

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 333/2001

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SECTION OFFICER (Judl.)

FORM. NO. 4

(See Rule 42)

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

ORDER SHEET

Original APPLICATION NO. 333 OF 2001APPLICANT(s) B LP GuptaRESPONDENT (s) h.o. I formADVOCATE FOR APPLICANT(s) B. Malakar, GB DasADVOCATE FOR RESPONDENT(s) C ASL

Notes of the Registry

dated

Order of the Tribunal

This application is in form
b6. It is admitted on 23.8.2001
for hearing on 16.11.01
by Mr. B. Malakar, learned
counsel for the applicant.

120.5/2001/76548818

Dated 8.8.2001
By Dr. K. N. Das, 2001

23.8.2001

Heard Mr. B. Malakar, learned
counsel for the applicant. The application
is admitted. Call for the records, returnable
by four weeks. List for orders
on 21.9.01.

Vice-Chairman

21.9.01
WS
23.8.01

List on 16/11/01 to enable the
respondents to file written statement.

Vice-Chairman

16.11.01

None is present for the applicant.
List the case on 14.12.2001 for order.
In the meanwhile respondents may file
written statement.

Member

WS

bb

16.11.01
Member

① Service report are still
awaited.

28.9.01

No written statement has
been filed.

15.11.01

14.12.01 None is present for the applicant.

On the request of Sri A.Deb Roy, learned Sr. C.G.S.C. six weeks time is allowed to file written statement.

List on 18.1.02 for order.

No. written statement has been filed.

ZB

17.1.02

IC Usha
Member

No. written statement has been filed.

18.1.02 List on 20.2.02 to enable the respondents to file written statement.

ZB

19.2.02

IC Usha
Member

lm

20.2.02

List on 22.3.02 to enable the

No. written statement has been filed.

Respondents to file written statement.

*Vice-Chairman**ZB*

21.3.02

lm

22.3.02

At the request of Mr.A.Deb Roy Sr.C.G.S.C. four weeks time is allowed for filing of written statement. List on 26.4.02 for filing of written statement and further orders.

IC Usha
Member

27.3.2002 lm

R/S submitted 26.4.02
by the Respondents.

Written statement has been filed.

The case may now be listed for hearing on 22.5.02. The applicant may file rejoinder if any, within two weeks.

*Vice-Chairman*No rejoinder has
been filed

lm

24.5.2002

Heard in part. List the matter again for further hearing on 19.6.2002 to enable the respondents to obtain necessary instructions in the matter of regularisation.

Vice-Chairman

nkm

(3)

O.A.333/2001

Notes of the Registry | Date

Order of the Tribunal

21.6.2002

Mr.R.Das appearing for Mr.B.Malakar learned counsel for the applicant, submits that Mr.Malakar has left the Tribunal as he was unwell. He requests for short adjournment.

Request is accepted. List the case again for hearing on 19.7.2002.

K. Usha
Member

Wks has been bled.

bb

3/2
25/7/02.

19.7.02

Request is made on behalf of Mr.B.Malakar learned counsel for the applicant and prays for adjournment. Prayer is allowed. List on 26.7.02 for hearing.

K. Usha
Member

lm

26.7.02

Request is made on behalf of Mr.B.Malakar learned counsel for the applicant for adjournment. Prayer is allowed. List on 23.8.02 for hearing.

K. Usha
Member

lm

23.8.02

Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is dismissed. No order as to costs.

K. Usha
Member

pg

Order dtd. 23/8/02
Communicated to the
applicant and the
parties Comm -
db

Notes of the Registry

Date

Order of the Tribunal

20/1/61

cc

to 1/2/61 for direct delivery

on 1/2/61 to the following addressees

Mr. G. H. D. H. (for the Secretary of State)

cc

cc

to 1/2/61 for direct delivery

on 1/2/61 to the following addressees

Mr. G. H. D. H. (for the Secretary of State)

cc

cc

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A. No. 333 of 2001.

DATE OF DECISION.. 23-8-2002:.....

Sri Bhagwan Lal Prasad Gupta

APPLICANT(S)

Mr B. Malakar.

ADVOCATE FOR THE APPLICANT(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

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

ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Admn. Member.

K K Sharma

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 333 of 2001.

Date of Order : This the 23rd Day of August, 2002.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Shri Bhagwan Lal Prasad Gupta,
Work Sarkar Grade-I,
NSTLCISD-I, CWC Alipurduar (W.B)

....Applicant

By Advocate Sri B.Malakar.

- Versus -

1. Union of India,
represented by the Secretary,
Ministry of Water Resources,
Govt. of India, New Delhi.

2. The Chief Engineer,
Brahmaputra Barak Basin,
CWC, Marathan Umpling,
Shillong, Meghalaya.

3. The Executive Engineer,
NEID-III, CWC, Itanagar,
Arunachal Pradesh.

...Respondents.

By Sri A.Deb Roy, Sr.C.G.S.C.

- O R D E R -

CHOWDHURY J.(V.C)

By this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant has claimed the following reliefs :

(i) the applicant may be confirmed with effect from 25.7.76 and

(ii) may be given posting at Mujaffarpur Division (Bihar) or to Varanasi, Lucknow, Agra, Faridabad or Delhi.

2. The applicant was appointed as Work Sarkar Grade-II under Central Water Commission from 24.7.75. The applicant was promoted as Work Sarkar Grade-I with effect from 13.3.75. The applicant claimed benefit of regularisation with effect from 25.7.76. In the annexure filed with the O.A the applicant has not filed any order under which the applicant's request for regularisation was turned down. From record it is seen that the applicant had moved O.A.116/86 - C.R.No.1122/83. In earlier application the applicant claimed the benefit of regularisation as a permanent non technical staff. This application alongwith other O.A.147/85 was disposed of on 21.1.87. On the ground of regularisation the Tribunal observed as under :

"The question of regularisation of his services as permanent non-technical staff lies with the authority to consider, for which we do not think that we shall be justified to give any direction. Moreover, the learned counsel for the petitioner has not advanced any submission on the aforesaid grievances at the time of hearing."

Thus the applicant's claim for regularisation was rejected. Mr B.Malakar, learned counsel appearing for the applicant did not point out any change in factual position. His argument was that despite order dated 21.1.87 the respondents had not considered the case of the applicant for regularisation. Heard Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents. Mr Deb Roy argued

(Signature)

that the claim of the applicant for regularisation of the service of the applicant had already been considered by this Tribunal. If the applicant was aggrieved by the order of the Tribunal he should have approached a higher forum. Mr Deb Roy objected to the filing of the application on the ground of limitation and also submitted that the issue has already been heard and adjudicated upon by this Tribunal.

3. The other ground relates to the transfer of the applicant to Bihar or other stations like Varanasi, Lucknow, Agra, Faridabad and Delhi.

4. Mr B. Malakar, learned counsel for the applicant submitted that the applicant had made representation for transfer but his representation had not been considered.

