

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Shah
7/12/17

FORM NO. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: :: :: :: GUWAHATI

ORDER SHEET
APPLICATION NO 203/2001(T) OF 2001.
N.P.(C) 257/2001

Applicant (s) Gambal Hazy

Respondent (s) Chpt 2028

Respondent (s) Chot Dass Advocate for Applicants (s) Mr. M. Chanda & S. Datta.

Advocate for Respondent (s) Case -

Notes of the Registry	Date	Order of the Tribunal
	12.6.01	On request of the learned counsel 1 st for the applicants / this case along with the connected cases on 22-6-2001 for orders
Received from the Hon'ble Gurhatti High Court vide Court's order dated 2-4-2001 in W.P. C) No. 374/2000.	22.6.01	I C Usha Member
Laid before Hon'ble Court for orders.		Vice-Chairman
<u>DR</u>	30/6/01 2001 JG (J) 30/6/01	Heard counsel for the parties. Judgment delivered in open court, kept in separate sheets. The application is disposed of in terms of the order. No order as to costs.
	I C Usha Member	Vice-Chairman
Copy of the Judgment has been sent to the D/Secy, for the same to the L/Ad. the parties.		

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from W.P.(C)

No. 257 of 2000

Civil Rule

Sri. Gambok Hagey

Appellant

Petitioner

Versus

State of A.P.

Respondent

Opposite-Party

Appellant Mr. Manik Chanda
For Petitioner Mr. Surajit Dutta

Respondent C.A.A.P.
For Opposite-Party

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
		17.1.2000	-Before-

The Hon'ble Mr. Justice P.G. Agarwal

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

Let a notice of motion issue calling upon the respondents to show cause as to why a rule should not be issued as prayed for or why such further or other orders should not be passed as to this court may deem fit and proper.

Contd....

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
		17.1.2000 (Contd.)	
			The notice is made returnable within four weeks.
			Mr. H.Roy, learned counsel accepts notice on behalf of respondent nos. 1, 2, 3 and 6. Let respondent nos. 4 and 5 be served by registered post.
			The petitioner has prayed for an interim protection stating interalia that at present he is working as Divisional Accountant in the Office of the Executive Engineer, Ziro R.W.D. and he may be repatriated to the parent Department in spite of the Govt. Letter dated 16.11.99.
			It is provided that till the next date, the petitioner shall not be released from the present post. Petitioner shall furnish necessary copy of the petition to the responder
<p>RETURNABLE BY within 4 weeks ② 2 Notice to respondent kb ms 495 by Regd post with copy to the order ③ 20.1.2000 McGraw 20.1.2000</p>			<p><i>J.R.</i> Judge</p>

THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

No. of 19

Civil Rule

Appellant

Petitioner

Versus

• Respondent

Opposite-Party

Appellant

For
the
Patient

Respondent

For — — —

**Noting by Officer or
Advocate.**

Serial
No.

Date _____

Office notes, reports, orders or proceedings
with signature

88

2

3

4

3
W.P. (1) 257/2 cm

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
<u>25-2-2000</u> Notice sent to despatch section for issue to Respondent No 4 and 5 by Regd. post with A/D.			
<i>Offr 25/2/2000</i>			
<u>13/3/2000</u> order dtd. 17-1-2000 sent to despatch section as communication.			
<i>SD 3/3.</i>			
<u>18-5-2000</u> Notice issued on Respondent No. 4 and 5 by Regd. post with A/D rule Memo No. 6623-24/RM dt. 5-4-2k.		<u>28/6/2000</u>	<i>first the matter in the last deck of July 2000 a proposal for</i> <i>560</i>
<i>Offr 18/5/2000</i> <i>1st instance of July</i> <i>27-6-2000</i> <i>27-6-2000</i>			

Noting by officer or Advocate.	Serial No.	Date	Office notes, reports, orders, or preceding with signature.
<u>G. I. 2nd.</u>			5
An affidavit in opposition on behalf of the Repts. 4 & 5 has been filed.	Date 6/1/01	Before the Hon'ble 12-1-2001	B. Lamare
List next week ✓ 12/1/01	12-1-2001		list the matter in the next week.
	CJ		B28.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceeding with signature

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application Nos. From 200(T) to 208(T) of 2001. a

Date of Order : This is the 22nd Day of June, 2001.

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE CHAIRMAN.

HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER.

O.A.No.200/2001(T) (in C.R.6037/98):

R. Prathapan Applicant.

By Advocate Mr.B.K.Sharma & Mr.P.K.Tiwari.

- Vs -

State of Arunachal Pradesh & Ors . . . Respondents.

By Mr.B.C.Pathak, Addl.C.G.S.C.

O.A.No.201/2001(T) (in W.P.(c)1117/2000 :

Shri Habung Lalin Applicant.

By Advocate Mr. Tagia Michi

- Vs -

Union of India & Ors. Respondents.

Mr.B.C.Pathak, Addl.C.G.S.C.

O.A.No.202/2001(T) (in W.P.(c)374/2000

Sri Keshab Chandra Das Applicant.

By Advocate Mr.Amitava Roy & Mr.S.Dutta

- Vs -

State of Arunachal Pradesh & Ors . . . Respondents.

Mr. A.Deb Roy, Sr.C.G.S.C.

O.A.No.203/2001(T) (in W.P.(c)257/2000):

Sri Gamboh Hagey Applicant.

By Advocate Mr.M.Chanda & Mr.S.Dutta

- Vs -

The State of Arunachal Pradesh & Ors. Respondents.

Mr.B.C.Pathak, Addl.C.G.S.C.

O.A.204/2001(T) (in W.P.(c)373/2000) :

Shri Rathindra Kumar Deb Applicant.

By Advocate Mr.Amitava Roy & Mr.S.Dutta

- Vs -

The State of Arunachal Pradesh & Ors. Respondents.

Mr. A. Deb Roy, Sr.C.G.S.C.

O.A.205/2001(T) (in W.P.(c) 376/2000) :

Shri Utpal Mahanta Applicant.
By Advocate Mr.A.Roy & Mr.S.Dutta

- Vs -

The State of Arunachal Pradesh & Ors. . . . Respondents.

Mr. A.Deb Roy, Sr.C.G.S.C.

O.A.206/2001(T) (in W.P.(c) 496/2000) :

Hage Mubi Tada Applicant.
By Advocate Mr.A.Roy, Mr.M.Chanda & Mr.S.Dutta

- Vs -

Union of India & Ors. Respondents.

Mr.A.Deb Roy, Sr.C.G.S.C.

O.A.207/2001(T) (in W.P.(c) 876/2000) :

Malay Bhushan Dey Applicant.
By Advocate Mr.B.C.Das & Mr.S.Dutta

- Vs -

Union of India & Ors. Respondents.

Mr.A.Deb Roy, Sr.C.G.S.C.

O.A.No.208/2001(T) (in W.P.(c) 375/2000) :

Shri Hage Tamin Applicant.
By Advocate Mr.A.Roy, Mr.M.Chanda & Mr.S.Dutta.

- Vs -

The State of Arunachal Pradesh & Ors. . . . Respondents.

Mr.A.Deb Roy, Sr.C.G.S.C.

ORDER

R.R.K.TRIVEDI J.(V.C.) i

We have heard Mr. M. Chanda for the applicants
and Mr.A.Deb Roy, learned Sr.C.G.S.C. for the respondents.

2. In all the aforesaid O.A.s the questions of law and fact
involved in
are similar and they can be disposed of by a common

order, against which learned counsel for the parties have no objection.

3. The applicants of the present O.A.s are serving in different capacities under the State of Arunachal Pradesh. The applicants are serving on the basis of deputation. They are mainly involved with Divisional Accountant in the organisation, ^{under} ~~and~~ administrative control of Accountant General (A&E), Arunachal Pradesh and Meghalaya. After expiry of the period of deputation, orders have been passed for repatriation to their original department. Agrieved by the order of repatriation the applicants have filed the Writ Petitions in High Court, which have been transferred to this Tribunal.

4. Learned counsel for the applicant has submitted that by order dated 15-11-1999, the Government of Arunachal Pradesh has extended the period of deputation for a period of two years from the date of expiry of their present respective tenure, in the interest of public service. The operative part of the order reads as under :

"The Govt. of Arunachal Pradesh is of the view that requirement and posting of the DAO/DAS for 38 working Divisions of PWD may not be done at this stage, since final decision of the Govt. is still awaited. The serving Divisional Accountants in the works Deptts on deputation basis may be allowed extension for a further period of two years from the date of expiry of their present respective tenure in the interest of public service. This will provide succour to the poor financial position of the state prevailing at the present time. This arrangement is proposed till view of the State Govt. in final shape could be put forward to your esteemed office."

