

30/100

10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No. 205 (T) 10/10/2000 376/2000

R.A/C.P No.

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SECTION OFFICER (Judl.)

Kahls
7-12-17

FORM NO.4
(See Rule 42)

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

ORDER SHEET
APPLICATION NO 205/2001 (T) OF 2001.

W.P. (C) 376/2000

Applicant (S) Sri Utpal Mahanta

Respondent (S) Govt of Assam

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

Advocate for Respondent (s) C. S. C.

Notes of the Registry

Date

Order of the Tribunal

This application
has been received
from the Honble
Guwahati High Court
vide order dated
21/6/2001 in W.P. (C) 376/2000

12.6.01

bb

22.6.01

Filed before Honble
Court for orders.

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

K. C. Ghosh
Members

[Signature]
Vice-Chairman

H eard counsel for the parties.
Judgment delivered in open court,
kept is separate sheets.

The application is disposed of
in terms of the order.

No order as to costs.

K. C. Ghosh
Member

[Signature]
Vice-Chairman

bb

17.7.2001

Copy of the Judgment has
been sent to the Office
for issuing the same to
the L/ Advocates for the parties.
Ht

29/5/2001
[Signature]

17/7/01
[Signature]

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. 376 of 19 2000

Appellant
Petitioner

Shri. Utpal Mahanta

Versus

State of Arunachal Pradesh

Respondent

Opposite-Party has

Appellant
For
Petitioner

Mr. A. Roy
Mr. S. Datta
Mr. M. Chandra

Respondent
For
Opposite-Party

Govt Advocate A.P.
Mr. P. N. Choudhary for Respondent Nos. 4 and 5

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 respondents 1, 2, 3 and 6. Other respondents be served by registered A/D post. Steps to be taken within ~~days~~ 3 days.

Following the grant of interim relief as in W.P. (C) 1598/99, it is hereby ordered that the petitioner shall not be released from his present post of Division Accountant in the office of the Executive Engineer, Daporijo PHE Division, Daporijo, Arunachal Pradesh.

To come up alongwith W.P.(C) Nos. 1598 & 1599/99.

M
JUDGE

nk/-

① RETURNABLE BY

② to be served to respondent
③ to be served to respondent
④ to be served to respondent
⑤ to be served to respondent
⑥ to be served to respondent
⑦ to be served to respondent
⑧ to be served to respondent
⑨ to be served to respondent
⑩ to be served to respondent

Noting by Office or
AdvocateSerial
No.

Date

Office notes, reports, or
proceedings with signature7/2/2000

Order dated 24.1.2000

send to despatch
section for communication.C/M
J.D.17-2-2000Notice sent to
despatch section for
issue to Respondent No 4
& 5 by Regd. post with
A/DC/M
17/2/200018-5-2000Notice issued on
Respondent No. 4 and 5
by Regd. post with
A/D vide Memo No. 8163-
64/RN dt. 8-5-2K.C/M
18/5/200029/7/00Adv. Affidavit in opposition
has been filed
on behalf of Respondent 4 and 5.

A/D

Noting of office of Advocate

Sl. No.

Date

Office Notes, Reports, Orders or proceeding with signature

1.8.2000

PRESENT.

THE HON'BLE MR. JUSTICE P.C.PHUKAN

Learned counsel for the petitioner is present.

Mr. P.N.Choudhury, learned Addl. Central Govt. Standing Counsel ~~xx~~ has raised preliminary objections in the point of law. He ~~ix~~ contends that this Writ petition ~~ix~~ does not lie before this Court and it will lie before the Central Administrative Tribunal. Mr. Choudhury further submits that as ~~xx~~ many as 10 Writ petitions involving same point of law are pending in this Court for admission. In view of this, let all these matters namely-(1) CP 6037/98, (2) WP.1594/99, (3) W.P.1598/99, (4) W.P.373/2000, (5) W.P.1117/2000, (6) W.P.876/2000, (7) W.P.496/2000, (8) W.P.257/2000, (9) W.P.374/2000 and (1) W.P.375/2000 before the same Bench on 8.8.2000.

JUDGE.

Rahman/

FIXED ON

Before the Central Administrative Tribunal

(2) Transmit it to the Central Administrative Tribunal immediately along with the envelope cover as mentioned in the O/S.

