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8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Bahar
12.12.07

FORM NO. 4
(See Rule 42)

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

ORDER SHEET
APPLICATION NO 204/2001(T) OF 2001.

N.P(c) 373/2000.

Applicant (S) R.K. Deb

Respondent (S) Lot 2008.

Advocate for Applicants (s) Mr. Amitava Roy & S. Dutta

Advocate for Respondent (s) Casc.

Notes of the Registry

Date

Order of the Tribunal

12.6.01

This application has been received from the Honorable Gauhati High Court vide order dated 2.4.2001 in W.P(c) NO. 374/2000.

22.6.01

Read before Honble Court for orders-

[Signature]

204(T)
29/5/01
373/2000

bb

On request of the learned counsel ^{list} for the applicants/this case along with the connected cases on 22-6-2001 for orders.

[Signature]
Member

[Signature]
Vice-Chairman

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.

[Signature]
Member

[Signature]
Vice-Chairman

17.7.2001

Copy of the Judgment has been sent to the D/Secy, for issuing the same to the L/Adm. for the parties

HT

IN THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Appeal from W.P.(C)
Civil Rule

No. 373 of 19 2000

Appellant
Petitioner

Shri - Rathindra Kr. Dab.

Versus

State of Arunachal Pradesh.

Respondent
Opposite-Party

Appellant
For
Petitioner

Mr, A. Roy
Mr, S. Dutta
Mr. M. Chanda.

Respondent
For
Opposite-Party

Govt. Arunachal P.

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

Present
Hon'ble Mr. Justice NC Jain

24.1.2000

Notice of motion be issued to the respondents for a date returnable within 4 weeks.

Mr. H. Roy accepts notice on behalf of respondent Nos. 1, 2, 3 and 6. Other respondents be served by registered A/D posts. Steps to be taken within 3 days.

interim
Following the grant of relief as in W.P.(C) 1598/99, it is hereby ordered that the petitioner shall not be released from his present post of Divisional Accountant in the office of the Executive Engineer, Irrigation and Flood Control Deptt. Tezu Arunachal Pradesh.

To come up along-with W.P(C) 1598 & 1599/99.

JUDGE

NOTICE RETURNABLE BY

- ① Notice to respondents within 4 weeks.
- ② Notice to respondent Nos. 4, 5, 6 by Regd post.
- ③ Come up along-with 24.1.2000/1599/99.
- ④ Come up along-with 24.1.2000/1598/99.

nk/-
25.1.2000

Noting by Office of
Advocate

Serial
No.

Date

Office notes, reports, order
proceedings with sign

29/7/00

or affidavit in opposition has
been filed on behalf of respondent
Nos. 4 and 5

McDon

29/7/00

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
<p><u>24-2-2007</u></p> <p>Notice sent to despatch section for issue to Respondent Nos 4 and 5 by Regd. post with A/D.</p> <p>DM 24/2/2007</p>			
<p><u>18-5-2007</u></p> <p>Notice issued on Respondent No. 4 and 5 by Regd. post with A/D vide Memo No. 58/3-14/RN dt. 22-3-2007.</p> <p>DM 18/5/2007</p>			
<p><u>6.1.2001</u></p> <p>An affidavit in reply on behalf of the Petitioner has been filed.</p> <p>DM 6/1/2001</p>			

THE GAUHATI HIGH COURT

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

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

No. of 19

Appellant

Petitioner

Versus

Respondent

Opposite-Party

Appellant
For
Petitioner

Respondent
For
Opposite-Party

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

W.P.(c). 373/2000

Noting by Officer or Advocate	S.N.O.	DATE	OFFICE NOTES, REPORTS, LETTERS OR PROCEEDING WITH SIGNATURE
<p>Let next week</p> <p>12/11/2001</p>		<p>12-1-2001</p>	<p>Adm. B. Lamasce</p> <p>Via Lic'ble Att. Justice</p> <p>List the matter after in the next week.</p> <p>B/e</p>

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

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

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.

O R D E R

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

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 ^{involved} and facts 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, order 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 Depts 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."

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 absorb 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 totalling 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 & Treasuries, 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 & Treasuries
& 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 ^{purposely} ~~suspended~~ by order dated 15-11-1999, filed ^{at} ~~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: Lohit A.P. WPEJ CASE NO. 373 2020
DB/SB/A/B CATEGORI CODE: 10183
FILING SL. NO. 101 ⁴¹⁶ DATE OF FILING: 24/1/2020
Name of Party: Rathindran K. Deb

- vs -
State of A.P.

Signature of D. A.

1. Court Fee due :
Court Fee Paid : Rs. 58.00
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 : Yes / No.
named)

CASE READY / DEFECTIVE

24/1/2020
Commissioner of Affidavit
Gauhati High Court
SIGNATURE OF THE SURD
FILING SECTION.

SIGNATURE OF THE STAMP
REPORTER.

THE GAUHATI HIGH COURT

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

Category

No.