Mr Deb Roy referring to the Annexure-V to the written statement submitted submitted that transfer of Work charge staff are not entertained as it affects promotion avenues of workcharged staff in the circle where they request for transfer. Mr Deb Roy also pointed out that applicant had not submitted any representation for transfer but his wife Smt. Pawan Gupta made representation for transfer. The respondents had given reply dated 29.8.2001 informing the applicant that the transfer of workcharged employees is not covered under the transfer guidelines. It was also informed about rejection of the request of transfer.

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contd..4

5. I have carefully considered the submission made on behalf of the parties and have gone through the materials on record. The application claiming relief from 25.7.76 is hopelessly barred by limitation in view of the limitation prescribed under Section 21 of the Administrative Tribunals Act, The application ^{is} liable to be rejected on account of limitation. Moreover, legally also the claim of the applicant is not justified. The applicant had raised the same issue earlier and the claim was rejected by this Tribunal vide order dated 27.1.87. The same issue cannot be revived by filing new application. The prayer of the applicant for transfer is not covered by the transfer guidelines and he has been informed about the policy. In case the applicant is interested for a transfer on loosing the benefit of seniority he may approach the respondents by a representation.

5. In the circumstances I do not find any merit in the application. Subject to the observation above, the application is dismissed. There shall, however, be no order as to costs.

K.K.Sharma

(K.K.SHARMA)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH
Guwahati Bench

FILED BY

O.A. NO.

833

/200/1

Bhagwan Lal Prasad Gupta - Applicant

Through

Advocate for
Gautam Bishakha Das
Associate

Shri Bhagwan Lal Prasad Gupta - Applicant

- Versus -

The Union of India and Ors.... Respondents

(CWC)

I N D E X

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4.	Annexure	B	16 to 18
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Filed by

R. Das.
(R. Das.)
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

FILED BY
Bhagwan Lal Prasad Gupta
- Applicant
Through
Advocate
Gautam Brikash Das

O. A. NO. _____/2001

Shri Bhagwan Lal Prasad Gupta ... Applicant

- Versus -

The Union of India and Ors... Respondents.

1. (I) Particulars of the applicant : Shri Bhagwan Lal Prasad Gupta, Work Sarkar Grade-I, NSTLCISD-I, CWC, Alipurduar, (W.B.)

(II) Address for service of notice : Office of the Assistant Engineer NSTLCISD-I, CWC Alipurduar, (WB).

2. Particulars of the respondents : The Union of India, represented by the Ministry of water Resources, Govt. of India, New Delhi .

2. The Chief Engineer, Brahmaputra Barak and Basin, CWC, Marathan, Umpling (Meghalaya).

Contd....2/

Bhagwan
Lal Prasad
Gupta

3. The Executive Engineer,
NEID-III, CWC, Itanagar,
Arunachal Pradesh.

(II) Office of the : As above
respondents

(III) Address for services of: As above.
notices

3. Particulars of the : Non consideration of
order for which the the case of the applicant
application is made for bringin him to a
regular establishment and
non consideration of his
transfer inspite of
departmental guidelines.

4. Jurisdiction of the : The applicant declares
Tribunal that the subject matter of
the application is within the
jurisdiction of the Tribunal

5. Limitation : The applicant further
declares that the application
is within the limitation
prescribed under Section
21 of the CAT Act 1985.

Contd....

BL P Gatto

6. FACTS OF THE CASE :

(I) That the applicant was appointed as Work Sarkar Grade-II under the Central Water Commission and was posted at Gantok (Sikkim) in the pay scale of Rs. 110-3-131-180 Plus other ~~xx~~ allowances as admissible under the Rules. The appointment was issued vide letter NO. LAP/PC/E-4/3798-3801 dtd. 23-7-75 by the Executive Engineer, Lower Lagysp Construction Divn. No. 1.

23-7-75
A copy of the appointment letter is annexed herewith and marked as Annexure-A.

(II) That the applicant joined in the post on 24-7-75 under the said Division and he served with the Commission with best ability and sincerely. Due to the professional competence and satisfactory service record, the petitioner was promoted as Work Sarkar Grade-I from 13-3-75, the promotion order issued on 11-3-75 vide letter NoLHPC/ADMN/5/74/1422-23. The applicant worked there up to 25.7.81. The authorities on being satisfied with the work of the applicant, issued him a certificate of ~~xx~~ ability and competence.

Copies of certificates are annexed hereto this application and marked as Annexure-B series.

Contd....

BL P Gurbat

(III) That thereafter the applicant was transferred from Sikkim to Tipaimukh Investigation Circle of CWC Shillong vide letter NO. LLP/DCM/E-29/3689-96 dtd. 25-7-81. On receipt of the said transfer order, the applicant submitted an application on 27.7.81 before the Executive Engineer, Sikkim Division wherein he stated that since he was living with his family at Sikkim, he may be granted 10 days time for making reservation etc. but that was not considered. However, the applicant reported for his duties before the Superintending Engineer, Tipaimukh Investigation Circle No.1, Shillong on 17.8.81 and in turn directed the applicant to report to the Executive Engineer of the Division at Imphal. This order was issued verbally. There being no order in writing. However the applicant joined at Imphal on 20.8.81.

(IV) That on 3-9-81, the Executive Engineer, CWC Division, Imphal again transferred the applicant to Tipaimukh Investigation Sub-Division No. 2 which is about 215 Kilometers away from Imphal. The applicant joint there on 7.9.81 and worked there up to 8-11-81 wherefrom, he was again transfer to Imphal on a verbal order on 16-11-81 and accordingly he joined at Imphal on 19-11-81 on the request of the Executive Engineer. The verbal order was written on 16-11-81. The applicant had worked there till 30-4-82.

Contd.....

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(V) That the applicant begs to state that he was again transferred to Silchar on 24-3-82. On being so transferred, the applicant submitted a representation on 29-3-82 before the Superintending Engineer, Silchar through the Executive Engineer, Imphal where he had stated that he might be retained at Imphal as he was staying there with his family and frequent transfer has caused immense hardship to him as he had to school going children which was not considered and was released from Imphal on 30.3.82 with a direction to report to the Assistant Engineer, Tipaimukh Investigation Sub-Division under Silchar Division. And accordingly, the applicant joined at Silchar on 11-5-82.

(VI) That the applicant begs to state that while he was working at Silchar, the Assistant Engineer, Tipaimukh Sub-Division directed the applicant by a Wireless message issued on 14.5.82 directing the applicant to join at Tuivalchuwa site, the applicant accordingly went there and found that the site at Tuivalchua was yet to be opened. The applicant had travelled a distance of 150 kilometres through jungal and came back to Silchar again and reported on 29.6.82. On 29-6-82 the applicant was again directed to move at Tuivalchuwa site at Mizoram. The applicant who was residing at Silchar with his

Contd....

Dr. P. Guria

family and school going children faced severe hardship as he could not make any arrangement for his family and he accordingly informed the Executive Engineer, about the matter. There was, however, no consideration to his prayer and made before the Executive Engineer and he was informed that the Tuivalchuwa site was already closed and therefore, he was again directed to report for duty at Khokan Gauze and Discharge site on 26-2-83. The applicant went to the Khakan and there too, he found that the site was yet to be opened at Khokan.