Received today at 4 P.M. 5/8/2000

B. S. /

Noting of office by Asst
Advocate

Sl. No. : _____ Date : _____

Office Notes, Reports,
Orders or proceedings
with signature

Noting by Office or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
<p><u>18/8/2000</u></p> <p>Ref. - Hon'ble Court's order dtd. 1.8.2000</p> <p>All the cases mention in the order dtd. 1.8.2000 have been sent to Central Administrative Tribunal, Bhangagarh except case nos. ^{W.P.(C) No.} 1117/2000 and W.P.(C) No. 257/2000. The W.P.(C) No. 1117/2000 is fixed on 8.8.2000 in this Hon'ble Court and W.P.(C) No. 257/2000 was sent to this Hon'ble Court on 25/7/00 ^{which is listed today} for orders. The case W.P.(C) No. 1117/2000 is not yet received by the Section concerned.</p> <p><i>Sign</i> <i>H.S.N.</i></p>			
<p><u>6.1.2001</u></p> <p>An Affidavit in reply on behalf of the petitioner has been filed.</p> <p><i>Devi</i> 6/1/2001</p>			

IN 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

⑤ (S) W.P.(c) 376/2000

Noting by Officer or Advocate

SL. NO. DATE

OFFICE NOTES, REPORTS,
ORDERS OR PROCEEDING WITH
SIGNATURE

Before

B. Lamerce

Deputy Magistrate

12/1/2000

Let return
12/1/2000

B.L.
18/1/2000

By

List the matter
~~after~~ in the next
week.

Bto.

Noting by Officer or Advocate

SL.NO.	DATE
--------	------

OFFICE NOTES, REPORTS,
ORDERS OR PROCEEDING WITH
SIGNATURE

A.G.p. (H.C.) 324/2000/18,000-30/6/2000

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.

Contd.. 2

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} are similar and they can be disposed of by a common

contd.. 3

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. Aggrieved 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 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 observe the

contd.. 4



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.

Contd.. 5

[Handwritten signature]

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: Upper Subansiri WPEJ CASE NO. 376 DBTD
 DB/SB A/B CATEGORI CODE: 10183
 FILING SL. NO. 10148 DATE OF FILING: 24/1/2000
 Name of Party: Utpal Mahanta
vs.
State of A.P.R.

Signature of D. A.

1. Court Fee due :
 Court Fee Paid : Rs. 58.00
 Deficit if any : 24/1
2. Filed within Limitation : Yes / No.
 Condaton 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

24/1/2000
 Commissioner of Affidavits
 SIGNATURE OF THE SUPDT. High Court
 FILING SECTION. Subansiri

SIGNATURE OF THE STAMP
REPORTER.

G.H.C. E.W. FUND

THE GAUHATI HIGH COURT

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

Category

No.

Year

1. (a) Case No. : WP (C) 326 2000
1. (b) Related Case No. : _____/199
1. (c) Related Information : _____
1. (d) Jurisdictional Value Rs. _____ 1. (e) Court Fee Rs. 58.80
1. (e) Provision of law under which the case filed _____

DATE / MONTH / YEAR

1. (f) Date of Registration : 24 / 01 / 20002. (a) Case Category Code : 10189 *2. (b) Subject Category Code : 5B *2. (c) Bench Code : A *3. State Name : Assam (Sobansiri) 4. State Code A.P.4. Petitioner (s) : Utpal Mahanta5. Respondent (s) : State of A.P.6. Petitioner (s) : Mr. M. ChandraAdvocate (s) : S. Datta7. Respondent (s) : G. A. A.P.

Advocate (s) : _____

8. Stage Code of the Case : *9. Court No. : 10. Caveat (if any) : Yes ☐ / No ☒

Signature with date :

24/1/2000

* Kindly use appropriate codes.

18

District- Upper 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 (Civil) No. 376/2000

Category Code No. : 10/89

Bench : A

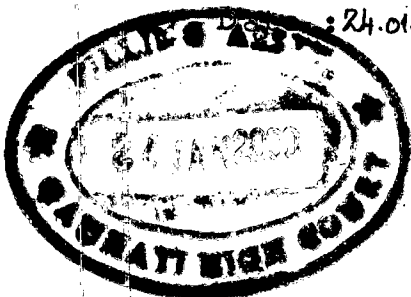
Shri Utpal Mahanta

-vs-

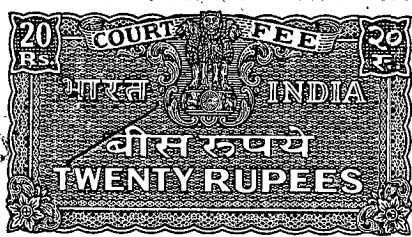
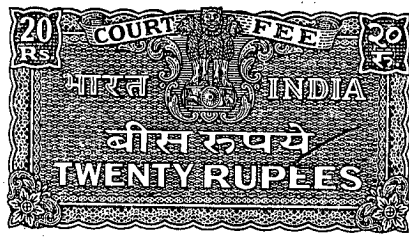
The State of Arunachal Pradesh & Ors.