Year

1. (a) Case No. : wp (C) 373 2000
1. (b) Related Case No. : _____ /199
1. (c) Related Information : _____
1. (d) Jurisdictional Value Rs. _____ 1. (e) Court Fee Rs. _____
1. (e) Provision of law under which the case filed _____

DATE / MONTH / YEAR

1. (f) Date of Registration : 24 / 01 / 2000

2. (a) Case Category Code :

				1	0	1	8	9		
--	--	--	--	---	---	---	---	---	--	--

 *

2. (b) Subject Category Code :

S	B
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 *

2. (c) Bench Code :

	A
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 *

3. State Name : Lohit (A.P.) 4. State Code _____

4. Petitioner (s) : Rathinda vs Sub

5. Respondent (s) : State of A.P.

6. Petitioner (s) : Mr. A. Roy, Sr. Adv.

- Advocate (s) : Mr. M. Chanda,

Mr. S. Dutta, Advocate.

7. Respondent (s) : B. A. A.P.

- Advocate (s) : _____

8. Stage Code of the Case :

--	--

 *

9. Court No. :

--	--

10. Caveat (if any) : Yes ☐ / No ☒

* Kindly use appropriate codes.

S. K. Barmy.

Signature with date :

24/1/2000

District - Lohit

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya, Manipur,
Tripura, Mizoram and Arunachal Pradesh).

(CIVIL EXTRA-ORDINARY JURISDICTION)

W.P. (Civil) No. 373/2000

Category Code No : 10/09

Bench : A

Shri Rathindra Kumar Deb

-verus-

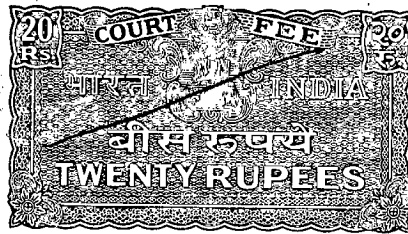
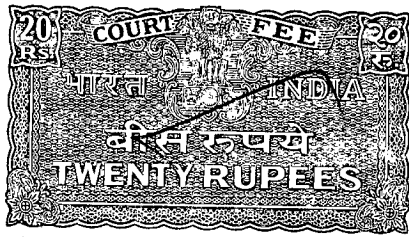
The State of Arunachal Pradesh & Ors.

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2	Affidavit	-	16
3	Office Order dt.30.12.96	1	17-19
4	Circular dt.24.12.96	2	20
5	Letter dt. 10.3.97	3	21
5A	Order dated 17.12.99	3A	21A-22
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7	Hon'ble Court's order dt. 1.4.99	5	23
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Date : 24.1.2000

Filed by :
Surajit Deka
Advocate





Filed by:-
The Petitioner
Through:-
Suraj B Datta
Advocate
24.01.2000

District : Lohit

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

W P(c) 373/2000

CIVIL EXTRA-ORDINARY JURISDICTION)

Category Code No. : CR 10189.

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 :

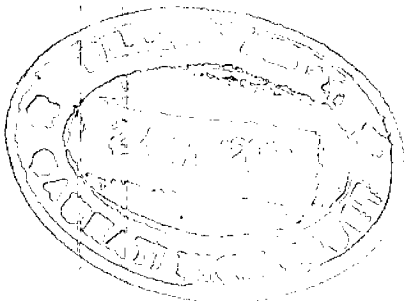
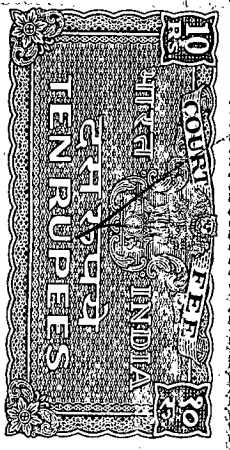
An application under Article 226
of the Constitution of India for
issue of a Writ in the nature of
Mandamus and/or any other appro-
priate Writ, Order or Direction
of like nature.

-AND-

IN THE MATTER OF :

Challenge to the legality of the
threatened action of the Respondents
to repatriate the Petitioner to
his parent department without con-
sidering his case for permanent
absorption and the option exercised

Contd.....



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, 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 :

Rathindra Kumar Deb
Son of late Ramani Mohan Deb
Working as Divisional Accountant in the office of the Executive Engineer, I & FCD, Tezu, Arunachal Pradesh, Department of I & FCD, Government of Arunachal Pradesh.

....Petitioner

Contd...

~~XXXXX~~ -VERSUS-

1. The State of Arunachal Pradesh,
through the Secretary,
Department of I & FCD,
Government of Arunachal Pradesh,
Itanagar.
2. The Chief Engineer,
I & FCD,
Government of Arunachal Pradesh,
Itanagar.
3. Director of Accounts & Treasuries,
Government of Arunachal Pradesh,
Naharlagun
Arunachal Pradesh
4. The Comptroller & Auditor General
of India,
10 Bahadur Shah Zafar Marg,
New Delhi-110002.
5. The Accountant General (A&E),
Meghalaya etc. Shillong-793003.
6. The Executive Engineer,
I & FCD,
Tezu,
Arunachal Pradesh

.....Respondents

Contd.....

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The Petitioner above named

MOST RESPECTFULLY SHEWETH :

1. That the Petitioner in the present petition is seeking his permanent absorption as Divisional Accountant in the organisation and administrative control of Accountant General (A&E), Meghalaya Shillong. 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 P.W.D., 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 on 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 the 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

Contd...

was pursuant to a selection. It will be pertinent to mention here that option was 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 P.W.D., Government of Arunachal Pradesh as UDC at Roing PWD, Roing, 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 and is posted at Ziro R.W.D.; Ziro, A.P., Department of R.W.D. Government of Arunachal Pradesh. Subsequent the Petitioner was transferred from Ziro RWD to I & FCO, Tezu, Arunachal Pradesh and he joined in I & FCD, Tezu on 27.7.1998 and still he is continuing in that Division. Thus although he is working under the administrative control of AG (A&E), Meghalaya etc. Shillong but practically, he has been 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, R.W.D., Ziro, Arunachal Pradesh vide order

Contd...