Thus the period of expiry stands extended by order dated 15th Nov'99 from the date of expiry. In the meantime the State of Arunachal Pradesh has taken a decision to observe the

deputationist applicants in the State Cadre by order dated 12-1-2001, copy of which has been filed as Annexure-9. The letter is being reproduced below:

To,

The Accountant General(A&E)
Arunachal Pradesh, Meghalaya, etc.,
Shillong-793 001.

Sub: Transfer of the Cadre of Divisional Accounts Officer/Divisional Accountants to the State of Arunachal Pradesh - regarding.

Sir,

It was under active consideration of the Government of Arunachal Pradesh for sometime to take over the Cadre of the Divisional Accounts Officers / Divisional Accountants of the Works Department totaling 91 (Ninety one) posts from the existing combined cadre being controlled by you. Now, the Government of Arunachal Pradesh has decided to take over the above said Cadre under the direct control of the Director of Accounts & Treasurries, Govt. of Arunachal Pradesh, with immediate effect.

Persons those who are borne on regular basis in the cadre and opt to come over to Arunachal Pradesh state Cadre, will be taken over on status quo subject to acceptance of the state Government. It is also decided that henceforth no fresh Divisional Accountant(s) on deputation will be entertained. Cases of those who are presently on deputation and serving in this state shall be examined at this end for their future continuation even after completion of the existing term of deputation.

It is, therefore, requested to take necessary action at your level so that the process of the transfer of the Cadre along with the willing personnel can be completed immediately.

Formal notification is under issue and shall be communicated in due course.

Yours faithfully,

(Y. Megu)
Director of Accounts & Treasurries
& Ex-Officio Dy. Secy. (Finance),
Govt. of Arunachal Pradesh,
NAHARLAGUN.

5. As the State Government has extended the period of deputation and further has taken a decision to absorb the applicants in the State Cadre by order dated 12-1-2001, in our opinion, nothing is left to be decided by this Tribunal in these O.A.s. The order of repatriation impugned in these O.A.s stands ^{disposed of} ~~suspended~~ by order dated 15-11-1999, filed ^{of} ~~in~~ Annexure-7.

The applications are accordingly, disposed of.

It is made clear that if change in the present situation arises, it ^{shall be} ~~is~~ open to the applicants to approach this Tribunal.

There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN
Sd/ MEMBER (ADM)

THE GAUHATI HIGH COURT
 (THE HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA MANIPUR : TRIPURA
 MIZORAM AND ARUNACHAL PRADESH)

CHECK SLIP

DISTRICT: Lower Subansiri (A.P) W.P.(C) CASE NO. 252 118 2000
 DB/SB/A/B A 27 CATEGORI CODE: 10040
 FILING SL. NO. 101 DATE OF FILING: 12-1-2000

Name of Party: Sri Gombok Hagey
III
Stat. Of. A.P. 2000

Signature of D.A.

1. Court Fee due : R. 58/- ✓
 Court Fee Paid :
 Deficit if any :
 2. Filed within Limitation : Yes / No. ✓
 Condation Petition : Yes / No. ✓
 (if any)
 3. Related information For : Yes / No. ✓
 Caveat Matching :
 4. Vakalatnama File : Yes / No. ✓
 5. Certified copy of order : Yes / No. ✓
 Judgement, if required, :
 Filed.
 6. Affidavit / Verification : Yes / No.
 in order.
 7. Form in proper : Yes / No. ✓
 8. Any other defects (to be named) : Yes / No. ✓

CASE READY / DEFECTIVE

121/2000
 SIGNATURE OF THE ^{Commissioner of Affidavit} _{Sub-Sub-DP/}
 FILING SECTION. *Gawahat*

**SIGNATURE OF THE STAMP
 REPORTER.**

THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA MANIPUR : TRIPURA
MIZORAM AND ARUNACHAL PRADESH)

Category	No.	Year
1. (a) Case No. : <u>W. P. (C) 1252</u>		/19920250
1. (b) Related Case No. : <u></u>		/199
1. (c) Related Information : <u></u>		
1. (d) Jurisdictional Value Rs. <u></u>	1. (e) Court Fee Rs. <u>58.80</u>	
1. (e) Provision of law under which the case filed : <u></u>		
DATE / MONTH / YEAR		
1. (f) Date of Registration : <u>12 / 01 / 2000</u>		
2. (a) Case Category Code : <u>18040</u>		★
2. (b) Subject Category Code : <u></u>		★
2. (c) Bench Code : <u>A.P.</u>	<u>A</u>	<u>Lower Subansiri</u>
3. State Name : <u></u>		4. State Code <u>S</u>
4. Petitioner (s) : <u>Sri Gambok Hagey</u>		
5. Respondent (s) : <u>State of A.P.</u>		
6. Petitioner (s) : <u>Mr. Manik Chanda</u>		
Advocate (s) : <u>Mr. Surajit Datta</u>		
7. Respondent (s) : <u>C. A. A. P.</u>		
Advocate (s) : <u></u>		
8. Stage Code of the Case : <u></u>		★
9. Court No. : <u></u>		
10. Caveat (if any) : Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>		

Signature with date :

Usha 12/11/2008

★ Kindly use appropriate codes.

16

District - Lower Subansiri

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya, Manipur
Tripura, Mizoram and Arunachal Pradesh)

(CIVIL EXTRA-ORDINARY JURISDICTION)

WRIT PETITION (C) NO. 252/2000

Category Code No : 10040
Bench : A, A'

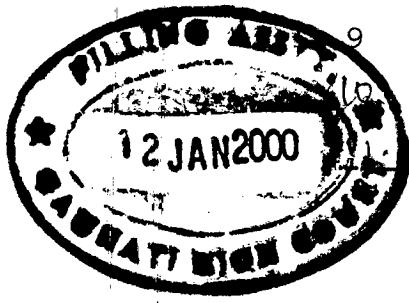
Sri Gamboh Hagey

-Vs-

The State of Arunachal Pradesh & Ors.

I N D E X

Sl.No.	Annexure	Particulars	Page No.
1	-	Petition	1-14
2	-	Affidavit	15
3	1	Office Order dt. 30.12.96	16-18
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7	5	Hon'ble Court's Order dt. 01.04.99	22
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9	7	Letter dated 16.11.99	24-25
V(Name (Pet'ner)			26.
Affidavit - in - oppo (Repdts 425)			29 - 44



Date : 12.01.2000

Filed by :
Swagat Deka
Advocate 12.01.2000

District - Lower Subansiri.

Filed by :-
The Petitioner / X
Through :
Surajit Roy
Advocate
12.01.2000

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya, Manipur,
Tripura, Mizoram and Arunachal Pradesh)

(CIVIL EXTRA-ORDINARY JURISDICTION)

WRIT PETITION (C) No. 257 / 2000

Category Code No. : 00 10040

Bench - A

To

The Hon'ble Shri Brijesh Kumar, B.A., LL.B., the
Chief Justice of the Gauhati High Court and His Lordship's
Companion Justices of the said Hon'ble Court.



IN THE MATTER OF :

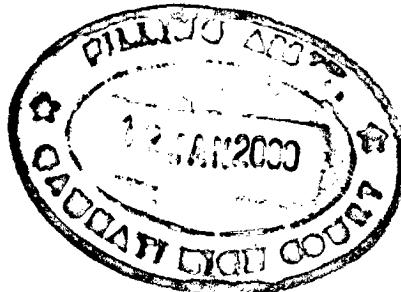
An application under Article 226 of
the Constitution of India for issue
of a Writ in the nature of Mandamus
and/or any other appropriate Writ,
Order or Direction of like nature.

-AND-

IN THE MATTER OF :

Challenge to the legality of the
threatened action of the Respondents
to repatriate the Petition to his
parent department without considering
his case for permanent absorption

Contd....



Subanjit Roy
Advocate
12.01.2000

and the option exercised by him to be absorbed in the bifurcated cadre of A.G. (A & E) at Arunachal Pradesh.

-AND-

IN THE MATTER OF :

- ✓ Permanent absorption of the Petitioner as Divisional Accountant in the organisation and administrative control of Accountant General (A & E), Meghalaya, etc. Shillong.

-AND-

IN THE MATTER OF :

Enforcement of Petitioner's fundamental right under Article 14 and 16 of the Constitution of India.

-AND-

IN THE MATTER OF :

Gamboh Hagey
son of Shri H.N. Bhat,
presently working as Divisional Accountant
in the office of the Executive Engineer,
R.W. Division, Department of Rural Works Dept.
Government of Arunachal Pradesh.