I N D E X

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Filed by :
Suryajit Dutta
Advocate



District - Upper Subansiri

Filed by:-
The Petitioner
Through:-
Surajit Datta
Advocate
24.01.2000

IN THE GAUHATI HIGH COURT

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

(CIVIL EXTRA ORDINARY JURISDICTION)

Writ Petition (Civil) No. 376/2000

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 :

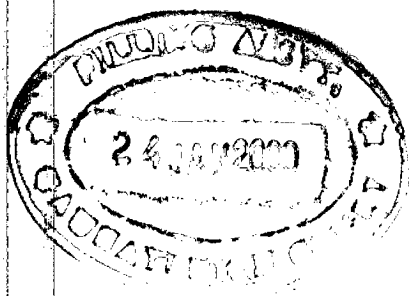
An application under Article 226
of the Constitution of India for
issuance of a Writ in the nature of
Mandamus and/or any other appropriate
Writ, Order or Direction of like
nature.

-AND-

IN THE MATTER OF :

Challenge to the legality of the
threatened action of the Respondents
to repatriate the Petitioner to his
parent department without considering

Contd....



-2-

his case for permanent absorption 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 :

Sri Utpal Mahanta
Son of Shri Krishna Kanta Mahanta
presently working as Divisional Accountant in the office of the Executive Engineer, Daporijo PHE Division, Department of Public Health Engineering, Government of Arunachal Pradesh.

.... Applicant
Contd...

-3-

-versus-

1. The State of Arunachal Pradesh
through the Secretary,
Department of PHE,
Government of Arunachal Pradesh,
Itanagar.
2. The Chief Engineer,
Department of Public Health Engineering,
Government of Arunachal Pradesh,
Itanagar.
3. Director of Accounts & Treasuries,
Government of Arunachal Pradesh,
Itanagar.
4. The Comptroller & Auditor General
of India,
10 Bahadur Shah Zafar Marg
New Delhi-110002.
5. The Accountant General (A&E),
Meghalaya,
Shillong-793001
6. The Executive Engineer,
PHE Division,
Daporizo,
Arunachal Pradesh

..... Respondents

The Petitioner above named

MOST RESPECTFULLY SHEWETH :

1. That the Petitioner in the present petition is seeking his permanent absorption as Divisional Accountant

Contd...

in the organisation and administrative control of Accountant General (A&E), Meghalaya etc. 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.H.E., 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 Power, 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 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 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

Contd.....

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. Department of Government Arunachal Pradesh as Upper Division Clerk at Basar PWD. Eversince his entry to his service he has been discharging his duties to the satisfaction of all concerned. Presently, is is on deputation to A.G. (A&E) Meghalaya and is posted at Daporijo, PHE Division, Department of PWD, Government of Arunachal Pradesh. Thus although he is working under the administrative control of A.G. (A&E), Meghalaya, 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 was appointed as Divisional Accountant in the office of the Executive Engineer, Daporizo, PHE Division, Arunachal Pradesh vide order No. DA Cell/213 dated 24.1.1997.

Copy of the Office order dated 24.1.1997 is annexed as Annexure-1.

4. 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 department of Power 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 26.2.1997.

Copies of the relevant documents in the above context viz. circular dated 24.12.96 and letter dated 26.2.1997 alongwith the enclosures are annexed as Annexures 2 & 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 came on deputation to a promotional post carrying higher pay scale to the office of the AG (A&E), 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 Pay Commission, the pay scale of the Petitioner has been revised and fixed on the scale of pay of Rs. 5000/- - 8000/- with effect from 10.2.97. Thus it will be seen that for all practical purposes he has been

9

treated to be a regular staff in the establishment of AG (A&E), Meghalaya etc. Shillong.

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 repatriate to his parent department i.e. under the Chief Engineer, Public Works Department, Itanagar, wef 10.2.2000. 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.