No. DA Cell/192 dated 30.12.1996.

Copy of the Officer dated 30.12.1996 is annexed 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.

5. That when the Petitioner was working as Divisional Accountant in the depart of RWD, Ziro, as 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 31.3.1997.

Copies of the relevant documents in the above context viz. circular dated 24.12.96 and letter dated 31.3.97 alongwith enclosures are annexed as Annexures 2 & 3 respectively.

6. That pursuant to exercise of such option, it has been 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 came on deputation to a promotional post carrying

Contd....

8. That the petitioner states that his legitimate expectation for permanent absorption has been shattered due to the arbitrary action of the respondents in issuing the impugned order dtd. 17.12.99 whereby the petitioner has been repatriated to his parent department i.e. under the Chief Engineer, Public Works Department, Itanagar, wef 28.2.2000. However, the impugned order has not been given effect till date and consequently the petitioner has not been released. But the petitioner reasonably apprehends that he may at any time be released by the respondents in frustration of his legitimate expectation of permanently absorption.

A copy of the said order dtd. 17.12.99 is annexed herewith as Annexure-3A.

8A. That it is pertinent to mention here that
on an earlier occasion, xxxxxxxxxx

Contd...

7

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 one Shri R. Prathapan, Shri Bidhu Bhusan De and Shri M.V.K. Nair, Divisional Accountants under the establishment of AG (A&E), Meghalaya who being aggrieved by such move of repatriation without considering his case for absorption approached this Hon'ble Court by way of filing Civil Rule No. 6037/98, No. 1598/99 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 their posts of Divisional Accountant. Now said Shri Prathapan, Shri Bidhu Bhusan De and Shri M.V.K. Nair are continuing in the post of Divisional Accountant under the establishment of AG (A&E), Meghalaya etc. Shillong at Arunachal Pradesh. The petitioner in the present case is similarly situated like that of the petitioners in the said Civil Rules.

Copies of order passed by the Hon'ble High Court annexed 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,

Contd...

Shillong, he is being replaced by another deputationist. The Petitioner has worked as Divisional Accountant for nearly three years. His appointment 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) Meghalaya, Shillong 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

Contd...

2

upto five years. Thus if the post presently being held by the 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 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, protected 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 cases, the State of Arunachal Pradesh dot not have any objection towards absorption

Contd....



of the Petitioners 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 etc. Shillong and/or in the bifurcated establishment of AG (A&E), Meghalaya etc. Shillong 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 from the Government of Arunachal Pradesh to take the cadre of Divisional Accountant from the Administrative control of A.G. (A&E), Meghalaya etc. Shillong. The Government of Arunachal Pradesh has already issued circular in this respect, on the last 16th November, 1999, for taking the cadre from the Administrative control of A.G. (A&E), Meghalaya etc. Shillong.

In fact A.G. (A&E), Meghalaya etc. has no right to issue order of repatriation, repatriating the Petitioner to his parent department, under the Govt. of Arunachal Pradesh.

As per the cadre of the petitioner is a born cadre of Arunachal Pradesh, A.G. (A&E) Meghalaya

Contd...



etc. Shillong should have issued order of permanent absorption of Petitioner in the cadre of Divisional Accountant on the basis of the option exercised by the Petitioner.

Further, Government of Arunachal Pradesh has already made a reference with the AG (A&E), Shillong vide letter No. DA/TRY/15/99 dt. 15.11.99 in this regard. And copy of the same letter was endoresed to all the concern i.e. Hon'ble Chief Minister, Arunachal Pradesh, Commissioner (Finance), Arunachal Pradesh, Commissioner RWD/PHED/PWD/I&FCD/Power, Arunachal Pradesh and all the Chief Engineers of Arunachal Pradesh for continuation of the presently working Divisional Accountants (on deputation) for a further period of 2 (two) years on expiry of their present terms of deputation. And also has directed to all the Chief Engineers of Arunachal Pradesh not to allow any new appointee Divisional Accountant without consulting the State Government. Copies of circular dt. 16.11.99 & letter dt. 15.11.99 are annexed as Annexures 7 & 8 respectively.

13A That the petitioner states that he has gathered information that he is being replaced by another ~~depart-~~ deputationist. It is stated that the instant case is not one of his replacement by any regular incumbent of the Office of the AG (A&E), Meghalaya etc., Shillong. 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 have already been arranged. Thus if, in the meantime, the petitioner is repatriated to his parent department without considering his case for permanent absorption, it would seriously tell upon his service career. It is further stated that the entire action of the respondents, in repatriating the

petitioner to his parent department, in the facts and circumstances of the case is highly unreasonable and arbitrary. The impugned order of repatriation suffers from arbitrary exercise of power, non-application of mind and is prima-facie illegal. It would be therefore, in the interest of justice that this Hon'ble Court may be pleased to set aside the impugned order of repatriation dated 17.12.99.

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, I & FCD, Tezu, Arunachal Pradesh, Department of I & FCD, Arunachal Pradesh or as Divisional Accountant in any of the office of the Accountant General (A&E), Meghalaya etc. 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, I & FCD, Tezu, Arunachal Pradesh, Department of I & FCD, 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 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 the impugned order dt. 17.12.99 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 etc. Shillong and/or 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 other or further order/orders as may be deemed fit and proper.