.....Petitioner

-VERSUS-

Contd...

1. The State of Arunachal Pradesh,
through the Secretary,
Department of Rural Works Department,
Government of Arunachal Pradesh,
Itanagar.
2. The Chief Engineer,
Rural Works Department,
Government of Arunachal Pradesh,
Itanagar.
3. The Directorate of Treasuries &
Accounts, Naharlagun,
Arunachal Pradesh (Itanagar).
4. The Comptroller of Auditor General
of India, 10 Bahadur Shah Zafar Marg,
New Delhi-110002.
5. The Accountant General (A&E)
Meghalaya etc.,
Shillong-793001.
6. The Executive Engineer
Ziro Rural Works Department,
Ziro,
Arunachal Pradesh

.....Respondents.

The humble petition of the above named petitioner-

MOST RESPECTFULLY SHEWETH :

1. That the Petitioner in the present petition is

Contd....

Arunachal
High Court
Decided

seeking his permanent absorption as Divisional Accountant in the organisation and administrative control of Accountant General (A&E), Meghalaya etc., Shillong or Director of Accounts & Treasuries, Govt. of Arunachal Pradesh, Naharlagun. Though this Petitioner has worked for nearly three years as Divisional Accountant in the organisation and administrative control of Accountant General (A&E) Meghalaya, Shillong, but he is not being permanently absorbed in the aforesaid capacity. Now the efforts are on to repatriate the Petitioner to his parent department of Public Works Department, Government of Arunachal Pradesh. What makes the likely repatriation of the petitioner disturbing is the fact that though he is being repatriated to his parent department of P.W.D., Government of Arunachal Pradesh, but his place is to be taken by the deputationist only. Hence present case is the case where one deputationist is replaced by another deputationist. Instead of permanently absorbing the Petitioner to the post presently being held by him, wherein he has worked for nearly three years by repatriating him to his parent department, the Respondents are only bringing a person on deputation to work in the place of Petitioner. It is also noteworthy that the Petitioner is competent to be permanently absorbed in the deputation post of Divisional Accountant. Moreover, though he worked on deputation but his appointment was against the permanent post in a substantive capacity and his such appointment was pursuant to a selection. It will be pertinent to mention here that option was

Contd....

called for to be absorbed in the bifurcated cadre of AG (A&E), Meghalaya etc. Shillong for Arunachal Pradesh and the Petitioner duly exercised his option. However, presently there is a move to repatriate him without considering his such option. Hence the present Writ Petition.

2. That the Petitioner was initially appointed in the Public Works Department (for short P.W.D.), Arunachal Pradesh as Upper Division Clerk at Bomdila, PWD Division, Bomdila, Arunachal Pradesh. Eversince his entry to his service, he has been discharging his duties to the satisfaction of all concerned. Presently, he is on deputation to AG (A&E), Meghalaya etc., Shillong and is posted at Ziro Rural Works Division (for short RWD), Ziro, Department of R.W.D., Government of Arunachal Pradesh. Thus although he is working under the administration control of AG (A&E), Meghalaya etc., Shillong but practically, he has been posted and working in the office of the State of Arunachal Pradesh.
3. That the Petitioner consequent on his selection for the post of Junior Grade Divisional Accountant in the cadre of Divisional Accountant under the administrative control of the Accountant General (A&E), Meghalaya etc., Shillong was appointed as Divisional Accountant in the office of the Executive Engineer, Anini PWD, Anini, Arunachal Pradesh vide E.O. No. DA Cell/202 dated 30.12.1996.

Copy of the Office Order dated 30.12.1996 is annexed hereto and marked as Annexure-1.

4. That though the aforesaid appointment of the Petitioner was on deputation for the period of one year, but the same was subsequently extended from time to time and the Petitioner is still continuing in the said post. As stated above, after undergoing transfer, the Petitioner is presently posted at Ziro, R.W.D., Ziro, Arunachal Pradesh.
5. That when the Petitioner was working as Divisional Accountant under the Administrative control of A.G. (A&E), Meghalaya etc. Shillong, aforesaid options were called for from the intending incumbents to be absorbed in the bifurcated cadre of AG (A&E) for Arunachal Pradesh. The Petitioner being interested to be absorbed in the bifurcated cadre, duly exercised his option vide letter dated 5.2.1997.

Copies of the relevant documents in the above context viz. circular dated 24.12.96 and letter dated 5.2.97 alongwith the enclosures are annexed hereto and the same are marked as Annexures-2 and 3 respectively.

6. That pursuant to exercise of such option, it has been the legitimate expectation of the Petitioner that he would be absorbed in the establishment of AG (A&E) for Arunachal Pradesh in due course. However, it is whispered in the office that before consideration of such absorption, he would be repatriated to his parent department. It will be pertinent to mention here that the Petitioner who was a UDC in his parent department

Contd.....

came on deputation to a promotional post carrying higher scale of pay to the office of the AG (A&E), Meghalaya etc., Shillong. Such expectation was also in view of the fact that the performance of the Petitioner as a Divisional Accountant has been well recognised by the authorities.

7. That the petitioner states that consequent upon the revision of pay scale pursuant to the recommendation made by the 5th Central Pay Commission, the pay scale of the Petitioner has been revised and fixed in the scale of pay of Rs.5000-8000/-. Thus it will be seen that for all practical purposes he has been treated to be a regular staff in the establishment of AG (A&E), Meghalaya etc., Shillong.

8. That as already stated above, it is the definite information of the Petitioner that he is being repatriated to his parent department without considering his case for permanent absorption. On the other hand, he has also gathered the information that he is being replaced by another deputationist. It is not a case of his replacement by any regular incumbent of the office of the A.G. (A&E), Meghalaya. On the other hand, the bifurcation towards creation of a new cadre of AG (A&E) for Arunachal Pradesh is on the offing and the necessary infrastructure facilities including the office building etc. Thus if in the meantime, the Petitioner is repatriated to his parent department without considering his option as was called for, same will seriously tell upon his service career. It will be pertinent to mention here

Contd...

that on an earlier occasion, there were other similarly situated colleagues of the Petitioner who being aggrieved by the order of repatriation assailed the same before this Hon'ble Court and this Hon'ble Court was pleased to protect their interest by way of appropriate interim order. In this connection, mention may be made of the case of Shri R. Prathapan, Shri Bidhu Bhusan De and Shri M.V.K. Nair, Divisional Accountants, under the establishment of A.G. (A&E), Meghalaya etc., Shillong, who being aggrieved by such moves of repatriation without considering their cases for absorption approached this Hon'ble Court by way of filing Civil Rule No. 6037/98, 1578/99 and 1599/99. This Hon'ble Court by its order dated 3.12.98 and 1.4.99 protected the interest of the Petitioners in those cases by issuing a direction to allow them to continue in his post of Divisional Accountant. Now said Shri Prathapan, Shri Bidhu Bhusan Dey and Shri M.V.K. Nair are continuing in the post of Divisional Accountants under the establishment of AG (A&E), Meghalaya etc., Shillong in Arunachal Pradesh. The Petitioner in the present case is similarly situated like those of the Petitioners in the said Civil Rules.

Copies of the Hon'ble Court order dated 3.12.98 and 1.4.99 passed in Civil Rules No. 6037/98, 1598/99 and 1599/99 are annexed hereto and the same are marked as Annexures 4,5 and 6 respectively.

9. That the Petitioner is aggrieved because instead of absorbing him permanently as Divisional Accountant in the office of the Accountant General (A&E), Meghalaya, etc.,

Contd...

Shillong, he is being replaced by another deputationist. The Petitioner has worked as Divisional Accountant was against a permanent post and there is no reason as to why he cannot be absorbed in the said capacity more particularly when he has already exercised his option for absorption. Instances are at galore in the establishment of AG (A&E) of absorption of deputationists. In this connection, it is noteworthy that the Petitioner's appointment as Divisional Accountant was made after carrying out selection in accordance with law. Since the Petitioner was duly qualified and he was selected for such appointment, he was accordingly sent on deputation as Divisional Accountant.

10. That as stated above, the Department is seriously considering to bring on deputation another person in place of the Petitioner to work as Divisional Accountant. Such a move on the part of the administration is wholly unacceptable inasmuch as the Petitioner is not only duly qualified but he has also worked as Divisional Accountant for a long time. In view of the fact that the Petitioner has a considerable experience to work as Divisional Accountant, his replacement by another person who will be brought on deputation is not only arbitrary but also unreasonable. It will be pertinent to mention here that although normal period of deputation is three years, but the same is extendable upto five years. Thus if the post presently being held by the

Contd...