9. That it is pertinent to mention here that on an earlier occasion, there were other similarly situated colleagues of the Petitioner who being aggrieved by the order of repatriation~~d~~ 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, Sri Bidhu Bhusan De and Shri N.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 referred to above are annexed as Annexure 4, 5 and 6 respectively.

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

11. 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 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.

12. 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 through 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.

13. 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 Datta Vs. U.O.I. & Ors). In all these cases, the State of Arunachal Pradesh do not have any objection towards absorption of the Petitioner 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 benefitted.

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.

14. That there is a proposal from the Govt. of Arunachal Pradesh to take over the cadre of Divisional Accountant from the Administrative control of A.G. (A&E), Meghalaya etc. Shillong. The Govt. of Arunachal Pradesh had already issued circular dated 16.11.99 to all the Executive Engineers, within the State of Arunachal Pradesh, calling for, some information. As the move of taking of cadre of Divisional Accountant from the Administrative control of A.G. (A&E) Meghalaya etc. is in a final stage, Government of Arunachal Pradesh has requested the A.G. (A&E) Meghalaya, Shillong vide letter dated 15.11.99, to extend the period of deputation ~~1/2~~ of the serving deputationists for a further period of two years.

Thus, it is clear from the above fact that A.G. (A&E) Meghalaya etc. Shillong has no right to repatriate the Petitioner. Rather A.G. (A&E), Meghalaya etc. Shillong should issue order in favour of the Petitioner, absorbing the petitioner in the cadre of Divisional Accountant, in the light of the option exercised by the petitioner.

Copies of the letter dated 15.11.99 and 16.11.99 are annexed as Annexures-7 & 8 respectively.

15. That the petitioner states that he has gathered information that he is being replaced by another 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

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cadre of AG (A&E) for Arunachal Pradesh is on the offing and the necessary infrastructure ~~xxxxxxx~~ 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 17.12.1999.

16. 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, Daporijo PHE Division, Department of PHE, 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, Daporijo PHE Division, Department of PHE 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 in favour of the Petitioner towards passing such an interim order.

17. 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.

15. 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 and quashing the

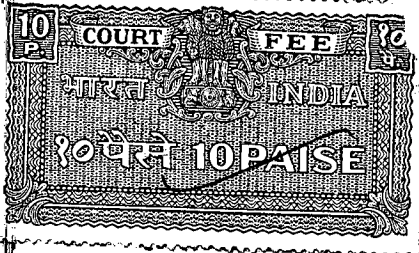
-14-

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 Account-~~ant General~~ ant General (A&E), Meghalaya 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 such other or further order/orders as may be deemed fit and proper.

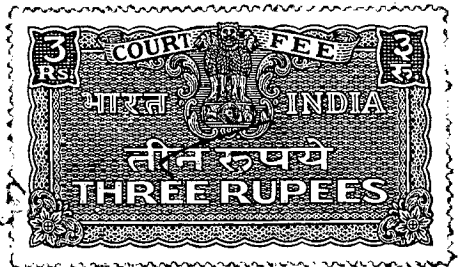
-AND-

Pending disposal of the Rule, be pleased to direct the Respondents not to release the Petitioner from his present post of Divisional Accountant in the office of the Executive Engineer, Daporijo PHE, Division, Department of PHE, 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.



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A F F I D A V I T

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I, Utpal Mahanta, son of Shri Krishna Kanta Mahanta, aged about 36 years, presently working as Divisional Accountant in the office of the Executive Engineer, Daporijo PHE Division, Department of PHE, 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
are true to my knowledge, those made in paragraphs
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 24th day of January, 2000.

Identified by :

P. K. Barmann

Advocate's clerk

24/1/2000

Utpal Mahanta
Deponent

24th January/2000
P. K. Barmann
24/1/2000

Annexure-1

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

EO No. DA Cell/213

Dated 24.1.97

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 Utpal Mahanta, UDC at present working in the office of the Executive Engineer, Basar PWD is posted on deputation as Divisional Accountant, Basar, A.P. in the office of the Executive Engineer, Daporijo, A.P. PHE Division, Daporijo, A.P.

2. Shri Utpal Mahanta, 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. ~~His~~ No representation for a change of the place of posting will be entertained under any circumstances whatsoever.
3. The period of deputation of Shri Utpal Mahanta 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, Daporijo, PHE Division, Daporijo, 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 three years.
4. The pay and deputation (duty) allowances in respect of Shri Utpal Mahanta will be governed by the Government of India, Ministry of Finance, Public Grievances and Pension (Dep'tt. of Personnel and Training) letter No. 2/12/87-Estt(Pay.II) dtd. 29.4.1988.