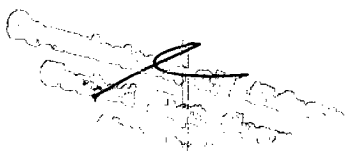
-AND-

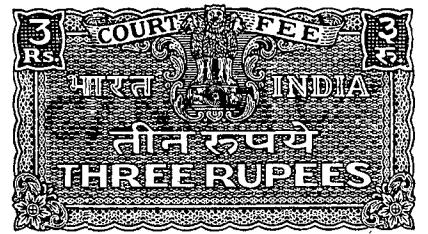
Pending disposal of the Rule, be pleased to stay the operation of the impugned order dated 17.12.99 and/or direct the Respondents ~~not to release the Petitioner from his present post of~~

not to release the Petitioner from his present post of Divisional Accountant in the office of the Executive Engineer, I & FCD, Tezu, Arunachal Pradesh, Department of I & FCD, Government of Arunachal Pradesh and to allow him to continue as such till disposal of the Rule.

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

..... Affidavit





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A F F I D A V I T

I, Rathindra Kumar Deb, son of late Ramani Mohan Deb, aged about 46 years, presently working as Divisional Accountant in the office of the Executive Engineer, I & FCD, Tezu, Department of I & FCD, 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 the statements made in this affidavit and in the accompanying petition in paragraphs 1, 2, 4, 6, 7, 9, 10 and 12 are true to my knowledge, those made in paragraphs 3, 5, 8, BA and 13 being matters of records are true to my information derived therefrom and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the 24th day of January, 2000 at Guwahati.

Identified by me :

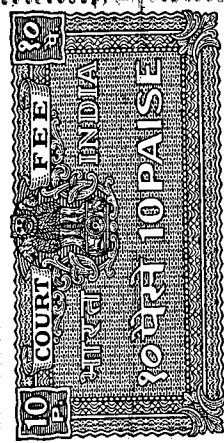
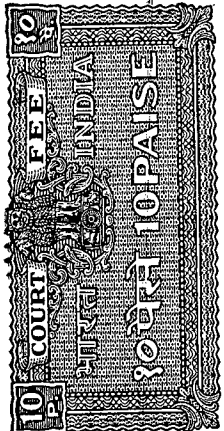
Rathindra Kr. Deb
Deponent

Prakash Kr. Barman
Advocate's Clerk

24/1/2000

24TH January/2000
P. K. Barman
A/C

24/1/2000



Annexure-1

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

EO. No. DA Cell/192

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 Rathindra Kumar Deb, UDC at present working in the office of the Executive Engineer, Roing PWDivn. Roing, A.P. is posted on deputation as Divisional Accountant in the office of the Executive Engineer, Ziro Road, Ziro, Arunachal Pradesh.

2. Shri Rathindra Kr. Deb should join in the aforesaid post of Divisional Accountant on deputation within 30 days from the date of issue of this order, failing which his posting on deputation is liable to be cancelled without any further communication and the position may be offered to some other eligible and selected candidate. No representation for a change of the place of posting will be entertained under any circumstances whatsoever.
3. The period of deputation of Shri Rathindra Kr. Deb 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, Ziro RWD, Ziro, A.P. 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 of Shri Rathindra Kr. Deb will be governed by the Government of India, Ministry of Finance, Public Grievances and Pension (Deptt. of Personnel and Training letter No. 2/12/87-Estt (Pay.II) dtd. 29.4.1988, and as amended and modified from time to time. While on deputation Shri Rathindra Kumar Deb

Contd...

Annexure-1 (Contd.)

may elect to draw either the pay in the scale of pay of the deputation post of his basic pay in the parent cadre plus personal pay, if any, plus deputation (duty) allowance, Shri Rathindra Kumar Deb on deputation should exercise option in this regard within a period of (one) month from the date of joining the assignment (i.e. the aforesaid post of deputation). The option once exercised by Shri Rathindra Kr. Deb 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 OM No. F1(16) E-IV(A)/62 dt. 7.12.1962 (Incorporated as Annexure 31 of Choudhury's C.S.R. Volume IV (13th Edition) and as amended and modified from time to time.

6. Shri Rathindra Kumar Deb 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 Rathindra Kumar Deb (on deputation) is entrusted to additional charges appointed or transferred to a post/station other than cited in this Establishment Order.

Sd/-

Sr. Deputy Accountant General (A&E)
Office of the Accountant General
Meghalaya, Mizoram & Arunachal Pradesh
Shillong-793001

Memo No. DA Cell/2-49/94-95/2390-2394 Dated 1 JAN 1997
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
intimation to this office.

REGISTERED

He is requested to release immediately Shri
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 R thindra Kumar Deb, UDC, O/o the Executive
Engineer, Roing P W Divn. Roing, A.P.

7. E.O. File
8. S.C. File.
9. P.C. File

Sd/- Illegible

31.12.96

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-1&11) 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-1&11 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.

Subject : Option for separation of Cadre.