Commission of Audit
Shillong

Petitioner is filled up by a deputationist only, there is no earthly reason as to why the Petitioner cannot be continued upto the maximum permission period of five years, even leaving aside the fact that he has already exercised his option for permanent absorption.

11. That an employer has to be model to be a model employer more so when such an employer is the State itself. It is unjust to throw out a person who has rendered about three years of service in the same cadre especially when such a service was rendered on the basis of a thorough process of selection pursuant to which the person was found fit for an appointment as Divisional Accountant and he rendered his services in the said capacity for nearly three years.

12. That the Petitioner states that similar cases of sending back the deputationists to Arunachal Pradesh from CBI came up for consideration before this Hon'ble Court and this Hon'ble Court in consideration of the fact that option has already been exercised for permanent absorption in the CBI, procted the interests of the petitioner therein by passing appropriate interim order. In this connection, mention may be made of W.P. (C) No. 367/99 (Krishna Mangal Das Vs. UOI & Ors.), W.P. (C) No. 877/99 (Ajit Kumar Deb Vs. UOI & Ors.), W.P. (C) No. 1196/99 (Dambaru Dutta Vs. UOI & Ors.), In all these cases, the State of Arunachal Pradesh do not have any objection towards absorption of the Peti-

Contd...

Complaints
Court

tioner therein in the CBI. However, its only objection was in respect of the delay towards such absorption.

Same is the case here also inasmuch as the Government of Arunachal Pradesh cannot have any objection if the Petitioner is permanently absorbed in the establishment of AG (A&E), Meghalaya and/or in the bifurcated establishment of AG (A&E) for Arunachal Pradesh. The reason is obvious inasmuch as by such absorption, posts will fall vacant by which others will be benefited.

The Petitioner is not in possession of the copies of the orders passed in the above writ petitions. However, he craves leave of the Hon'ble Court to produce the same at the time of hearing of this petition.

13. That there is a move by the Government of Arunachal Pradesh to take over the cadre of Divisional Accountant from the administrative control of A.G. (A&E), Meghalaya etc., Shillong and Government of Arunachal Pradesh, has already issued circular in this respect to all the concerned. The Petitioner being originally from the State of Arunachal Pradesh and was appointed as Divisional Accountant, the Accountant General (A&E), Meghalaya etc. Shillong has no right to repatriate the Petitioner to his parent Department. Rather, the A.G. (A&E), Meghalaya, should have issued necessary order for permanent absorption of the applicant/petitioner, on the basis of his option, exercised by the Petitioner.

Copy of the circular dated 16th November, '99 issued by the Director of Treasuries & Accounts, Government of Arunachal Pradesh, is annexed as Annexure-7.

Contd. . .

14. That in this petition, the Petitioner has made out a prima facie case of arbitrariness on the part of the Respondents. Petitioner has a strong case for being permanently absorbed as Divisional Accountant either in his present capacity as Divisional Accountant in the office of the Executive Engineer, Ziro R.W.D., Ziro, Department of R.W.D., Arunachal Pradesh or as Divisional Accountant in any of the office of the Accountant General (A&E), Meghalaya, Shillong and so also in the bifurcated cadre of AG (A&E) for Arunachal Pradesh. An interim direction by this Hon'ble Court that pending disposal of this petition, the petitioner may not be disturbed from his present post of Divisional Accountant in the office of the Executive Engineer, Ziro, RWD, Ziro, Arunachal Pradesh, Department of RWD, would not adversely affect the interest of the Respondents and they would not be prejudiced in any way, whereas on the other hand, if such an interim direction is not given in favour of the Petitioner, the writ petition itself would be rendered infructuous. Hence the balance of convenience is in the favour of the Petitioner towards passing such an interim order.
15. That the Petitioner has no other appropriate alternative remedy than the one sought for herein and the reliefs if granted by this Hon'ble Court would be just, adequate, proper and effective.
16. That the Petitioner demanded justice but the same was denied to him. Hence the Petitioner files this petition bona fide and for securing the ends of justice.

In the premises aforesaid, it is most respectfully prayed that Your Lordships may be pleased to admit this petition, call for the records of the case, issue Rule calling upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or Certiorari and/or any other appropriate Writ, Order or Direction should not be issued setting aside and quashing the proposed action of the Respondents to repatriate the Petitioner to his parent department and as to why directions shall not be issued to the Respondents to permanently absorb the Petitioner as Divisional Accountant in the organisation and administrative control of the Accountant General (A&E), Meghalaya and till in the bifurcated cadre of AG (A&E) for Arunachal Pradesh and upon hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to make the Rule absolute and/or pass such other or further order/orders as may be deemed fit and proper.

-AND-

Pending disposal of the Rule, be pleased to direct the Respondents not to release the Petitioner from his present

Contd....

post of Divisional Accountant, and to allow him to continue as Divisional Accountant in any Division in Arunachal Pradesh till disposal of this Rule.

And for this, your Petitioner as in duty bound, shall ever pray.



A F F I D A V I T

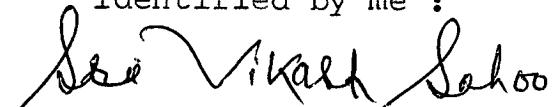
I, Gamboh Hagey, son of Shri H.N.Bhat, aged about 29 years, presently working as Divisional Accountant in the office of the Executive Engineer, RWD, Ziro, Department of RWD, Government of Arunachal Pradesh, do hereby solemnly affirm and declare as follows :

1. That I am the petitioner in the instant petition, conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
2. That ~~exam~~ the ~~petitio~~ statements made in this Affidavit and in the accompanying petition in paragraphs 1, 3, 4, 6, 7, 9, 10, 11 and 12 are true to my knowledge; those made in paragraphs ~~8~~ 2, 5, 8 and 13 being matters of records are true to my information derived therefrom and the rests are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 12th day of January, 2000.


Shri Gamboh Hagey

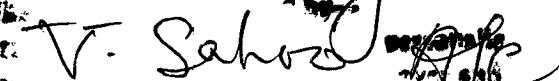
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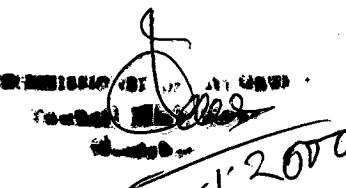

Advocate's Clerk

12/1/2000

DEPONENT

12th Jan 2000


T. Sahoo


T. Sahoo
12-1-2000

ANNEXURE-I

OFFICE OF THE ACCOUNTANT GENERAL (A&E) METHALAYA,
ARUNACHAL PRADESH AND MIZORAM, SHILLONG

EO No. DA Cell/202

Dated 30.12.96

Consequent on his selection for the post of Divisional Accountant (on deputation basis) in the pay scale of Rs. 1400-40-1600-50-2300-60-2600/- in the combined cadre of Divisional Accountants under the administrative control of the office of the Accountant General (A&E), Meghalaya etc., Shillong Shri G. Hagey, U.D.C. at present working in the office of the Executive Engineer, Bomdila PWD Division; Bomdila, is posted on deputation as Divisional Accountant. in the office of the Executive Engineer, Anini PWDvn. Anini, Arunachal Pradesh.

2. Shri G. Hagey should join in the aforesaid post of Divisional Account on deputation within 15 days from the date of issue of this order, failing which his posting on deputation is liable to be cancelled without further communication and the position may be offered to some other eligible and selected candidate. No representation for change of the place or posting will be entertained under any circumstances whatsoever.

3. The period of deputation of Shri G. Hagey will be for a period of 1 (one) year at the initial stage, from the date of joining in the office of the Executive Engineer, Anini PW Divn, Anini, Arunachal Pradesh. However, the period of deputation may be extended upto 3 years. But in no case, the period of deputation will be extended beyond 3 years.

4. The pay and deputation (duty) allowances in respect Shri G. Hagey will be governed by the Government of India, Ministry of Finance, Public Grievance and Pensions (Department of Personnel and Training) letter No. 2/12/87-Estt (Pay.II) dated 29.4.1988.

Contd...

and as amended and modified from time to time. While on deputation Shri G. Hagey may elect to draw either the pay in the scale of pay of the deputation post or his basic pay in the parent cadre plus personal pay, if any, plus deputation (duty) allowance, Shri G. Hagey on deputation should exercise option in this regard with a period of 1 (one) month from the date of joining the assignment (i.e. the aforesaid post of deputation). The option once exercised by Shri G. Hagey shall be treated as final and cannot be altered/changed later under any circumstances whatsoever.