Contd....

Annexure-1 (Contd.)

and as amended and modified from time to time. While on deputation Shri Utpal Mahanta may elect to draw either in the pay in the scale of pay of the deputation post or his basis pay in the parent cadre plus personal pay, if any, plus deputation (duty) allowance. Shri Utpal Mahanta on deputation should exercise option in this regard within 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 Utpal Mahanta 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/62 dated 7.12.1962 (Incorporated as Annexure-31 of Choudhury's C.S.R. Volume. IV (13th Edition) and as amended ~~xxx~~ and modified from time to time).

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

Sd// -

Sr. DAG

Contd.....

Annexure-1 (Contd.)

Memo No. DA Cell/2-49/94-95/2430-2436 Dated 24.1.97
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, PWD, Arunachal Pradesh, Itanagar. He is requested to release Shri Utpal Mahanta 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

O/o the

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

Sd/- Illegible 24.1.97
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 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

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

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

Sub : Option for separation of Cadre.

Ref : 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.

Yours faithfully,

Enclo : One option
26.2.97

(UTPAL MAHANTA)
26.2.97
Divisional Accountant
Daporijo PHE Division

Annexure-3A

OFFICE OF THE ACCOUNTANT GENERAL (A & E) 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 Utpal Mahanta, DA on deputation at present posted in the Office of the Executive Engineer, Daporijo PHE Division, Daporijo, Arunachal Pradesh is repatriated to his parent Department i.e. Chief Engineer, P.W.D., Itanagar w.e.f. 11.2.2000

On being relieved of his duties on or before 11.2.2000 from the office of the Executive Engineer, Daporijo, PHE Divn. Daporijo, 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 produced in Appendix -I of the C.E.W.D. Code, 2nd Edition 1964 the relieving 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. The 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/39 N in the file No. DA Cell/10-1/93-94/98-99/Vol.V.

Sd/-

Sr. Deputy Accountant General (Ad)

Annexure-3A (Contd.)

Memo No. DA Cell/10-1/93-94/99-2000/1644-1649

Date 24.12.

Copy forwarded for information and necessary action to :

1. The Chief Engineer, P.W.D., Arunachal Pradesh, Itanagar. He is requested to arrange for posting of Shri Utpal Mahanta Divisional Accountant on Deputation, on his repatriation to his parent Department. The concerned Executive Engineer has been asked to release Shri Utpal Mahanta on or before 11.2.2000.
2. The Executive Engineer, Daporijo, PHE Divn. Daporijo, AP. He is requested to release Shri Utpal Mahanta of his Division on or before 11.2.2000 as His term of deputation expires. He is also requested to instruct Shri Utpal Mahanta to report to his parent Department i.e. Office of the Chief Engineer, PWD, Arunachal Pradesh on his release from your department. It may be noted that no further extension of period of deputation will be granted to Shri Utpal Mahanta under any circumstances to avoid any complicity.
6. The Executive Engineer, P.W.D. Daporijo, AP, He is requested to direct Shri S.C. Nath, DAO/Gr.I of his Division to look after the work of the Division Accountant of the office of the Executive Engineer, PHE Divn. Daporijo, AP in addition to his normal duties with effect from 11.2.2000 until further order.
7. Shri S.C. Nath DAO Grade-I of the office of the Executive Engineer, PWD, Daporijo, AP. He is directed to look after the work of the Divisional Account of the Office of the Executive Engineer PHE Division Daporijo, AP w.e.f. 11.2.2000 A.N. in addition to his normal duties until further order.

Contd.....

Annexure-3A (Contd.)

8. Shri Utpal Mahanta, Divisional Accountant on deputation, O/O the Executive Engineer, Daporijo PHE Divn. Daporijo. He is hereby asked to report to his parent Department, i.e. office of the Chief Engineer, P.W.D., Arunachal Pradesh, Itanagar.
9. Personal File of Shri Utpal Mahanta.
10. Personal File of Shri S.C.Nath
11. S.C.File
12. E.O. File

Sd/-

Senior Accounts Officer

Annexure-4

IN THE CAUHATI 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. 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, 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 apssed 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 Account-
ant in the Office of the Executive Engineer, Ziro Civil
Division Department of Power, District Lower Subansiri,
Arunachal Pradesh.