(VII) That the applicant begs to state that being disappointed, the applicant was again ready to go to Khokan for the second time, but the Assistant Engineer, Tipaimukh did not released the applicant and instead wrote to the Executive Engineer, Silchar informing the latter that the applicant was engaged at Tipaimukh due to some urgent works for the time being. Accordingly, the Executive Engineer, Silchar was requested to approve the site of the applicant at Tipaimukh. The applicant continued at Tipaimukh where he had worked till 6-4-83 and as he was not getting his salary from July, 82 he filed an application before the Assistant Engineer, on 7-3-83 requesting for permission to leave Tipaimukh from 8-3-83 so that he could meet the Executive Engineer, Silchar for getting his salary and transfer travelling allowances. But the Assistant

Contd.....

BL Psnpts

Engineer, Tipaimukh refused to reply anything and he did not even talk to the applicant. On 16-4-83, the applicant went to the office of the Executive Engineer at Silc ar and he stated about the no receipt of his salary and travelling allowances etc. but the Executive Engineer also did not pay any attention to the grievances of the applicant. However, he filed an applicantion in writing stating inter alia his all grivences. The applicant having not received his s lary and transfer allowances since July, 1982 was facing great difficulty to maintain himself and his family. Therefore, he filed an application before the Executive Engineer for granting leave on 18-3-83 with effect from 9-4-83 till the matter of his non receipt of salary and allowances. Thereafter, the Superintending Engineer terminated the service of the applicant on 25-1-84. The order of termination was challenged first in the Hon'ble Gauhati High Court under Civil Rule No.704/85 which was however transferred to the Central Administrative Tribunal, Gauhati Bench, Guwahati under the provision of Central ^Administrative Tribunal Act 1985. In the High Court, another application was also filed under Civil Rule No. 1122/85. Both ~~the~~theseapplications were transferred to CAT, Guwahati Bench and were numbered as GC.147/85 and GC 116/85. Both these applications were heard and disposed of by the

Contd.

BC Gupta

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Tribunal vide judgment and order dated 21.1.87. The application No. GC.147/85 was allowed and the order of terminstion was set asside as per the judgment. The application No. GC. 116/85 was dismissed.

A copy of the judgment and order is annexed herewith and marked Annexure-C.

VIII) That the applicant begs to state that the Central Water Commission in its Circular bearing No. 2/10/78, dtd. 24.12.80 issued guidelines envisaging the conversion of temporary post into the permanent as regard to the non industrial category of staff and the extent of conversion from temporary to permanent was 90%. Therefor , 50% of the work charge post which fulfil Central Civil services category can be safely converted into permanent post without any formal classification into the industrial and non-industrial category. On the basis of the circular aforesaid, the applicant filed an application before the Chairman, CWC on 7.5.80 and 21.1.82 for the payment of the applicant to the post of Supervisor/Design Work in view of the aforesaid circular. But it was not considered whereas other work charged employees junior to the applicant were appointe to the said post.

Contd.....

SLP Gupta

A copy of the guideline is annexed hereto and marked Annexure-D.

(IX) That the applicant begs to state that as per the office Memorendum No. 8 (1-Esstt.(SPL)/60, dated 12.8.60 followed by subsequent Memorendum dated 27-3-63, it was directed by the Ministry that the work charge staff in no-industrial categories may be brought to the regular establishment entitling them to all the occasion of a regular non-industrial staff. But the case of the applicant was never considered inspite of repeated representations filed by him.

A copy of the said Memorendum is annexed hereto and marked as Annexure-E.

(X) That the applicant begs to state that it is the convention to all Government departments that frequent transfer should not take place and the officer/staff should remain at the place of posting at least for 3 (three) years unless officer/staff is promoted or posted elsewhere. But the applicant has been transferred to a number of time which is clear violation of the prevailing convention. Regarding transfer to technical and non technical staff and

Contd.....

S. P. Gupta

and work charged staff, CWC department vide order No. 17(50)/81-P-1955 dtd. 10.11.55, it was desired that the individual cannot be posted to far from of places away from the home station and the transfer should be ordered during the month of April and June after the examination of children so that no difficulty is encountered by the official/staff in endorsement of their children at the new places of their posting. On the basis of the above notification the case of the applicant was not considered considered and he was subjected to transfer at any time according to the will of the officers. The Chairman, CWC department vide its letter dated 22.2.83 informed the applicant that the matter for consideration of his case for transfer would be considered soon, but till date nothing has happened.

A copy of the said Memorandum is annexed hereto and marked annexure-F.

(X) That the applicant begs to state that he had joined as Work Sarkar Grad-II on 23.7.73 and completed 3 years on 24-7-76. As per the circular issued by the Chairman, CWC, the applicant having completed 3 years of service was eligible for confirmation in the post on 25-7-76 and also he was entitled to be absorbed in regular establishment with corresponding rank which has not been done till today whereas junior persons such as 1) Shri G. Benugopalan, 2) Shri KC Bendupadhyay, 3) Shri Umasankar Prasad, 4) Shmti Sandinika Shah 5) Mrs. Rekha Dey 6) Shri Ananda Choudhury and others

SLP/SWS

have been regularised and brought into the cadre of regular establishment giving corresponding rank.

XI) That the applicant begs to state that he had submitted a representation before the Chairman for his transfer on 4-12-98 wherein it was requested that since he has been performing 25 years of service in the NE Region, his transfer to any Division in Bihar or in UP may kindly be considered. But the applicant has heard nothing in this respect whereas some persons similarly situated has already been transferred.

A copy of the representation annexed hereto and marked Annexure-G.

7. RELIEF SHOUGHT FOR :

(i) The applicant be brought into regular ~~into~~ cadre with effect from the date of confirmation i.e. 25.7.76 as have been done in the case of junior employees with all benefits.

(ii) The applicant be given posting at Mujaffarpur Division (Bihar) or to Varanasi, Lucknow, Agra, Faridabad or Delhi

Contd.....

BL P Gupta

8. REMEDIES EXTENDED:

The applicant declares that he has availed of remedies available but to no effect.

9. LEGAL GROUND:

The case of the applicant is covered by the rules and guidelines issued by his department with regard to regularisation of his service in regular establishment in corresponding rank and his transfer is also covered by the instruction of the Court. Persons junior to the applicant being given regular status, there can be no reason to act otherwise in case of the applicant.

10. INTERIM ORDER:

Nill.

**11. MATTER NOT PENDING
IN ANY OTHER COURT.**

: The applicant further declares that the matter regarding which this application has been made is not pending before any other court or Tribunal.