5. The Dearness Allowance, CCA, Children Education Allowance, T.A., L.T.C., Pension, etc. will be governed by the Govt. of India, Ministry of Finance O.M. No. F1(6) E-IV(A)/62 dated 7.12.1962 (Incorporated as Annexure 31 of Choudhury's C.S.R. Volume IV (13th Edition) and as amended from time to time.)

6. Shri G. Hagey on deputation will be liable to be transferred to any place within the state of Arunachal Pradesh, Manipur and Tripura, in the combined cadre of Divisional Accountants under the administrative control of the Accountant General (A&E) Meghalaya etc., Shillong.

7. Prior concurrence of this office must be obtained by the Divisional Officer before Shri G. Hagey (on deputation) is entrusted additional charges appointed or transferred to a post/station other than cited in this Establishment Officer.

Sd/-

Deputy Accountant General (A&E)
Meghalaya, M~~é~~xoram and Arunachal
Prasad, Shillong

Contd...

Annexure-I (Contd.)

Memo No. DA Cell/2-49/94-95/2461-2467 Dt. 1.1.97

Copy forwarded for information and necessary action to :

1. The Accountant General (A&E), Manipur, Imphal.
2. The Accountant General (A&E), Tripura, Agartala.
3. The Chief Engineer
He is requested to release Shri
immediately with the direction to report for duty
to his place of posting on deputation under intima-
tion to this office.

REGISTERED

Shri He is requested to release immediately
with the direction to report for duty to his place of
posting on deputation under intimation to this office.

REGISTERED

The Executive Engineer
He is requested to intimate the date of joining of Shri

REGISTERED

Shri G. Hagey, UDC, C/o the Executive Engineer,
Bomdila PW Divn., Bomdila, Arunachal Pradesh.

7. E.O. File
8. S.C. File
9. P.C. File
10. File of the deputationist

Sd/- Illegible

21.12.96

Sr. Accounts Officer

ANNEXURE-2

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

Circular No. DA Cell/2-1/96-97/178 Dt. 24.12.96

Separation of the joint cadre of Divisional Accountant/D.A.O's among the State Accountant General (A&E) Manipur, Tripura and Meghalaya etc. (for A.P) has been under consideration of this Office in consultation with the respective State A.G. To enable this office to assess the availability of qualified/unqualified D.A., D.A.O's (Gr. -I & II) for each of the States and the decide further course of action in the matter all Divisional Accountants (both qualified and unqualified) and Divisional Accounts Officer, Gr-I & II are requested to send their Option (enclosed) so as to reach the Office on or before 15.2.97.

Final decision on the exercised options will however, be taken considering the following conditions :

1. Transfer of the officers will be considered according to their options and seniority subject to the availability of vacancies in the State cadre.
2. Option once exercised is final and cannot be revoked.
3. The entire process of separation of cadre will be conducted in a phased manner.

Sd/- Illegible
Sr. Deputy Accountant General (A&E)

Annexure-3

To

The Accountant General (A&E), (DA Cell),
Meghalaya etc.
Shillong.

(Through the Executive Engineer, Thoubal
Project Division No. II, I & F C Department,
Manipur).

Subject : Option for separation of Cadre.

Reference : Your Circular No. DA-Cell/2-1/96-97/178
dated 24.12.96.

Sir,

With reference to the above circular I am
exercising my option for separation of Cadre under
the Accountant General (A&E) Meghalaya etc. (for
Arunachal Pradesh).

Necessary Annexure to the circular is enclosed
for kind consideration and acceptance.

Enclo : One option

Yours faithfully,

Dated, Anini
the 5th Feb'97

Sd/- 5.2.97

(Shri Gamboh Hagey)
Anini PWD D.A.
Anini A.P.

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA : MANIPUR :
TRIPURA : MIZORAM & ARUNACHAL PRADESH)

CIVIL RULE NO. 6037/98

R.Prathapan

Petitioner

-Vs-

State of Arunachal Pradesh
& Ors.

Respondents

P R E S E N T

THE 'HON'BLE JUSTICE SMTI M.SHARMA

For the Petitioner

-

Mr. B.K.Sharma
Mr. P.K.Tiwari
Ms. Helen D, Advocates

For the Respondents

-

G.A., Arunachal Pradesh

O R D E R

3.12.98

Heard Mr. B.K.Sarma, counsel for the petitioner and
Mrs. N. Saikia, G.A., AP.

Let the records be called for.

Let a rule issue calling upon the respondents to
show cause as to why writ should not be issued, as prayed
for, and/or why such further or other orders should not
be passed as to this court may deem fit and proper.

Rule is returnable by eight weeks.

Govt. Advocate accepts notice for respondents
1,2,5 and 6. Petitioner shall take step on the other
respondents by regd. post.

Till the returnable date petitioner shall not be
released from the present post of Divisional Accountant
in the office of the Executive Engineer, Ziro Civil
Division, Department of Power, District Lower Subansiri,
Arunachal Pradesh.

Sd/- M.Sharma
Judge

Annexure-5

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA : MANIPUR :
TRIPURA : MIZORAM & ARUNACHAL PRADESH

WRIT PETITION (CIVIL) NO. 1598/99

BIDHU BHUSAN DE - Petitioner
-Vs-
THE STATE OF ARUNACHAL - Respondents
PRADESH & ORS.

P R E S E N T

THE HON'BLE MR JUSTICE A K PATNAIK

For the Petitioner : Mr. B.K. Sharma & Mr. U.
K. Nair Advs.
For the Respondents : G.A., A.P
Date of Order : 01.04.99

O R D E R

Heard Mr. BK Sarma, learned counsel for the petitioner and Mr. N. Sinha, GA, AP

Let a notice of motion issue calling upon the respondents to show cause as to why a Rule should not be issued, as prayed for; or why such further or other order should not be passed, as to this Court may seem fit and proper. Notice is made returnable by one month.

Mr. N. Sinha, GA, AP accepts notice on behalf of the respondent Nos. 1, 2 and 4. The petitioner will take steps for service of notice on the other respondents by registered post with A/D by 5.4.99.

In the meanwhile, the petitioner will not be released from his present post of Divisional Accountant in the office of the Executive Engineer, Hayuliang Civil Division, Department of Power, Arunachal Pradesh.

TRUE COPY

Sd/- Illegible

13.10.99

Sd/- A K PATNAIK
Judge

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM : MEGHALAYA, MANIPUR : TRIPURA :
MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION (CIVIL) NO. 1599/99)

M.V.KARTIKEYAN NAIR ! PETITIONER

-Vs-

THE STATE OF ARUNACHAL : RESPONDENTS
PRADESH & ORS

P R E S E N T

THE HON'BLE MR JUSTICE A K PATNAIK

For the Petitioner : Mr. B.K.Sharma & Mr. M.
K. Nair
For the Respondent : G.A., A.P.
Date of Order : 01.04.99

O R D E R

Heard Mr. B.K.Sarma, learned counsel for the petitioner and Mr. M. Sinha, GA, AP.

Let a notice of motion issue calling upon the respondents to show cause as to why a Rule should not be issued, as prayed for; or why such further or other order should not be passed, as to this Court may seem fit and proper. Notice is made returnable by one month.

Mr. Sinha, GA, AP accepts notice on behalf of the respondent Nos. 1,2 and 4. The petitioner will take steps for service of notice on the other respondents by registered post with A/D by 5.4.99.

In the meanwhile, the petitioner will not be released from his present post of Divisional Accountant in the office of the Executive Engineer, Kalaktang PWD Division, Government of Arunachal Pradesh.

TRUE COPY
Sd/- Illegible
04.10.99
Gauhati High Court
Guwahati

Sd/- A.K.Patnaik
Judge

GOVT. OF ARUNACHAL PRADESH
DIRECTORATE OF ACCOUNTS & TREASURIES
NAHARLAGUN

No. DA/TRY/15/99

Dated Naharlagun the 16th Nov '99

To

All Executive Engineer,
PWD/Power/PHED/IFCD/RWD/Civil Power.

Sub : Divisional Accountant/Divisional Accounts Officer
regarding.

Sir,

I would like to inform you that the Govt. of Arunachal Pradesh desire to take over the cadre of Divisional Accountant and Divisional Accounts Officer from the AG(A&E) Arunachal Shillong and to encadre these posts to the Finance and Accounts Service. You are therefore, requested to furnish the following informations with regard to creation and appointment to the post of DA/DAO in your division since the pay and allowances of DAs/DAOs are drawn by your division.