Sd/- M. SHARMA,
Judge

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

WRIT PETITION (CIVIL) No. 1598/99

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

P R E S E N T

The Hon'ble Justice A.K.Patnaik

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

O R D E R

Heard Mr. B.K.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/- A K PATNAIK
Judge

Annexure-6

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

~~CIVIL~~

WRIT PETITION (CIVIL) NO. 1599/99

M.V. Kartikeyan Nair - Petitioner

-vs-

The State of Arunachal Pradesh & Ors. - Respondents

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 : GA, 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 returnably be 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/- AK PATNAIK
Judge

Annexure-7

GOVT. OF ARUNACHAL PRADESH
DIRECTORATE OF ACCOUNTS & TREASURIES
NAHARLAGUN

No. DA/TRY/15/99

Dated Naharlagun the 15th
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/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 available 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/Temporary or Perma-
nent etc. may please be fur-
nished 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 15 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
Government of Arunachal Pradesh
Naharlagun.

Copy to :

1. The Chief Engineer PHE/RWD/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 on
priority basis in order to formulate the modalities
to take over these posts from the AG (A&E), Shillong
and their encadrement to FAS/SEAS 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

Annexure-8

GOVT. OF ARUNACHAL PRADESH
DIRECTORATE OF ACCOUNTS AND TREASURIES

(THROUGH FAX/SPEED POST)

No. DA/TRY/15/99

Dated Naharlogun 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
dt. 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 ~~xxxx~~ 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 (20.1.87), 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 ~~xxxxxxx~~ & 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 DAO/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 ~~xxxxxx~~ State Govt. in final shalpe could be put forward to your esteem office.

Yours faithfully,

Sd/- (C.M. Mongmaw)

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

Fax No. 0360 244281

Contd.....

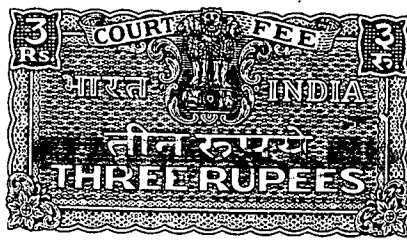
Annexure-8 (Contd.)

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 Treasures, 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



31

FILED BY
P. N. Choudhary
P. N. Choudhary

District: Upper Subansiri.

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

W.P.(C) No. 376 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 Utpal Mahanta

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. BANTHEW, son of Shri W. B. BANTHEW, 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 having gone

having gone through the facts and circumstances, I am in a position to depose about the same 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 para 4 of 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

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) was 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.4 only on 24.01.1997 (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 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.

That the Respondents humbly state that the Petitioner was appointed on deputation to the cadre of Divisional Accountants administered by respondent No.4 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 paragraph 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 24.12.1999 (annexed as Annexure 2 to the Writ Petition) 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 Respondents 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 Respondents 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

Commission and in terms of paragraph 4 of the order cited herein aforesaid and placed at Annexure 1 to the Writ Petition. 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 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 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 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 24.01.1997

(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 on 11.02.2000 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 11.02.2000 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 9 being misleading and misuse of the due process of law as applicable to this Hon'ble Court and is hence denied.

That as a matter of record OA 412/99 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 Respondents reserve 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.

9. 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.

10. 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.

11. That the averments made in paragraphs 12 & 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.

12. 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. 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 24.01.1997 (Annexure I 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 15 & 16 are denied as misleading and misconceived. That the Respondents 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 1997 (Annexure 1 to the Writ Petition) should have carried out and abided by the order (Annexure 8 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 8 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

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. 257/2000 in the matter of Gamboh Hage versus Govt. of Arunachal Pradesh and others.
9. W.P. 374/2000 in the matter of Keshab Ch. Das 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 Hon'ble CAT, Guwahati:

1. OA 412/99 in the matter of RK Sanajaoba 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 of similar nature to the cases mentioned above and filed in the Hon'ble High Court and the Hon'ble Central Administrative Tribunal, Guwahati Bench.

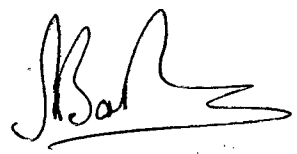
That in view of the various other cases being sub-judice before this Hon'ble Court and the Hon'ble Central Administrative Tribunal, Guwahati Bench, the Petitioners case may be consolidated and made analogous in order to prevent any conflicting judgement that may cause disparity.

That the answering Respondents 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 17 and 18 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 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 paragraphs 1 and 2 of this Affidavit-in-opposition is true to my knowledge and those made in paragraphs 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.