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

Dt. Ziro the 31.3.97

Yours faithfully,

Sd/-

(Rathindra Kr. Deb)

Annexure-3A

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

No. DA CELL/158

Date : 17.12.99

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 Rathindra Kr. Deb, DA at present posted in the office of the Executive Engineer I & FC Divn. Tezu, Arunachal Pradesh is repatriated to his parent Department i.e. Chief Engineer, PWD, to his parent Department i.e. Chief Engineer PWD, Itanagar w.e.f. 28.2.2000.

On being relieved of his duties on or before 28.2.2000 from the office of the Executive Engineer, I & FC Division, Tezu, Arunachal Pradesh he is to report for further duties to the Chief Engineer PWD, Arunachal Pradesh, Itanagar.

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.D. 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. Shillong 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 changes 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.

Sd/-

Sr. Deputy Accountant General (Ad

Memo No. DA Cell/10-1/93-94/98-2000/1632-1637

Date 13.1.2000

Copy forwarded for information and necessary action to :

1. The Chief Engineer, PWD, Arunachal Pradesh, Itanagar. He is requested to arrange for posting of Shri Rathindra Kr. Deb, Divisional Accountant on deputation, on his repatriation to his parent Department. The concerned Executive Engineer has been asked to release Shri Rathindra Kr. Deb on or before 28.2.2000.
2. The Executive Engineer, I & FC Division, Tezu, Arunachal Pradesh. He is requested to release Shri Rathindra Kr. Deb of his Division on or before 28.2.2000 as his term of deputation expires. He is also requested to instruct Shri Rathindra Kr. Deb to report to his parent Department i.e. Office of the Chief Engineer, PWD, Itanagar. On his release from your Department. It may be noted that no further extension of period of deputation will be granted to Shri Rathindra Kr. Deb under circumstances to avoid any complicity.

Contd...

Annexure-3A (Contd.)

6. The Executive Engineer, RWD, Tezu, AP. He is requested to direct Shri Bimal Biswas DA of his Division to ~~xxxx~~ look after the work of the Divisional Accountant of the office of the Executive Engineer I & FCD, Tezu, AP in addition to his normal duties with effect from 28.2.2000 until further order.
7. Shri Bimal Biswas Divisional Accountant of the Office of the Executive Engineer RWD, Tezu, AP. He is directed to ~~xxxx~~ look after the work of the Divisional Accountant of the Office of the Executive Engineer I & FCD, Tezu, AP w.e.f. 28.2.2000 A.N. in addition to his normal duties, until further order.
8. Shri Rathindra Kumar Deb, Divisional Accountant on deputation, O/O the Executive Engineer I & FCD Tezu, Arunachal Pradesh. He is hereby asked to report to his parent Department, i.e. O/o the Chief Engineer, PWD, Arunachal Pradesh, Itanagar.
9. Personal File of Shri Rathindra Kr. Deb.
10. Personal File of Shri
11. S.C.File.
12. E.O.File.

Sd/- Illegible
Sr. Accounts Officer.

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

CIVIL RULE NO. 6037/98

R. Prathapan - Petitioner

-vs-

State of Arunachal Pradesh - Respondents
& Ors.

P R E S E N T

THE HON'BLE JUSTICE SMTI M. SHARMA.

For the Petitioner - Mr BK 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, GA, 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.

PRESENT

THE HON'BLE MR JUSTICE AK PATNAIK

For the Petitioner - Mr. BK Sharma & Mr. U.
K. Nair, Advs.
For the Respondents : G.A., AP,

ORDER

Heard Mr BK Sharma, 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.

Sd/- AK PATNAIK
Judge

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

WRIT PETITION (CIVIL) NO. 1599/99

M.V. KARTIKEYAN NAIR - Petitioner
-vs-
THE STATE OF ARUNACHAL - Respondents
PRADESH & ORS.

PRESENT

THE HON'BLE MR. JUSTICE A K PATNAIK

For the petitioner - Mr. BK Sharma & Mr. UK
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, Kalaktang PWD
Division, Government of Arunachal Pradesh.

Sd/- A K PATNAIK
Judge

Annexure-7

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
- 5(a) If the post is upgraded to DAO-II/ :
DAO-I/SG 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.
- (A copy of the sanction order if avail- :
able with regard to upgradation of post
may please be furnished).
5. Name and designation of the incumbent :
holding the post (DAO/DA) and scale
of pay.
- 5(a) Date of joining to the post :

Contd...

- 5 (b) Whether regular or on :
deputation
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.

Copy to :

1. The Chief Engineer PHE/RWD/IFCD/PWD, (Zone-I), (Zone-II), Itanagar and the Chief Engineer, Power Department, Naharlagun for information. They are requested to furnish the required information as above for the working divisions under their jurisdiction or priority basis in order to formulate the modalities to takeover these posts from the AG (A&E), Shillong and their encadrement to SFAS/FAS of the State of Arunachal Pradesh.

Sd/- Illegible

(C.M. Mongmaw)

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

GOVT. OF ARUNACHAL PRADESH
DIRECTORATE OF ACCOUNTS & TREASURIES : NAHARLAGUN

(THROUGH FAX/SPEED POST)

No.DA/TRY/15/99

Dated Naharlagun the 15th
Nov'99

To

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

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 correspondence under reference the State Govt. as well as this Directorate were never consulted while recruiting and posting of DASS/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 Division 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.

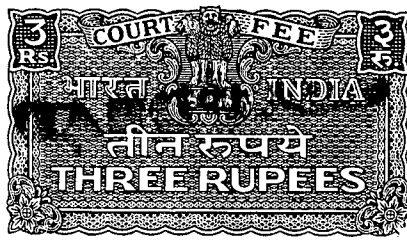
Yours faithfully,

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

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.
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 RWD (EZ/WZ)/RWD/PHED/IFCD/Power for information.
7. Office copy.