1. Name of the Division :
Mailing Address and phone
No./Fax No.
2. Date of opening of the Division. :
3. Whether the division is permanent or temporary :
4. Sanction order No. and date of creation of the post and scale of pay.
- 4 (a) If the post is upgraded to :
DAO-II/DAO-I and brought under Central cadre by the AG, sanction order No., date with scale of pay and the address of the issuing authority may please be quoted.
5. Name and designation of the incumbent holding the post (DAO/DA) and scale of pay.
- 5 (a) Date of joining to the post:
- 5 (b) Whether regular or on deputation. :

Contd....

Annexure-7 (Contd.)

6. Whether the post is under :
Non-plan/Plan/Temporary or
Permanent etc. may please
be furnished with their
budget head of account.

An early reply on the matter is requested enabling
the undersigned to furnish the required information as
above to the Govt. within 1st week of December, 1999.

Please treat this letter as urgent and confirm
action within 5th December, 1999.

Yours faithfully,

Sd/- Illegible

(C.M.Mongmaw)

Joint Director of Accounts
Directorate of Accounts and Treasuries
Govt. of Arunachal Pradesh
Naharlagun.



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P. N. Choudhury
P. N. Choudhury

District: Lower Subansiri.

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

W.P.(C) No. 257 OF 2000

To:

The Hon'ble Shri Brijesh Kumar, B.A., LL.B., the Chief Justice of the Hon'ble Gauhati High Court and his other Lordships' companion Justices of the said Hon'ble Court.

IN THE MATTER OF

Shri Gamboh Hage

PETITIONER

-versus-

State of Arunachal Pradesh and Ors

RESPONDENTS

-AND-

IN THE MATTER OF :

An affidavit-in-opposition on behalf of Respondents No. 4 and 5.

8658155
AFFIDAVIT IN OPPOSITION

1. I, Shri S. A. BANISTER, son of Shri W. B. BANISTER, aged about 37 years, presently working as Senior Deputy Accountant General (Admin), with Respondent No. 5 do hereby solemnly affirm and declare, as hereunder that having

-2-

gone through the facts and circumstances, I am in a position to depose about the same and save and except what has been stated therein, all else can be taken as denied.

2. That the averments made in para 1 of the writ are denied except to the extent supported by Record.

That it is most respectfully submitted that the subject matter before this Hon'ble Court falls under the provisions of the Central Administrative Tribunals Act, 1985 and hence the Petitioner having approached this Hon'ble Court prematurely, has no lis to move the present petition.

That the Respondents humbly state that the Petitioner, an employee of the Government of Arunachal Pradesh, was posted on deputation as Divisional Accountant to posts under the administrative control of Respondent No.5 only for a specified period. In his appointment letter (Annexure 1 to the writ Petition) wherein it was clearly mentioned that while on deputation the Petitioner's service conditions would be governed by the orders set forth in the Government of India's Office Memorandum No.2/12/87-Est.(Pay II) dated 29.04.1988, as referred to in Annexure 1 abovesaid. The Petitioner being only on Deputation has no claim of absorption to posts under the administrative control of Respondent No.5.

The Hon'ble Apex Court while laying down the law in Ratilal B Soni reported in AIR 1990 SC 1132 (1991) 15ATC(85) and State of Punjab vs. Inder Singh (1997) 8 SCC 372 : 1998 SCC (L&S) 34 held that

“ a person on deputation can be reverted to his parent Department at any time and does not get any right to be absorbed in the deputation post.”

That as per the Recruitment Rules, 1988 of Divisional Accountants (Indian Audit and Accounts Department), which came in force w.e.f. 24.09.1988, the

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(31) 11

Petitioner does not have any right of claim to be absorbed against the post to which he is appointed on deputation, as per Rule 6 ,Schedule 11 of the said Rules of 1988.

Further the Petitioner was reverted back to his parent Department in the Government of Arunachal Pradesh as his tenure of deputation of three years had expired and the "order of repatriation is not violative of Article 14 of the Constitution" as held by the Hon'ble Apex Court in State of M.P. vs. Ashok Deshmukh (AIR 1988 SC 1240).

The Petitioner's claim that he had exercised an option for absorption is false, misleading and hence denied. That No option for absorption was called for from any Divisional Accountant on deputation. That this call of options was circulated from the office of Respondent No.5 vide Circular No. DA Cell/ 2-1 / 96-97/ 198 dated 24.12.1996 (annexed as Annexure 2 to the Writ Petition) before the Petitioner was even being considered for appointment on deputation and hence not applicable to him

That therefore the order appointing the Petitioner on deputation as a Divisional Accountant was issued from the office of Respondent No.5 only on 30.12.1996 (Annexure 1 to the Writ Petition) and was under different terms and conditions as applicable. That whereby in the said order the only option given to the Petitioner was an exercise of option regarding the fixation of his pay in the deputation post vide paragraph 4 of Annexure 1 to the Writ Petition and not for exercise of option as averred.

3. That, the averments made in paragraphs 2, 3 & 4 of the Writ Petition, being misleading misconceived and contrary to the record are hence denied in toto.

(32) 4

That the Respondents humbly state that the Petitioner was appointed on deputation to the cadre of Divisional Accountants administered by respondent No.5 under the normal deputation terms and the rest is a matter of records.

The Respondent would rely on the record at time of hearing it necessary.

That the averments made in paragraphs 5 & 6 of the writ petition being concocted, misconceived and misleading are hence denied.

That the Respondents most humbly submit that the Petitioner is not entitled for absorption as per existing rules in vogue. That further the claim of the Petitioner that the circular issued on 24.12.1996 abovesaid calling for his option for absorption in the bifurcated cadres is not correct to the extent as averred by him as the option was then to be exercised only by the qualified/ unqualified Divisional Accountant and Divisional Accounts Officers (Grade I & II) who were employees of Respondent 5. That further as a matter of fact no option was called for from any Divisional Accountant on deputation. That as the Petitioner was a Divisional Accountant on deputation from the government of Arunachal Pradesh there was no question of exercise of the option by him, under the terms of the Recruitment Rules.

That further Respondent humbly state that at no stage whatsoever and as detailed herein before and above, was the absorption of the Petitioner ever considered by the Respondents.

4. That the averments made in paragraph 7 being non est in law and misconceived are hence denied. That the Respondent humbly submit before the Hon'ble Court that the Petitioner who was on deputation was allowed to opt for the revised scale of pay of Rs. 5000-8000/- p.m. in the Deputation Post because of revision of pay scales in the Government of India based on the recommendations of the Fifth Central Pay

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Commission and in terms of paragraph 4 of the order cited herein aforesaid and placed at Annexure 1 to the Writ Petition. That the pay of the Petitioner was therefore accordingly fixed in the revised scale of pay. That the fact that the Petitioner's pay was re-fixed does not allow him to claim that he is a regular employee of the Government of India as his parent Department is in the Government of Arunachal Pradesh. Further vide this fixation of the Petitioner's pay in the revised pay scales of the Government of India, the initial terms of deputation contained in Annexure-1 to the Writ Petition had not been altered in any way and the Petitioner continued to remain an employee of the Government of Arunachal Pradesh.

5. That it is most humbly reiterated that the Petitioner by misleading this Hon'ble Court is attempting a back door entry into Central Government Service discarding all norms and rules and regulations related to appointment to and under Respondent No.5.

That the Recruitment Rules and norms as applicable to these posts under the answering Respondents being formal and laid down, can in no way be substituted, whereby a deputationist by attempting to misuse the due process of law and by misleading this Hon'ble Court gain back door entry abovesaid. That it would not be out of place to mention that even the criteria of age requirement for fresh recruitment and appointment to Central Government service has been given a go by, as it is most respectfully submitted that if the present deputationist is absorbed in the service of answering Respondents, he would block the appointment of those to be regularly appointed on eligibility criteria under the applicable Recruitment Rules.

6. That the averments made in paragraphs 8 and 9 of the Writ Petition are denied as the Respondent humbly submit that as per Recruitment Rules which came in force w.e.f. 24.09.1988, the period of deputation cannot be extended

-6-

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beyond the period of three years. That in the appointment order issued to the Petitioner on 30.12.96 (annexed as Annexure 1 to the Writ Petition) in paragraph 3 it was clearly mentioned that "in no case the period of deputation will be extended beyond three years".

As the Petitioner was due to complete his three years period of deputation the order repatriating him to his parent Department was issued vide No. DA Cell/157 dated 17.12.1999, by the Respondent No. 5 requesting the Executive Engineer to release the Petitioner, to allow the Petitioner to join back in his parent Department in the Government of Arunachal Pradesh from where he proceeded on deputation to his present post.

That the Petitioner's expectation of permanent absorption in the cadre of Divisional Accountants does not arise as he is on deputation. That the Petitioner had clearly understood that he could make no claim for permanent absorption or that his deputation term would not be extended beyond three years as this was clearly mentioned in paragraph 3 of his appointment letter Annexure 1 to the Writ Petition.