DEPONENT

Identified by:

Manmild Das

Advocate Clerk

28/6/2000

महालेखापर (प्र.)
Sr. Dy. Accountant General (Admn)
महालेखापर (ले.र.ह) का कार्यालय
Office of the A.G. (A&E)
मिज़ोरम, मिज़ोरम एवं मारुणाचल प्रदेश
Meghalaya, Mizoram & A.P.

दिनांक- 28.6.2000

Shillong- 793001

Solemnly affirmed before me this
28th day of June 2000
The declarant is identified by—
Sri. M. Das personally
known to me. I certify that I read over and
explained the contents to the declarant and
he seemed perfectly to understand
them.
28/6/2000
Commissioner of Affidavits
Gauhati High Court
Guwahati



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,

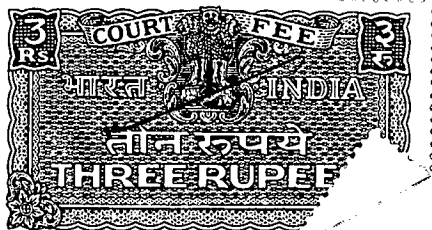
In inviting a reference to your letter No. DA/TRY/15/99/9029 dated 15.11.1999 on the subject cited above, I am to inform you that this office is the cadre controlling authority for the cadres of DA/DAO/Sr. DAO in respect of the State of Manipur, Tripura and Arunachal Pradesh. Transfer and postings of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



Filed by the petitioner
through :-
Sujit Kumar Ghosh
Advocate
17.8.2000

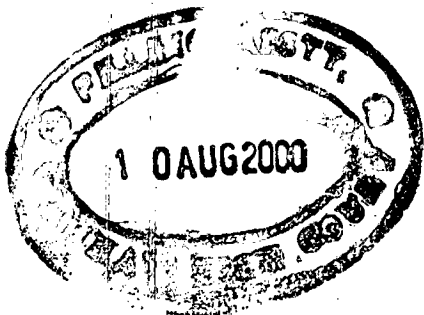
IN THE GAUHATI HIGH COURT

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

W.P. (C) No. 376 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.



10, 6/3/49

In the matter of :

Shri Utpal Mahanta

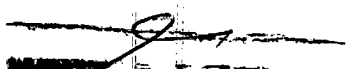
..... Petitioner.
-Versus -

The State of Arunachal Pradesh
and Others.

- And -

In the matter of :

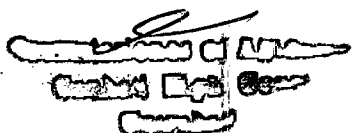
An affidavit-in-reply on behalf of
the petitioner.


Sujit Kumar Ghosh
Advocate

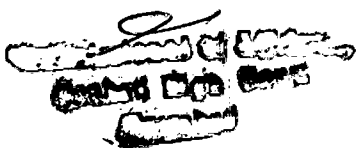
AFFIDAVIT-IN-REPLY

I Shri Utpal Mahanta, son of Shri Krishna - Kanta Mahanta aged about 37 years working as a Divisional Account in the Office of the Executive Engineer (I & FCE), 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 4 and 5 in their affidavit-in-opposition. The writ petitioner categorically denies all the statements made by the respondents Nos. 4 and 5 in the affidavit-in-opposition except which are borne out of records.
3. That your writ petitioner categorically denied the statement made in paragraphs 2, 3, 4, 5, 6 and 7 of the affidavit-in-opposition submitted by the respondents 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 provisions laid down in Administrative Tribunal Act 1985 is not correct rather jurisdiction of the Hon'ble



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 pertinent to service conditions and recruitment of Central Government Employees . It is relevent to mention here that the petitioner in the instant case is a permanent and regular employee of the Government of Arunachal Pradesh, he is appointed on deputation although by the Accountant General (A & E) Shillong but his services is being placed under the & Executive Engineer (I & FCD) Tezu Arunachal Pradesh under Government of Arunachal Pradesh. The Directorate of Accounts 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 Accountants to 38 Public Works Divisions of the State of Arunachal Pradesh are presently manned by deputationist were under active consideration of the State of Government. The Government of Arunachal Pradesh has observed the prior to this correspondence under reference the State Government as well as the Directorate of Accounts and Treasuries were never consulted while recruiting and posting of Divisional Accountants through the this posts were borned in the establishment of Executive - Engineers and ^{Paid} ~~prayed~~ from the State exchequar. It is further requested ^{to} the Accountant General (A & E) their ~~that~~



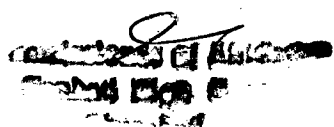
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-4-

the Government of Arunachal Pradesh is of the view that recruitment ^{and} ~~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 is 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 ^{tenure} ~~tenure~~ of the serving Divisional Accountants in the Public Works Departments in the interest of Public Service which will provide ^{Successor} ~~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 put forward to Accountant General (A & E) Shillong.