**12. PARTICULARS OF
THE IPO.**

: i) No. of IPO - 7G548318
II) Name of
issuing
Post office- GPO, Guwahati

Bh. Raygupta

Contd...

iii) Post office
where payable-

13. ANNEXURES:

A. Memo No. 2/2/76/Admn. Vi Govt. of
India dtd. 1-4-80

B. Forwarding representation by Executive
Engineer.

C. Tribunal Judgment and order.

D. Memo No. 1(17)/96-DBB/2435-37
dtd. 14.10.95

E. Memo No. A-32014/1, /80/Estt.-V,
dtd. 2.9.81.

F. Memo No. 17(5)81-Pt-I, /955,
dtd. 10.11.81.

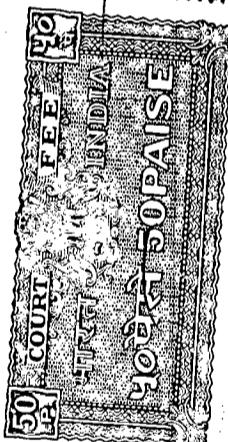
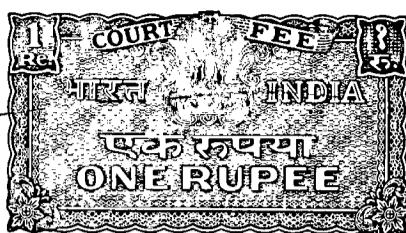
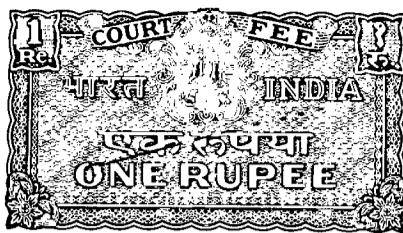
G. No. 2/10/78-W.E. dtd. 24-12-80.

Page - 25

1981 - 7 employees —
61 - WS - wife submitted depn - 29.8.81
R - u - considered

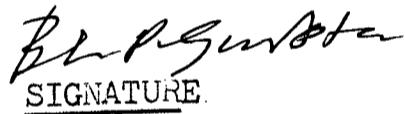
Contd..

Sub-Sub-Sub



VERIFICATION

I, Shri Bagwan Lal Prasad Gupta, the applicant of the above application do hereby verify that the statements made in para i, ii, iii, iv, v, vi, vii, viii, ix, x and xii are true to my knowledge and those made in para vi and xi being matters of records are true to my information which I believe to be true and the rest are my humble submission before this Hon'ble Court.


SIGNATURE

Guwahati,

Dtd. 08/08/2001.

Annexure No. 1
Part 2

GRAM : LAGY.P
PHONE: 366(Gangtok)

No. LLR/C/E-43/8 - 6801
Government of India
Central Water & Power Commission,
Office of the Executive Engineer,
Lower Lagyap Construction Division
No. 1
Gangtok (Sikkim)

Dated ~~six~~ July, 23rd, 1973.

OFFICE ORDER.

Shri Bhagwan Lal Prasad Gupta is hereby offered a post of ~~work~~ charged work Sarker Grade II under Lower Lagyap Construction Division No. I, C.W.P.C; Gangtok (Sikkim) in the scale of pay 110-3-131-4-143-4-171-4-175-5-180 plus other allowances as are admissible from time to time.

His services are governed by paras 10-12 of the C.P.W.D. code and other local rules in force from time to time.

His pay is chargeable against the work "Care Custody and Handling of stores" at Sripur for the year 1973-74.

He should report for duty to the Assistant Engineer, Lower Lagyap Construction Sub-division No. I, C.W. & P.C., Gangtok (Sikkim) immediately.

Illegible.
(Om Parkash) 23.7.73
Executive Engineer,
Lower Lagyap construction
Division No. I.

To
Shri Bhagwan Lal Prasad Gupta,
Gangtok (Sikkim)

Copy forwarded to:-

1. Superintending Engineer, Investigation Circle No. I, C.W. & P.C., Faridabad (Haryana) with reference to his letter No. IC/E-18/B/4201 dated 9.7.73. It is requested that formal approval for appointment of the aforesaid person as work sarkar Grade II may kindly be accorded at the earliest.

2. Assistant Engineer, Lower Lagyap Construction sub-Division No. I, C.W. & P. C., Gangtok (Sikkim). To the date of joining of Sri Bhagwan Lal Prasad Gupta may be intimated in ~~due~~ due course.

3. Accounts Branch.

(Om Parkash)
Executive Engineer,
Lower Lagyap construction
Divn. No. I!

ANNEXURE NO. 3TO WHOM IT MAY CONCERN.

This is to certify that Shri Bhagwan Lal Prasad Gupta, presently working in this office as work sarkar Grade - I (Pay scale Rs.330-560) is known to me since August '1973. To the best of my knowledge he is honest, sincere and devoted worker. He bears a good moral character. His duties include in assisting the supervisor (electrical stores) in maintaining all sort of stores account. He has also worked in sub-Divisional office for some time and his performances during this period was found to be excellent.

I wish him all success in his future life.

Sd/-

(B. S. AHUJA) 12.8.76

Assistant Executive Engineer,
Lower Lalyap mechanical sub-Division,
C.E. & P.C. Ranipul, (sikkim)

Attested by

Illegible. 8th 1976
Assistant Engineer,
L.I. Proc & store sub-Division,
C.E.C. Ranipul (sikkim)

Certified to be true

Abdul
Advocate

ANNEXURE NO. 1

GOVERNMENT OF INDIA,

Central Water Commission

Office of the Assistant Engineer

Office of the Assistant Engineer,

Mechanical Sub-Division, L.L.H. Project.
Ranipul (Sikkim)

Dated the 13.12.1978

TO WHOM IT MAY CONCERN.

This is to certify that Shri Bhagwan Lal Gupta, s/o. Shri Kobhari Shah has been working under this mechanical sub- Division, Lower Lagyap Hydel project, CWC, Ranipul (Sikkim) since 23rd July, 1973. He was first appointed as work Sarkar Grade II in the scale of pay 260-400 and then promoted as Work sarukar Grade I in the scale of pay 330-560 from March 1975. His duties includes supervision of work, Assisting the supervisors in maintaining the stores accounts. He also knows typing also. His performances in his jobs has been found excellent.

He is very hard working, painstaking and intelligent young man. He bears a good moral character and I have no hesitation in recommending him to those with whom his future may be associated.

Sd/-

(G. L. DUA)

Assistant Engineer,
Lower Lagyap Mech. Sub-Division,
Ranipul (Sikkim)

Attested by:

Illegible.

Seal. a. x. 8

Certified to be true
R. D. D.
Advocate.

Almora Dt.

GOVERNMENT OF INDIA
Central Water Commission,
Lower Tatyap Elect. & Mech. Division,
Kanipul/ Sikkim.

TO WHOM IT MAY CONCERN.

This is to certify that Shri Bhagwan Lal Parasad Gupta, work Barker Grade Under this project has been working in this Division for more than over five years. In fact he has been one of the first employees of this project. Since the very beginning he has been posted in the stores and procurement section of this division which is responsible for procurement of the entire stores like cement, Steel, explosive, P.L.O. Machinery, spare etc. required for the whole project. Needless to say that he has had a unique experience of the line. He has been of great help in Procurement, maintenance and storage of stores and store records. By virtue of his experience he can handle stores of any kind and size successfully.

I am sure he will give a good account of himself wherever he goes. I wish him all the success in life.

Sd/-
(Vijay Kumar) 23.2.79
Executive Engineer,
L.D.D. & M. Division,
C.W.C., Kanipool/Sikkim.

Certified to be true

Paras
Advocate.