A copy of order dated 17.12.1999 is annexed as Annexure I.

That the averments made being misleading and misuse of the due process of law as applicable to this Hon'ble Court and hence is denied.

That as a matter of record OA412/99 with Shri R.K Sanajaoba Singh, OA 67/2000 with Binit Kumars Das, OA 122/2000 with Shri S.K. Dam, OA 141/2000 with Tage Murten as Applicants - versus - the present Answering Respondents as one of the opposite Parties, are pending before the Hon'ble CAT, Guwahati. That the Respondents humbly submit that conflicting and contrary Judgements may further confuse the issue on law and on facts.

That the Respondent reserves the right to file additional Affidavits - in - opposition if necessary and humbly submit that as the matters referred to in the para

under reply are still pending before this Hon'ble Court, they may be consolidated into analogous cases and the preliminary question of jurisdiction may kindly be decided before proceeding on merits in the matter.

7. That the averments made in paragraph 10 are denied as false and concocted. That the Respondents humbly state that the Petitioner was reverted back to his parent Department in the Government of Arunachal Pradesh as his term of deputation of three years had expired in terms of the order appointing the Petitioner (Annexure 1 to the Writ Petition). That the Petitioner's claim for permanent absorption does not arise in the light of what has been explained to the Hon'ble Court herein before and above.

8. That the averments made in paragraph 11 is denied as unfounded, false and misleading. That the Respondents humbly submit that the presumption made by the Petitioner is without any basis on law and on fact. That in this connection it is reiterated that because the term of deputation of three years having expired in the case of the Petitioner, the order reverting him back to his parent Department in the Government of Arunachal Pradesh was issued by Respondent No.5. That this action of the Respondents was thus reasonable and not arbitrary.

9. That the averments made in paragraphs 12 and 13 are misleading and misconceived. That the Respondent humbly state while reiterating their submissions herein before and above that the Petitioner who was on deputation has no right of claim to be absorbed in the establishment of the Respondent No.5 in the cadre of Divisional Accountants. The records are relied on in support of the above.

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10. That the averments made in paragraph 14 are denied as misleading and misconceived. That the Respondents humbly submit that the Government of Arunachal Pradesh has unilaterally mooted the idea of takeover of the cadre of Divisional, Accountants in December 1999 but till date has not come out with a firm proposal.

That it is most respectfully submitted that the Petitioner's claim is premature and based on conjecture and hence in terms of the law as applicable cannot be given effect to. That the Government of Arunachal Pradesh made a request vide their letter No. DA/TRY/15/99/9029 dated 15.11.1999 to extend the tenure of deputation for another two years beyond the period of three years, but this was not agreed to by the Respondent No.5, in keeping with the terms of deputation issued to the Petitioner on 30.12.1996 (Annexure 1 to the Writ Petition). The government was accordingly informed vide letter No. DA Cell/2-46/92-93/1698 dated 07.01.2000

A copy of order dated 15.11.1999 is annexed as Annexure II.

A copy of order dated 07.01.2000 is annexed as Annexure III.

11. That the averments made in paragraphs 15 and 16 are denied as misleading and misconceived. That the Respondent humbly submit that besides what has been stated herein above, they have not resorted to any arbitrary action or illegal exercise of power as claimed in the Petition. The Petitioner having accepted the terms and conditions of deputation in December 1996 (Annexure 1 to the Writ Petition) should have carried out and abided by the order of 17.12.1999 abovesaid (Annexure I) reverting him

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12. back to his parent Department in the Government of Arunachal Pradesh on expiry of his deputation period.

That the Respondents humbly state that there was no ill will, arbitrariness or illegal exercise of power while issuing the reversion order (Annexure I) to the Petitioner asking the latter to revert back to his parent Department in the Government of Arunachal Pradesh on expiry of his three years deputation term. The claim of absorption of the Petitioner does not arise.

That it would not be out of place at this stage to mention that identical matters as given herein below and after are pending before this Hon'ble Court and Hon'ble Central Administrative Tribunal, Guwahati Bench, filed by various petitioners situated similarly against the answering Respondents -

Before this Hon'ble Court:

1. CR 6037/98 in the matter of R Prathaphan versus Govt of Arunachal Pradesh and others.
2. W.P. 1594/99 in the matter of M.V. K. Nair versus Govt. of Arunachal Pradesh and others
3. W.P. 1598/99 in the matter of Bidhu Bhushan De versus Govt. of Arunachal Pradesh and others
4. W.P. 373/2000 in the matter of Rathindra Kr. Deb versus Govt. of Arunachal Pradesh and others
5. W.P. 1117/2000 in the matter of Habung Lalin versus Govt. of Arunachal Pradesh and others
6. W.P. 876/2000 in the matter of Malay Bhusan De versus Govt. of Arunachal Pradesh and others
7. W.P. 496/2000 in the matter of Hage Mubi Tada versus Govt. of Arunachal Pradesh and others
8. W.P. 374/2000 in the matter of Keshab Ch. Das versus Govt. of Arunachal Pradesh and others

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9. W.P. 376/2000 in the matter of Utpal Mahanta versus Govt. of Arunachal Pradesh and others
10. W.P. 375/2000 in the matter of Hage Tamin versus Govt. of Arunachal Pradesh and others.

Before the Hon'ble CAT, Guwahati:

1. OA 412/99 in the matter of RK Sanajoaba Singh versus Govt. of Arunachal Pradesh and others
2. OA 126/99 in the matter of Monmohan Das versus Govt. of Arunachal Pradesh and others
3. OA 67/2000 in the matter of Binit Kr. Das versus Govt. of Arunachal Pradesh and others
4. OA 122/2000 in the matter of S.K. Dam versus Govt. of Arunachal Pradesh and others
5. OA 141/2000 in the matter of Tage Murten versus Govt. of Arunachal Pradesh and others

That the answering Respondents from the record vested with them, respectfully submit that the Petitioner's case appears similar nature to the cases mentioned above and filed in the Hon'ble High Court and the Hon'ble Central Administrative Tribunal, Guwahati Bench.

That in view of the various other cases being sub-judice before this Hon'ble Court and the Hon'ble Central Administrative Tribunal, Guwahati Bench, the Petitioner's case may be consolidated and made analogous, in order to prevent any conflicting judgement that may cause disparity.

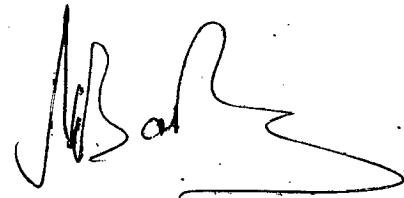
That the answering Respondents crave leave to rely on the submissions made in the other Affidavits in opposition filed in order to support and submit their stance in law to this Hon'ble Court.

That the law as laid down by the Hon'ble Apex Court clearly held that "a person on deputation can be reverted to his parent cadre at any time and does not get any right to be absorbed in the deputation post", as cited herein before and above.

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12. That the averments in paragraphs 15 and 16 being formal in nature is hence denied. That in the facts and circumstances it is most respectfully and humbly prayed that the present petition as filed by dismissed in limine, costs imposed in favor of the answering Respondents, the order dated 17.02.2000 vacated and the order dated 17.12.1999 be allowed to be implemented without any further undue delay.

13. That the contents made in paragraph 1 and 2 of this Affidavit-in-opposition is true to my knowledge and those made in paragraph 3 to 12 are derived from records which I believe to be true and rest are humble submissions made before this Hon'ble Gauhati High Court and I swear this Affidavit on 28th June 2000.



DEPONENT

Identified by:

Mammiel Das

Advocate Clerk.

28/6/2000

प्रहालेखाकार (प्र.)
Sr. Dy. Accountant General (Admn.)
प्रहालेखाकार (ले.र.ह.) का कार्यालय
Office of the A.G. (A&E)
मिजोरम्, मजोरम् एवं बहुणाचल प्रदेश
Me. Malaya, Mizoram & A.P.
फोन- ७६३००९
मोबाइल- ७०३००१

28/6/2000
I solemnly affirm before me this
28th day of June 2000
that the person above identified by

M. Das
I declare and say that I read over and
understood the contents of the declaration and
signed perfectly to understand
it in

28/6/2000
Commissioner of Affidavits
Gauhati High Court
Guwahati

ANNEXUR:

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

NO. DA CELL/157

Date : 17/12/99

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On expiry of the period of deputation to the post of Divisional Accountant under the Administrative Control of the Accountant General (A&E) Meghalaya etc., Shillong, Shri/Smti Zinu Ama Nachal Padak at present posted in the Office of the Executive Engineer, Hamagam is repatriated to his parent Department i.e. Chief Engineer, Hamagam w.e.f. 14.1.2000.