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

It is further stated, that para 249 of the mannual of standing orders which provided for recruitment to the cadre of Divisional Accountant, from three sources through a competitive and qualified test, the three sources namely I.P.W.D Accounts Clerk 2 ^(two) ~~(two)~~ 2. Upper Division Clerk of Audit Officers 3 ^(three) ~~(three)~~. Direct recruits. The above ^{mode} ~~made~~ of recruitments to the cadre



of Divisional ^{Accounts} ~~Accounts~~ is still in force even after the enforcement of 1988 recruitment rules. It is stated ^{that} applicant is in spite of his best effort could not collect manual of standing orders ^{referred above} refer in para 249, as such, the Hon'ble Court be pleased to direct the Respondents to produce the manual of standing orders referred above.

It is further stated that ⁱⁿ the instant case, ^{this} ~~this~~ ^{the} circumstances is little ^{bit} ~~be~~ different than what has been stated by the respondents no. 4 and 5. It is abundantly ^{clear} ~~clear~~ as ~~it is~~ revealed from the communication dated 15.11.99, where-in it is stated that the question regarding recruitment of Divisional ^{Accounts} ~~Accounts~~ is under active consideration of Government of Arunachal Pradesh and so far instructions received from reliable sources it is learned that the Government of Arunachal Pradesh is considering the question of taking over the entire accounts system under its own control from the Accountant General (A&E) Shillong as because the cadre of Divisional ^{Accounts} ~~Accounts~~ born in the Establishment of Executive Engineer, State of Arunachal Pradesh and the salary of the Divisional ^{Accounts} ~~Accounts~~ also being paid from the State exchequer, in this special circumstances the Government of Arunachal Pradesh requested Accountant General (A&E) Shillong to extend the period of deputation for a period of two years of the serving Divisional ^{Accounts} ~~Accounts~~ 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 rule laid down by the Government of India.

[Handwritten signature and stamp at the bottom left]

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the maximum period of deputation has been fixed to five years. In this connection it is stated that when the matter for recruitment of Divisional ^{Accounts} ~~Accounts~~ on regular basis for the State of Arunachal Pradesh is under active consideration for the Government of Arunachal Pradesh, there is no jurisdiction on the part of the Accountant General (A & E) Shillong to recruit another set of Divisional Accountant on deputation basis when rule of 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} ₁ sustained in the eye of law. The process of recruitment of another set of deputationist in place of present petitioner is also likely to cause huge expenditure to the State exchaquer, as because the cadre of Divisional ^{Accountant} ~~Account~~ 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 ~~s~~ further stated that the judgements of the Supreme Court referred by the respondents No. 4 and 5 is not applicable in the facts and circumstances of the instance case rather Apex Court decision in the case of

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Rameswar Prasad - Vs - Managing Director U.P. Rajkiya -
Nirman Nigam Limited and Others reported in 1999 (8) SBC 500
381 where in it is held that although the power of absor-
ption 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 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 the petitioner ^{submitted} ~~submitted~~ *further stated that*
^{submitted} option ₁ terms of the circular dated 24.12.96, the contents
of the circular dated 24.12.96 has not been denied by the
respondents no. 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 ~~xx~~ cadre 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, ^{the} actual position the petitioner has acquired a valuable and legal right for consideration to the post of Divisional Accountant. 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 and 13 are categorically denied and further reiterates the statement ^{made} there in and further stated ^{that} 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 extent the period of deputation ^{is not justified}. The decision of taking over the cadre of Divisional Accountants is also admitted by the respondent in ^{Para} 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 August of 2000

Identified by
Sujit Ghosh
Advocate.

Utpal Mahanta
Deponent.

Subscribed and sworn to before me on 7th August 2000
The Declarant is
Sri S. Ghosh, who is personally known to me and explained to me the contents of the declaration and the facts stated therein
Advocate
Utpal Mahanta
Deponent
7/8/00
Court of Affidavits
High Court