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



31

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Filed by

P.N. Choudhury Adv.
Gauhati High Court
Addl. C.G.S.C.

District: Lohit.

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

W.P.(C) No. 373 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 Rathindra Kumar Deb

PETITIONER

-versus-

The State of Arunachal Pradesh & Ors.

RESPONDENTS

-AND-

IN THE MATTER OF :

An affidavit-in-opposition on behalf of Respondents

No. 4 and 5.

AFFIDAVIT -IN -OPPOSITION

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

(32)

having 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 more the present petition.

That the Respondents humbly state that the Petitioner, a regular 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 aforesaid. 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

(33) 48

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 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 vide letter dated 30.12.1996 had expired and hence 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 on 24.12.1996 (annexed as Annexure 2 to the Writ Petition)) was before the Petitioner was even being considered for appointment on deputation.

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 was 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 for absorption as averred.

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

(2/4) 49

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 if necessary.

4. 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 as stated specifically herein before and above. 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 was meant for him is not correct 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.

5. That the averments made in paragraphs 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

(35) 5

the Government of India based on the recommendations of the Fifth Central Pay 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 remained an employee of the Government of Arunachal Pradesh

6. 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 Central Government 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 answering respondents service has been given a go by, as it is most respectfully submitted that if the present deputationist is absorbed in the service of the answering Respondents, he would block the appointment of those to be regularly appointed on eligibility criteria under the applicable Recruitment Rules.

7. That the averments made in paragraph 8 of the Writ Petition is denied as the Respondent humbly submit that as per Recruitment Rules which came in

(cyb) 51

force w.e.f. 24.09.1988, the period of deputation cannot be extended beyond the period of three years. That in the appointment order issued to the Petitioner on 30.12.1996 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 on 28.02.2000 the order repatriating him to his parent Department was issued vide No. DA Cell/158 dated 17.12.1999 (annexed as Annexure 3A to the Writ Petition), by the Respondent No. 5 requesting the Executive Engineer to release the Petitioner on or before 28.02.2000 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.

8. That the averments made in Para 8A 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 Kumar 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

(32)

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.

9. That the averments made in paragraph 9 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.

10. That the averments made in paragraph 10 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.

11. That the averments made in paragraphs 11 & 12 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 in support of the above.

12. That the averments made in paragraph 13 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.

(28)

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 (Annexure 8 to the Writ Petition) 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 07.01.2000 is annexed as Annexure I.

13 That the averments made in paragraphs 13A & 14 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 Petitioner. 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 (Annexure 3A to the Writ Petition) reverting him 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 3A to the Writ Petition) 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

(29) 54

and Hon'ble Central Administrative Tribunal, Guwahati Bench, filed by various petitioners situated similarly against the answering Respondents -

Before this Hon'ble High Court:

1. CR 6037/98 in the matter of R Prathaphan versus Govt of Arnachal 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. 257/2000 in the matter of Gamboh Hage versus Govt. of Arunachal Pradesh and others
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 Murtan versus Govt. of Arunachal Pradesh and others

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

- 10 - 200 5

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 Petitioners 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.

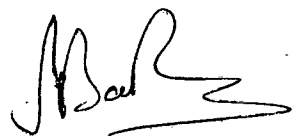
That the law as laid down by the Hon'ble Apex Court clearly held that "a person on deputation can be reverted to his parent cadre at any time and does not get any right to be absorbed in the deputation post", as cited herein before and above.

14. That the averments in paragraphs 15 and 16 being formal in nature are hence denied. That in the facts and circumstances it is most respectfully and humbly prayed that the present petition as filed be dismissed in limine, costs imposed in favor of the answering Respondents, the order dated 24.01.2000 vacated and the order dated 17.12.1999 be allowed to be implemented without any further undue delay.

15. 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 14 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.

- Identified by:

Manniel Das
Advocate Clerk.
28/6/2000



DEPONENT
महालेखाकार (प्र.)

Sr. Dy. Accountant General (Admin.)
महालेखाकार (ले.र.प्र.) का कार्यालय
Office of the A.G. (A&E)
मे. जलिया, मिजोरम एवं मरुणाचल जिला
Me. Jalya, Mizoram & A P
28/6/2000
Bittong- 793001

Solemnly affirmed before me this 28.6 days of June 2000
The declarant is identified by M. Das personally
I have read over and explained the contents of the affidavit and the declarant understands them
[Signature]
28/6/2000
Commissioner of Affidavits
Gauhati High Court
Guwahati

ANNEXUR: 1

OFFICE OF THE ACCOUNTANT GENERAL(A&E),
MEGHALAYA, MIZORAM & ARUNACHAL PRADESH,
SHILLONG - 793 001



344-11-
(20)

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.