ANNEXURE-C

-19-

30

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GENERAL PETITION :

G.C. No. 147 of 1986 (T) - C. No. 704 of 1985 :
G.C. No. 116 of 1986 - C.P. No. 1122 of 1983 :.

Shri Bhagwan Lal Prasad Gupta. - Petitioner in both the cases.

vrs.

Union of India and others. - Respondents.

PRESENT :

The Hon'ble Shri D. Pathak, Vice-Chairman.
The Hon'ble Shri S.P. Hazarika, Member.

For the petitioner in both the cases. : Mr. R.F. Sharma, Advocates.

For the respondents : Mr. S. Ali, Central Government Standing counsel.

Date of Judgment & Order : The 21st day of January 1987.

JUDGMENT & ORDER :

These two Writ Petitions filed by Shri B.L. Prasad Gupta before the Gauhati High Court have come on transfer by operation of the provision of section 29 of the Central Administrative Tribunals Act, 1985, for adjudication. In

writ petition No. G.C. 147 of 1986 - Civil Rule No. 704 of 1985, the petitioner has challenged the order of termination of his service passed on 25.1.1984 by the Superintending Engineer for Chief Engineer (P & I)-C.W.C., Shillong. In writ petition No. G.C. No. 116 of 1986 - Civil Rule No. 1122 of 1983, the

petitioner has asked for direction (A) to pay salary from July, 1982 and transfer travelling allowance as may be due to him; (B) to withdraw the wireless message dated 14.4.83 (Annexure No. 19) and to make necessary order of posting of the petitioner, (C) to post the petitioner if possible beyond the jurisdiction of the present Superintending Engineer (Respondent No. 4), and (D) to regularise the service of the petitioner as a permanent non-technical staff. Both the petitions are heard analogously and as such we propose to dispose of them by a common judgment.

-: 2 :-

2. The brief facts in petition G.C.No.147 of 1983 C.E.No.704 of 1983, leading to the present petition are that the petitioner was appointed as a work sarkar grade II under Lower Lagyap Construction Division No.1 of Central Water and Power Commission, Government of India and posted at Gangtok (Sikkim) in the pay scale of Rs.110-180/- plus other allowances admissible from time to time vide appointment letter dated 23.7.73, issued by the Executive Engineer of the said Division. Due to his professional competence for his satisfactory service records he was promoted to Work Sarker Grade I in the project in Sikkim from 13.3.75 upto 25.7.81. During his service period there, he also received the certificates of competency and ability. By an order dated 25.7.81, the petitioner was transferred from Sikkim to Tipaimukh Investigation Circle, Central Water Commission, Shillong. The aforesaid transfer and relieving order was received by the petitioner on 26.7.81 (Sunday) at about 7.15 a.m. at his residence and he filed an application on 27.7.81 before the Executive Engineer of the said Division wherein the petitioner stated that as the petitioner was living with his family at Gangtok he may be granted/retained in the said Division at least for ten days to enable him to get train reservation but the just demand of the petitioner was not considered at all by the authority and the petitioner was compelled to take earned leave from 26.7.81 to 19.8.81. Thereafter the petitioner had reported ^{for duty} the Superintending

Engineer, Tipaimukh Investigation Circle, at Shillong on

17.8.81 and submitted his joining report before the Superintending Engineer, but the Superintending Engineer directed the petitioner verbally to report to the Executive Engineer, Tipaimukh Investigation Division No. II, Central Water Commission, Imphal. The petitioner requested the Superintending Engineer, Shillong, to give order in writing but the said Engineer refused to give the order in writing. Then the petitioner...



petitioner reported to the Executive Engineer at Imphal Divisional Office on 20.8.81 and joined his post on the same day. The petitioner worked at Imphal till 3.9.1981. But, immediately thereafter the Executive Engineer, Imphal, transferred the petitioner to Tipaimukh Investigation Sub-division No.II about 215 kilometers away from Imphal and the petitioner joined there on 7.9.81 and worked there till 6.11.1981.

Thereafter, the petitioner was again transferred to Imphal vide letter dated 16.11.1981 but the petitioner joined at Imphal ^{already} on 9.11.1981 at the request of the Executive Engineer, Imphal, and the written transfer order was given later on 16.11.1981.

The petitioner was again transferred to Silchar vide letter dated 24.3.82 and the petitioner had submitted an application on 29.3.82 to the Superintending Engineer, Shillong, through Executive Engineer, Imphal, wherein the petitioner stated that he may be retained at Imphal as he was staying at Imphal with his family members and two school going children had been admitted in the school recently and the wife of the petitioner was under treatment in the Regional Medical College Hospital at Imphal, but the authorities turned down the just demand of the petitioner. The petitioner was relieved on 30.4.82 from Imphal with a direction to report to the Assistant Engineer, Tipaimukh Investigation Sub-division No.III under Silchar Division vide letter dated 30.4.82 and the petitioner joined his new posting on 11.5.82 under the Assistant Engineer, Tipaimukh under Silchar Division. On 14.5.82, the Assistant

Engineer, Tipaimukh directed the petitioner to join at Tuival Chuya side under Shri B.E. Nath, Supervisor and the petitioner went to the aforesaid site but curiously enough to the petitioner found it to be in a vacuum as the site was not opened at Tuival Chuya at that time. He went to Tuival Chuya covering a distance of 150 kilometers passing through thorny jungles but was surprised to see that there was no shadow of

the.....

the site and the petitioner came back and reported to the Executive Engineer, Tipaimukh Investigation Division, Silchar on 29.5.1982. That the petitioner remained at Silchar till 9.6.1982 and thereafter the petitioner was again directed to report at Tuival Chuya site at Mizoram vide letter dated 29.5.82. Being faced with such transfers, the petitioner took leave on personal ground as he had to make arrangements for his family members who were getting harassment like anything and after availing the leave the petitioner reported for duty at Silchar Division but the petitioner was informed that the Tuival Chuya site has already closed and the petitioner was again asked to report to Khokhan gauge and discharge site vide letter dated 27.2.83. The petitioner went to Khokhan passing through jungles but he was disappointed to know that there was no site at all at Khokhan at that time. He came back from Khokhan and reported to the Assistant Engineer, Tipaimukh Investigation Sub-Division III, who instructed the petitioner to become ready to go to Khokhan vide letter dated 6.3.83. When the petitioner was ready to leave for Khokhan for the second time, the Assistant Engineer of Tipaimukh did not release him from Tipaimukh and the Assistant Engineer, wrote a letter to the Executive Engineer, Tipaimukh Investigation Division No. 1 of Silchar vide letter dated 18.3.83, wherein he informed the Executive Engineer, Silchar that the petitioner had been temporarily engaged at Tipaimukh due to some urgent official works for the time being and the Assistant Engineer of Tipaimukh requested the Executive Engineer for the approval for retaining the petitioner at Tipaimukh and as the petitioner was not released from Tipaimukh, he continued to work there. The petitioner contends that his duty was at Tipaimukh till 5.4.83 and as he was not getting his salary from July, 1982, he filed an application.