On being relieved of his duties on or before 14.1.2000 from the Office of the Executive Engineer, Zinu Ama Nachal Padak he/she is to report for further duties to the Chief Engineer Hamagam.

As required under para 384 of the Comptroller and Auditor General's M.S.O. (Admn) Vol. I reproduced in Appendix-I of the C.P.W.A. Code, 2nd Edition 1964 the relieved official should prepare a memorandum reviewing the Accounts of the Division (in triplicate) which the relieving official should examine and forward promptly with his remarks, to the Accountant General (A&E) Meghalaya etc. through the Divisional Officer, who will record such observations thereon as he may consider necessary. This memorandum is required in addition to the handing over memo of his charges to relieving Officer.

Authority :- Sr. DAG(Admn) order dt. 5-11-99 at P/ 49 N in the file No. DA Cell/10-1/93-94/98-99/Vol-V.

SCH

Sr. Deputy Accountant General(Admn).

Memo No. DA/Cell/10-1/93-94/99-2000/ 1624/1631 dt 24/12/99

Copy forwarded for information and necessary action to :

1. The Chief Engineer, ~~1624~~; ~~A. Bhattacharya~~

~~1624; Gambhush Hargay~~. He is requested to arrange for posting of Shri/Smti ~~1624; Gambhush Hargay~~

Divisional Accountant on deputation, on his repatriation to his parent Department. The concerned Executive Engineer has been asked to release

Shri/Smti ~~1624; Gambhush Hargay~~ on or before ~~14.1.2000~~.

2. The Superintending Engineer

3. The Executive Engineer

4. The Accountant General (i.e.)

5. The Executive Engineer ~~1624; 21/12~~
~~A. Bhattacharya~~. He is requested to release Shri/Smti ~~1624; Gambhush Hargay~~

of his Division on or before ~~14.1.2000~~ as his

term of deputation expires. He is also requested to instruct Shri/Smti ~~1624; Gambhush Hargay~~ to report to his/her parent Department i.e. Office of the Chief Engineer, ~~1624; Gambhush Hargay~~

on his/her release from your department. It may be noted that no further extension of period of deputation will be granted to Shri/Smti ~~1624; Gambhush Hargay~~ under any circumstances to avoid any complicity.

6. The Executive Engineer, ~~SEFC~~ ~~21/12; AP~~
He is requested to direct Shri/Smti ~~1624; T.K. Banerjee~~

~~1624~~ of his/her division to look after the

work of the Divisional Accountant of the Office of the Executive Engineer ~~21/12; AP~~

in addition to his/her normal duties with effect from ~~14.1.2000~~ until further order.

Contd....3

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7. Shri/Smti T. K. Banerjee

~~DHO Grade II/II~~ Divisional Account of the Office of the Executive Engineer, R.W.D. 2120, S&FC Divn, Zirci A.P.

He/She is directed to look after the work

of the Divisional Account of the Office of the Executive Engineer, R.W.D. 2120, Amanchala Panchayat.

w.e.f. 14/1/2000 A.M. in addition to his/her normal duties, until further order.

8. Shri/Smti Ganibehi Haqee

Divisional Accountant on deputation, O/O the Executive Engineer, R.W.D. 2120, A.P.

He/She is hereby asked to report to his/her parent

Department, i.e. O/o the Chief Engineer - P.W.D.

Amanchala Panchayat, Hanaigar.

9. Personal File of Shri/Smti Ganibehi Haqee

10. Personal File of Shri/Smti T. K. Banerjee

11. S.C. File.

12. E.O. File.


Senior Accounts Officer

No DA/TRY/15/99/9629

Dated Naharlogun the 15th Nov '99

To,

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

DA/Cell 2504
RML 2504
JK 1204

Sub:- Recruitment /posting of regular Divisional Accountants

Ref:- Your letter No DA/Cell/2-46/92-93/1241 dtd 4-10-99
& this office letter No DA/29/85/(Part)/6304 dtd 8-9-99

Sir,

The issue of recruitment and posting of Divisional Accountants to 38 public works divisions of this state which are presently manned by deputationist were under active consideration of the state Government. The Govt of A.P has observed that prior to this correspondance under reference the state Govt. as well as this Directorate were never consulted while recruiting and posting of DAOs/DAs, though these posts were borned in the establishment of Executive Engineers and paid from the state exchequer. It has also been observed that prior to declaration of the State-hood (20-2-87), the cadres of the DAOs/DAs were enjoying pay scales without anomaly with the comparable status of Accountant/Assistant/Superintendent in the state Govt. working either in the Directorate of Accounts & treasuries as well as in other Directorates or in the District establishment. The Directorate of Accounts and Treasuries now express concern on the pay scales presently enjoying by the cadres of DAOs/DAs which were enhanced without having approval of the State Govt of A.P. The higher pay scales presently enjoying by the cadre of DAOs/DAs has been posing a problem for granting huge amount in the form of pay and allowances during the proposed training period of 38 Divisional Accountants.

The Govt of Arunachal Pradesh is of the view that recruitment and posting of the DAOs/DAs for 38 working Divisions of PWD may not be done at this stage, since final decision of the Govt is still awaited. The serving Divisional Accountants in the works Deptts on deputation basis may be allowed extension for a further period of two years from the date of expiry of their present respective tenure in the interest of public service. This will provide succour to the poor financial position of the state prevailing at the present time. This arrangement is proposed till view of the State Govt. in final shape could be put forward to your esteem office.

ScB
Pl. Pwd
GWA
O/W

Yours faithfully,

(C. M. Mongmaw)

Joint Director of Accounts
Directorate of Accounts & Treasuries
Govt of Arunachal Pradesh

Fax No 0360 244281

Copy to :-

1. The P.S to the Hon'ble Chief Minister, Arunachal Pradesh, Itanagar for information of the Hon'ble Chief Minister.
2. The P.S to the Commissioner (Finance) Govt of A.P Itanagar for information.
3. The PS to the Commissioner PWD/RWD/PHED/IFCD/Power for information.
Contd...2..

4. The Accountant General (Audit) Arunachal , Meghalaya etc
Shillong for favour of information.
5. The Chief Engineer PWD (EZ / WZ) / RWD / PHED / IFCD /
Power, for information please. They are requested to give
continuation to the serving DAs who are on deputation,
for a further period of 2 years on expiry of their present
term of deputation & meanwhile they may please direct
the Executive Engineer concerned not to accept joining report
of new appointee(DA) without consulting the State Govt/
Directorate of Accounts and Treasuries , Naharlogun.
6. The Chief Accounts officer PWD (EZ / WZ) / RWD /PHED /
IFCD / Power for information.
7. Office copy.

(C . M. Mongmaw)
Joint Director of Accounts
Directorate of Accounts & Treasuries
Govt of Arunachal Pradesh
Naharlogun



~~17~~ ANNEXURE ~~3~~ 3AA
63
OFFICE OF THE ACCOUNTANT GENERAL(A&E),
MEGHALAYA, MIZORAM & ARUNACHAL PRADESH,
SHILLONG - 793 001

No. DA Cell/2-46/92-93/1698

Date : 07.01.2000

To

The Joint Director of Accounts,
O/o The Director of Accounts & Treasuries,
Government of Arunachal Pradesh,
Naharlugun,
ARUNACHAL PRADESH

Sub.: Recruitment/Posting of regular Divisional Accountant.

Sir,

In inviting a reference to your letter No. DA/TRY/15/99/9029 dated 15.11.1999 on the subject cited above, I am to inform you that this office is the cadre controlling authority for the cadres of DA/DAO/Sr. DAO in respect of the State of Manipur, Tripura and Arunachal Pradesh. Transfer and postings of DA/DAO/Sr. DAO is the sole responsibility of this office and these officials are transferred among these three states.

Temporary appointment of DAs on deputation is only a stop-gap arrangement. Further whenever a proposal for recruitment of regular DAs is considered, concurrence of the concerned State is sought for. In this regard, this office letter No. DA Cell/2-46/92-93/3365 dated 07.01.1998, addressed to the Secretary, Finance Department, Government of Arunachal Pradesh, Itanagar, may please be referred to.

Further, I am to state that as per Recruitment Rules, published in the Gazetted of India dated 24.09.1988, the period of deputation cannot be extended beyond three years. Hence, your request for extension of the deputation terms of the deputationist Divisional Accountants beyond three years and for a further period of two years cannot be acceded to.

Yours faithfully,

Sr. Dy. Accountant General (Admn)