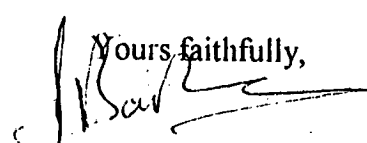
Sir,

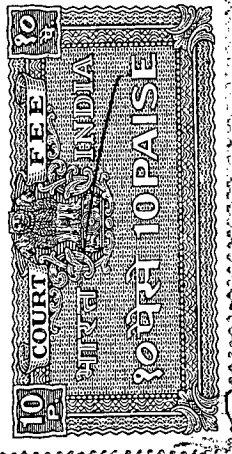
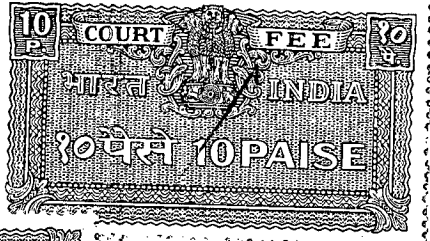
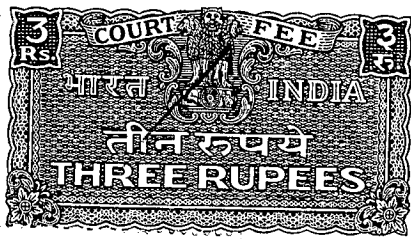
In inviting a reference to your letter No. DA/TRY/15/99/9029 dated 15.11.1999 on the subject cited above, I am to inform you that this office is the cadre controlling authority for the cadres of DA/DAO/Sr. DAO in respect of the State of Manipur, Tripura and Arunachal Pradesh. Transfer and postings of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



10,612/48

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5X

Filed by the petitioner
through:-
Srijit Kumar Ghosh
Advocate
7.8.2000

IN THE GAUHATI HIGH COURT

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

W.P (C) No. 373 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 Rathindra Kumar Deb

..... Petitioner.

-Vs-

The State of Arunachal Pradesh & Others.

-And-

In the matter of :

An affidavit-in-reply on behalf of
the petitioner.

AFFIDAVIT-IN-REPLY

I Shri Rathindra Kumar Deb son of late aged
about 47 years Ramani Mohan Deb working as a Divisional
Account in the Office of the Executive Engineer (J & FCD),

Signature of Shri
Rathindra Kumar Deb
Advocate

Tezu, Arunachal Pradesh, presently residing at Tezu do hereby solemnly affirm and declare as follows .

1. That I am the petitioner in the aforesaid writ petition and as such I am well acquainted and competent to swear this affidavit.
2. That the writ petitioner beg to traverse the various contention raised by the respondents no.4 and 5 in their affidavit-in-opposition. The writ petitioner categorically denies all the statements made by the respondents no. 4 and 5 in the affidavit-in-opposition except which are bolne out of records.
3. That your writ petitioner categorically denied the statement made in paragraph 2, 3, 4, 5, 6 and 7 of the affidavit-in-opposition submitted by the respondent No. 4 and 5 and further beg to state that the contention of the respondents that the subject matter of the writ petition falls under the jurisdiction of learned Central Administrative Tribunal in view of the prevision laid down in Administrative Tribunal Act 1985 is not correct rather jurisdiction of the Hon'ble High Court under Article 226/227 has been re-affirmed by the Hon'ble Supreme Court while deciding the Case of Sri L. Chandra-Kumar -Vs- Union of India even relating to the matter partinent to service conditions and recruitment of Central Government Employees. It is relevent to mention here that the petitioner in the instant case is a

-3-

permanent and regular employee of the Government of Arunachal Pradesh, he is appointed on deputation although by the ^{Accountant} Accountant General (A&E) Shillong but his services is being placed under the Executive Engineer (I & FCD) at Tezu, Arunachal Pradesh under Government of Arunachal Pradesh. The Directorate of Account and Treasuries Government of Arunachal Pradesh vide their letter dated 15.11.99 (Annexure 8 of the writ petition) categorically stated that the issue of recruitment and posting of Divisional Accountant to 38 Public Works Divisions of the State of Arunachal Pradesh are presently manned by deputationist were under active consideration of the State Government. The Government of Arunachal Pradesh has observed that prior to this correspondence under reference that State Government as well as the Directorate of Accounts and treasuries were never consulted while recruiting and posting of Divisional Accountants through this Posts were borned in the establishment of Executive Engineers and ^{paid} prayed from the State exchequer. It is further requested the Accountant General (A & E) ^{that} ~~their~~ the Government of Arunachal Pradesh is of the view that recruitment of Posting of 38 Working Division of Public Work Department may not be done at the stage since final decision of Government of Arunachal Pradesh as still awaited and also requested by the Government of Arunachal Pradesh for extension of period of deputation for another two years from the date of expiry of present respective

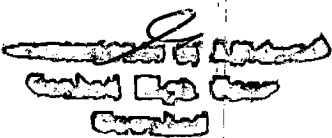
tannure of the serving Divisional Accountants in the public works Departments in the interest of Public Service which will provide ^{Succour} secure to the poor financial position of the State prevailing at the present time. It is also stated that this arrangements is proposed till view of the State Government in final ^{shape} ~~shape~~ would be part forward to Accountant General (A & E) Shillong.

It is established beyond all doubt from above correspondence ^{dated 15.11.99} that the present petitioner has been appointed against a post born in the establishment of Executive Engineer, State of Arunachal Pradesh as such this Hon'ble ^{Court} Government has jurisdiction to deal with this matter under article 226.

It is further state that para 249 of the mannual of standing orders which provided for recruitment to the cadre of Divisional Accountants ~~from~~ three sources through a competitive and qualitative test, the three sources namely I.F.W.D Accounts Clerk 2(two) Upper Division Clerk of Audit Officer 3(three), Direct recruits. The above ~~mode~~ of recruitments to the cadre of Divisional Accountants ~~is~~ still inforce even after the enforcement of 1988 recruitment rules. It is stated that applicant is inspite of his best effort could not collect mannual of standing orders referred ^{above} in para 249, as such, the Hon'ble Court be pleased to direct the Respondents to produce the mannual of standing orders referred above.