:- 5 :-

application on 7.4.83 before the Assistant Engineer, Tipaimukh, praying for permission to leave the Head Quarter on 8.4.83 so that the petitioner may meet the Executive Engineer at Silchar for getting the salary and transfer travelling allowances but the Assistant Engineer refused to reply anything and he did not even like to talk with the petitioner. That on 16.4.83 the petitioner received a wireless message wherein it was stated that the petitioner had not joined his posting place and violated official rule and that he insulted the Engineer in-charge. The petitioner was asked to submit explanation. The petitioner submitted explanation on 15.4.83 stating that the allegation was false. The said explanation was received on 19.4.1983. On 15.4.83 the petitioner went to the office of the Executive Engineer at Silchar for informing him the fact of the non-receipt of the salary of the petitioner, but the Executive Engineer at Silchar refused to meet the petitioner and as such the petitioner had no other alternative but to file an application on 16.4.83 at Silchar stating the grievances and the refusal of the Executive Engineer to meet with the petitioner. As the petitioner was not getting his salary and transfer travelling allowances since July 1982 he had nothing to eat and maintain himself and his family members and under the compelling circumstances he filed an application before the Executive Engineer for granting leave on and from 19.4.83. stating therein to grant earned leave and any other leave with effect from 9.4.83 till the matter was settled. Thereafter the petitioner left for his native place after filing the leave application to the Executive Engineer, Silchar. On 24.9.82, the petitioner submitted an application to the Chairman through the Executive Engineer of Imphal for onward transmission wherein the petitioner had stated that due to very frequent transfer the petitioner was unable to maintain his....

:- 6 :-

his family being a low paid employee that the petitioner had school going children and now under transfer to Tipaimukh, the petitioner had no other alternative but to stop the education of the children as there was no school at Tipaimukh site. It is also stated in the said application that the petitioner did not have sufficient money to maintain two establishments, i.e. one for the petitioner and the other for his family, and that the petitioner may be posted to a place where the petitioner could give education to his children. That the letter dated 29.4.82 was duly received by the Executive Engineer of Imphal and the same was forwarded to the Superintending Engineer, Shillong, vide letter dated 11.5.82 but the Superintending Engineer, Shillong did not forward the said letter to the Chairman. In paragraph 27 of the petition he has a catalogue of his frequent transfers to show the vindictive nature of the opposite parties to harass him. On 2.2.83, the petitioner received a letter from the Chairman, wherein the Chairman has written as follows :

"His complaint regarding frequent transfers is also investigated. In the meantime he is advised to join the place of his posting and his request for transfer to the Circles will be considered sympathetically for other Circle."

On the advice of the Chairman the petitioner reported for his duty on 25.2.83 to the Executive Engineer, Silchar and the said Engineer told the petitioner that Tuival Chuya site had been closed and the petitioner was re-posted at Khokan in Mizoram about 500 kilometers away from Silchar and the petitioner went to Khokan by passing through jungles by walking three days on foot as there is no road communication. But the petitioner was

surprised to know that he was posted in a vacuum as till then the site was not opened and there was neither any sign of a hut nor any other employer was present there. He has stated that the aforesaid order shows the vindictive, malicious, capricious, arbitrary and harmful attitude of the opposite parties in transferring him to a place where the site was not opened.

He has referred to a circular No. 2/10/78/W.E., dated 24.10.80 issued by the Chairman of the Central Water Commission,

where....

where it is stated that as regard to non-Industrial categories which are envisaged to be brought on the regular establishment, the extent of conversion of temporary posts of work charged into permanent is 90%. Therefore 50% of the work charged posts which fulfil the Central Civil Services Criteria can be safely converted into permanent posts without any formal classification into Industrial and non-Industrial. The petitioner filed an application before the Chairman of the Central Water Commission on 7.5.80 and 21.1.82 for the appointment of the petitioner to the post of Supervisor/Design Assistant in view of the aforesaid circular, but the genuine case of the petitioner was not considered whereas other work-charged employees, junior to the petitioner were appointed to the said post. The petitioner has also averred that in another circular dated 2.9.81 issued by the Ministry of Irrigation, Government of India, Central Water Commission to the effect that the authorities are to see that frequent transfers do not take place and the officers/staff should remain at the place of posting at least for three years unless the officer is promoted and posted elsewhere. But, in the present case the petitioner has been transferred nine times within a span of seven months between 25.7.81 and 26.2.83, which is a clear violation of the aforesaid circular and the Service Rules. Being faced with such predicament, the petitioner was compelled by the inevitable circumstances to file a Writ Application under Article 226 of the Constitution of India before the Gauhati High Court and the same has been registered as Civil Rule No.1122 of 1983 and the High Court was pleased to pass an order on 25.11.1983 directing the opposite parties to pay the arrear salary within a month from the date of the receipt of the order. It is stated that the opposite parties were silent on the aforesaid representation and nothing was heard from the opposite parties till 7.4.1984, when the petitioner had received 5 letters all dated 3.1.1984 from

the.....

the Executive Engineer, Silchar, which was received by the petitioner on 7.4.84. The copies of the letter are annexed as Annexures, 41-42, 43, 44 & 45. The petitioner has also annexed to the petition a copy of the letter dated 9.6.82 by which it is stated that the petitioner was granted earned leave for 21 days from 10.6.82 to 30.6.82 by the Executive Engineer, Silchar, vide his letter dated 9.6.82. On 10.4.84, the petitioner received the notice of the order of termination of his services vide letter dated 25.1.1984. As the aforesaid order of termination of service was not sent to his present address, the same was received only on 19.4.84 at Silguri the present address given to the authority. The petitioner submitted an appeal under Rule 23 of the Central Civil Services (Classification, Control, and Appeal) Rules, 1955, against the order dated 25.1.1984 terminating his services. The petitioner received the order of termination only on 19.4.84 and the appeal was filed only on 28.5.84. It is contended that the order of termination is clearly in violation of Article 311 of the Constitution of India and also in violation of the principle of natural justice. It is contended that the authority had no right whatsoever to terminate the petitioner without holding an enquiry and without proper charges. Annexures 41, 42, 43, 44 and 45 show that he was still in service till the termination order was passed. The termination order shows that the order is passed by the Superintending Engineer for Chief Engineer, C.W.C. stating that the service of the petitioner shall stand terminated with effect from the date of expiry of a period of one month from the date on which the notice is served on or, as the case may be tendered to him.

3. It is submitted on behalf of the petitioner that although the order of termination is shown to be innocuous and termination simpliciter, it is in fact penal in nature and as such it is not sustainable in law as there was no enquiry held

against...

-: 9 :-

against the petitioner before the order of termination was served on him.

4. The respondents 1 to 5 have filed written statement. In paragraph 3 of the written statement, it has been stated that the petitioner was a temporary employee and a member of the Work Charge staff in the project work under Lower Lalyap Hydel Project Circle, where he worked as Work Sarker, Grade I under lower Lalyap Construction Division No.1. This Lower Lalyap Hydel Project work was completed and the Division was finally closed in July, 1961. The petitioner being a temporary employee, was to be retrenched along with the completion of the project work, but the authority on humanitarian ground transferred and posted him under Tipaimukh Investigation Circle, Shillong. As regards the frequent transfers of the petitioner, the respondents have stated in paragraph 9 of the written statement that the petitioner was transferred in public interest with immediate effect and as such the respondent No. 4 could not comply with the request made by the petitioner for his retention at Imphal by cancelling the transfer orders. In paragraph 11 of the written statement it has been stated that no order on 14.5.62 was issued to the petitioner by the Assistant Engineer to join at Tuival Chuya site as alleged by the petitioner. The petitioner did not visit Tuival Chuya site and no question of travelling at a distance of 150-kilometers through thorny jungle by the petitioner arises. In fact, instead of proceeding for opening the site at Tuival Chuya, the petitioner went on casual leave from 15.5.62 to 28.5.62. The petitioner directly came to Silchar after expiry of casual leave and he was allowed to join at Division Office at Silchar on 29.5.62 purely on his own request and to save him from unauthorised going to Silchar. At Silchar the petitioner had submitted two joining reports, one to the Executive Engineer dated 29.5.62, stating that he is joining in Division Office on 29.5.62, which was initialled by Assistant Engineer on 29.5.62 and by the Executive Engineer on....

on 9.6.82. The second one is addressed to the Assistant Engineer, T.I. Sub-division No. III, saying that he is joining in the Sub-division on 29.5.82, which was initialised by the Assistant Engineer, Executive Engineer, Head Clerk on 9.6.82. By the two joining reports, he created confusion regarding his so called joining report at Silchar. In paragraph 12 of the written statement, it has been stated that the petitioner was allowed to stay at Silchar upto 9.6.82; but in the said order he was directed to join at Tuival Chuya after 9.6.82. But he again applied for leave from 10.6.82 to 30.6.82 to proceed on L.T.C. to visit a holy temple in Jammu & Kashmir. The petitioner also gave an undertaking dated 9.6.82 that he would join at the place of posting at Tuival Chuya after expiry of leave. So his leave was granted and advance payment was made as admissible under the rules. After expiry of the leave granted to him he did not honour his own commitment and did not join accordingly at Tuival Chuya, but extended his leave upto 24.2.83. In the meantime, the petitioner sent two telegraphs first one mentioning that "leave extended for two months" sent from Siliguri junction and received in Division Office on 9.7.82. No post copy in confirmation was received by the Office. The second telegram from Samastipur saying "leave extended", received in the Division on 7.9.82, without any post copy in confirmation. A doubt was created in the minds of the Department about the visit of the petitioner to the holy temple at Jammu & Kashmir.

In paragraph 13 of the written statement it has been stated that after 7 months' absence from duties, the petitioner resumed his duty at Silchar on 24.2.83 by a joining report without mentioning the place. He was directed to join at Khokon as the Tuival Chuya site was already closed. But the petitioner never went to the Khokon site. The petitioner joined at Tipaimukh on 5.3.83 for non-opening of Khokon GMD site....

site at that time and his joining report was accepted by the Department. Further on a careful consideration of the petitioner's case, the authority reckoned his joining date with effect from 25.2.83 forenoon. In the meantime, the Assistant Engineer vide his letter dated 6.3.83, instructed the petitioner to be ready for proceeding to Khokon as soon as the site is established. The Khokon G&D site was established on 12.3.83 by the Assistant Engineer himself as the petitioner did not accompany the Assistant Engineer. Subsequently, the Assistant Engineer directed the petitioner to proceed Khokon G&D site vide letter dated 18.3.83. In paragraph 14 of the written statement, it has been denied that the Assistant Engineer did not release the petitioner to proceed to Khokon site. It is clear from the letter dated 6.3.83 which is Annexure G to the petition that the petitioner was asked to be ready to proceed to Khokon site as soon as the site is established. In paragraph 15 of the written statement it has been stated that a wireless message was sent on 13.4.83 by the Assistant Engineer, TISD-II, Tipaimukh to Executive Engineer, TID-I, Silchar that the petitioner neither joined at Khokon nor is intending to join there and insulted the Assistant Engineer badly. Subsequently, the Assistant Engineer, TISD-III was instructed by Executive Engineer TID-I on 14.4.83 through wireless to stop the petitioner's payment till he joins at his place of posting and to take affective measures in case of threaten for physical assault. Similarly, the Executive Engineer, TID-I sent another wireless message to the petitioner on 14.4.83, instructing him to submit explanation on the reports of the Assistant Engineer and any attempt for assault will be dealt severely. This fact was reported to the Superintending Engineer, TIC, Shillong by Executive Engineer, TID-I, Silchar vide his letter No. TID/PP-116/492 dated 19.4.83. The full report was received in the

Divisional.....

Divisional Office on 22.4.83 wherein the Assistant Engineer vide his letter TISD-III/Estt-9/241 dated 9.4.83 intimated that while disbursing the payment of the staff at Tipaimukh on 7.4.83, the petitioner attempted to snatch away the Attendance Register and intended to sign. He was allowed to receive his pay upto 18.3.83, i.e. the day after which he is supposed to join at Khokon GGD site. The petitioner refused the payment and insulted him with challenge. In this letter, the Assistant Engineer enclosed the application of the petitioner dated 9.4.83 addressed to the Chairman, C.W.C., New Delhi. The charges made therein are all false and fabricated as could be seen from the report of the Assistant Engineer. No action was taken on the petition dated 7.4.83 by the Assistant Engineer as the petitioner was not at his duty place and having no authority to permit him to go to Silchar. In paragraph 17 of the written statement, it has been stated that on 9.4.83, the petitioner submitted a departure report to the Assistant Engineer, saying that he is going to his native place via Silchar due to over harassment. This was received by the Sub-divisional Clerk on 9.4.83, which was submitted to the Assistant Engineer on 17.4.83. The petitioner came to Silchar Office on 16.4.83 and tried to report to the Executive Engineer against the Assistant Engineer. The Executive Engineer told him that he may submit his points in writing through proper channel or examination in this office. So, the petitioner submitted his application dated 16.4.83. This application is annexed as Annexure 20 to the petition and that the facts stated therein are incorrect. On 16.4.83, he filed another application, stating that he is going to his native place and he will neither work under the jurisdiction of this office as well as of Circle Office. The petitioner has never gone to Khokon GGD site. His mention about the fact that the Executive Engineer has refused to meet the petitioner is not correct. In paragraph 18 of the written statement, it has been stated that the petitioner has been....

been paid from the "Government" a sum of "Rs. 2,615.35 under various heads. It is stated that the Department is to recover an amount of Rs. 1,823.20 from the petitioner. It is also stated that all his earlier salaries etc. have been paid regularly. In paragraph 27 of the written statement it has been stated that the behaviour of the petitioner is wholly objectionable in view of the fact that he has stolen a D.O. confidential letter dated 24.4.82 written by H.S. Ranachar, respondent No.4 to respondent No.5 for which criminal action is warranted. No question of vindictive, malicious, arbitrary and ill motive of the authorities is there as alleged.

In paragraph 40 of the written statement, it has been stated that the petitioner being a temporary employee, a notice under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965, was served on him giving one month's time which is legal and proper. It is submitted that there is no illegality, improperly or irregularity in terminating his service as stated above and as such the petition is liable to be dismissed.