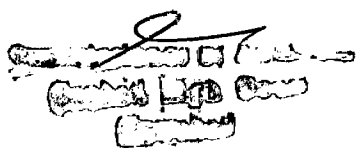
(27) 61

It is further stated that ^{is} the instant case ~~this~~ ^{the} circumstances is little ^{be} different than what has been stated by the respondents no. 4 and 5. It is abundantly clear as revealed from the communication dated 15.11.99, where in it is stated that the question regarding recruitment of Divisional Accountants ^{is} under active consideration of Government of Arunachal Pradesh and so far instruction received from reliable sources it is learned that the Government of Arunachal Pradesh is considering the question of taking over the entire account system under its own control from the Accountant General (A & E) Shillong as because the cadre of Divisional Accountants born in the Establishment of Executive Engineer State of Arunachal - Pradesh and the salary of the Divisional Accounts also being paid from the state exchequer, in the special circumstances the Government of Arunachal Pradesh ~~required~~ requested Accountant General (A & E) Shillong to extent the period of deputation for a period of two years of the serving divisional ^{Accountants} ~~Accountants~~ on expiry of their present period of deputation. The contention of the respondents that the maximum period of deputation is three years is not correct as per rate laid down by the Government of India the maximum period of deputation has been fixed ~~of~~ to five years. In this connection it is stated that when the matter for recruitment of Divisional ^{Accountants} ~~Accounts~~ on regular basis for the State of Arunachal Pradesh is under active consideration for the Government of Arunachal Pradesh, there is no ~~juxis~~ justification on the part of the



of the Accountant General (A&E) Shillong to recruit another set of Divisional Accountant on deputation permitted to continue on deputation basis for a maximum period of five years and particularly when the parent organisation of the petitioner has no objection rather requested to allow them to continue on deputation at least for a period of another two years. In such a circumstances decision of the Accountant General (A&E) for repatriating the petitioner to his parent department in a very arbitrary manner cannot ^{be} sustained in the eye of law. The process of recruitment of another set of deputationst in place of present petitioner is also likely to cause huge expenditure to the state exchaquer, as because the cadre of Divisional ^{Accountant's} Aeeunt born in the establishment of Executive Engineer State of Arunachal Pradesh, as such the impugned order dated 17.12.99 is liable to be set aside and quashed.

It is further stated that the judgement of the Supreme Court referred by the respondent No. 4 and 5 is not applicable in the facts and circumstances of the instance, case rather apex court decision in the case of Rameswar Prasad -Vs- Managing Director V.P. Rajkiya Nirman Nigam - Limited and others reported in 1999 (8) SCC 381 wherein it is held that although the power of absorption no doubt is discretionary but coupled with the duty not to act arbitrarily or at the whim or caprice of any individual. It is also ~~is~~ held that before rejection of application for absorption there must be justifiable reasons. That with regard to the



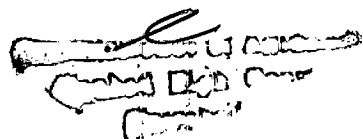
statements of option is categorically denied and petitioner further stated that submitted option, in terms of the circular dated 24.12.96 the contents of the circular dated 24.12.96 has not been denied by the respondent Nos. 4 and 5 rather they have admitted regarding the existence of circular dated 24.12.96. A mere reading of the circular dated 24.12.96 makes it crystal clear that the process of separation of order is under progress and the post of Divisional Accountant is a State Cadre which is evident from the relevant portion of the circular dated 24.12.96.

* 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)*

In view of the above, actual position the petitioner has acquired a valuable and legal right for consideration ~~at~~ to the post of Divisional Accountant. It is



It is specifically stated by the Senior Deputy Accountant General that the post of Divisional Accountant is a State cadre Post. Therefore the writ petition also falls within the jurisdiction of this Hon'ble Court.

4. That the contention of the respondent made in paragraph 8, 9, 10, 11 & 13 are categorically denied and further reiterates the statement there in and further stated the maximum terms of deputation as laid down by the Government of India is 5 years, therefore, passing of impugned order of repatriation order specially when the Government Arunachal Pradesh made a specific request to extend the period of deputation. The decision of taking over the cadre of Divisional Accountants is also admitted by the respondent in 12 of the affidavit - in-opposition since the cadre of Divisional Accountant born in the establishment of Executive Engineer as such decision of the respondent No.5 communicated under letter dated 7.1.2000 is arbitrary and unfair. unfair.

Contd.....



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5. That your petitioner denies the correctness of the statement made in paragraph 13 and 14 of the affidavit -in-opposition. In the facts and circumstances the writ petition is deserves to be allowed with cost.

6. That the statements made in paragraphs 1, 3, 4 are true to my knowledge and those made in paragraph 2 is derived from record which I believe to be true and the rest are my humble submission before this Hon'ble Court.

I signed this affidavit on 7th day of August 2000

Identified by
Syillshath
Advocate.

P. Ralwinda kr. Sub
Deponent.

7th August 2000
S. Ghosh, personally
to read and
understand
Commissioner of Affidavits
High Court
Dumkani