5. In a counter-reply filed by the respondents on 29.10.86, it has been stated in paragraph 4 that the termination of the petitioner from service was due to his long unauthorised absence from duty with effect from 23.3.83 till the date of his termination from service. The petitioner was asked to resume duties vide Annexure 42, annexed to the petition by the petitioner, but the petitioner deliberately remained unauthorised absence and did not join duty. Thereafter, the Superintending Engineer issued termination notice as required under rule 5(1) of the Temporary Service Rule, though the rule has not been quoted therein vide Annexure 47 annexed to the petition of the petitioner.

6. The impugned order reads as under :

"No. NEID/2201/83/250.

Government:....

Government of India, Central Water Commission,
North Eastern Investigation Circle, Nuhome :
Hongshilliang, Shillong - 793014.

Dt. the 25th Jan/84.

NOTICE OF TERMINATION OF SERVICE

I, hereby give notice to Shri P.L.I. Gupta
that his services shall stand terminated with
effect from the date of expiry of a period of
one month from the date on which this notice
is served on or, as the case may be tendered
to him.

H.S. Rangachar,
Superintending Engineer
for Chief Engineer (I&I) CWC

State - Shillong.

Signature of the
appointing authority.

To

Shri P.L.F. Gupta,
Wark Sarkar Gr.I (absenting from duty from 25.3.84)
Vill. Chhajan Goun,
P.O. Chhajan Harishankar,
via Turki,
District - Muzaffarpur.

On a perusal of the impugned order, it is found that the order
appears to be termination of the service of the petitioner
simpliciter. But the attending facts as noticed above from
the pleadings of the parties, it is seen that prior to the
passing of the impugned order there were allegations raised
about his misconduct. Therefore, it is contended by the
learned counsel for the petitioner that the foundation of the
impugned order is based on some allegations of misconduct of
the petitioner for which in order to punish him for those
misconducts, the impugned order was passed. It is submitted
that the impugned order although ex-facie an order of termina-
tion simpliciter, circumstances now disclosed it is found
that the action in passing the impugned order was penal in
nature. It is submitted by the learned counsel for the
petitioner that in paragraph 27 of the written statement the
respondents have raised allegations that the petitioner's
behaviour is wholly objectionable in view of the fact that
he has stolen a D.O. confidential letter dated 25.4.82 written

by.....

- : 15 :-

by N.S. Mangachar, respondent No.4 to respondent 5 for which criminal action is warranted. This is a very serious allegation of misconduct of the petitioner. If such a serious allegation is raised by the respondents, an enquiry is to be held in order to absolve or to punish him of such serious allegation. The learned counsel has drawn our attention to paragraph 4 of the counter reply filed by the respondents on 29.10.86. The learned counsel for the petitioner has also drawn our attention to Annexure 42 to the petition. This is an Office memo of the Executive Engineer. It reads as under :

" GOVERNMENT OF INDIA : CENTRAL WATER COMMISSION :
NORTH EASTERN INVESTIGATION DIV. I, F.O.
RONGKUR (PART I) SILCHAR DISTRICT
CACHAR (ASSAM)"

No. WEID/WC/PF-115/2. Dated Silchar 2nd Jan '84.
RE:O

Shri B.L.P. Gupta, work sarker - Gr. I has been absent from duty without permission since 25.3.83. He is hereby directed to resume duty at site and will be treated on unauthorised absence from duty from 25.3.83 till he resumes duty. The period of his absence will be treated dies-non for all purposes and an interruption in his service.

Sd/- S.C. Nath,
Executive Engineer.

To

Shri B.L.Gupta, Work Sarker - Gr. I.
(Absenting from duty from 25.3.1983 onwards)

On a perusal of the aforesaid memo, it is seen that there is allegation of unauthorised absence of the petitioner from duty from 25.3.83 till he resumes his duty. Here, serious allegation has been raised about his unauthorised absence. In this paragraph 4 of the counter reply referred to above, the respondents have

said that the termination of the petitioner from service was due to for his long unauthorised absence from duty with effect from 25.3.86 till the date of his termination from service.

This is another serious allegation which if correct called for enquiry. Without holding such enquiry, the petitioner's services cannot be terminated by invoking the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1963. The learned counsel has drawn to our notice the contents

of....

- : 16 :-

of a wireless message, which is Annexure 19 to the petition.

This wireless message reads as under :

" WIRELESS MESSAGE :

To
Shri B.L.P. Gupta, Work Sarkar Grade I
Khokan G & D Site.

(Through A.E. TISD - III : TIIAI'UKH)

IT IS REPORTED THAT YOU HAVE NOT JOINED YOUR
POSTING PLACE AND VIOLATED OFFICIAL RULE AND
INSULTED ASSISTANT ENGINEER IN-CHARGE (.) YOU SHOULD
SUBMIT YOUR EXPLANATION ON THE ABOVE CHARGES TO ASST.
ENGINEER TISD-III WITHIN 10 HOURS OF 15.3.84 (.) ANY
ATTEMPT BY YOU ASSAULT TO ANY STAFF WILL BE DEALT
SEVERELY (.)

Sd/- S.C. Nath,
Executive Engineer

Message transmitted
to Tipaimukh on 14.4.1983
at 12.30 hrs. Schedule.

Illegible

14/4,

GRAV: 'TIDIV'SILCWV:PHME 1187 "

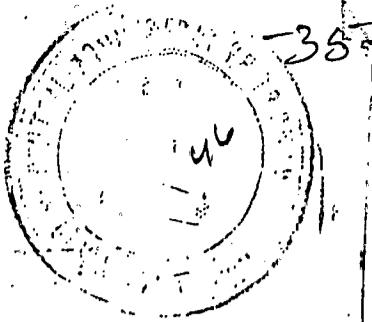
A fair reading of the wireless message shows that the petitioner has been charged with for not joining the place of posting, violation of official rules and also there is allegation of insult meted out to the Assistant Engineer in-charge. The above allegations of misconduct if correct it was only fair and proper to hold an enquiry, before taking any action against him. But, instead of doing that the authorities have chosen easy method of termination of the service of the petitioner by passing the impugned order because they thought that the launching of a proceeding would be a great bother or nuisance for them. In support of his submission, the learned counsel

for the petitioner relies on three cases of the Supreme Court, in Nepal Singh vrs. State of U.P., AIR 1985 SC 84, Jarnail Singh

vrs. State of Punjab, 1986 Labour and Industrial Cases 1986, and also Anup Jaiswal vrs. Govt. of India, AIR 1984 SC 636.

7. In Nepal Singh (supra), the Supreme Court had to consider an order of termination of a temporary Government servant. There it was held that if the circumstances under which the impugned order of termination of service is passed although such order *prima facie* does not put any stigma shall

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be liable to be quashed on the ground that the basis of passing of the order was on certain allegation of misconduct which can be found from the attending circumstances. In that case the appellant Nepal Singh was employed in a temporary capacity as Sub Inspector of Police. He was serving at Shahjahanpur in 1958 when the Superintendent of Police, Shahjahanpur initiated disciplinary proceedings under section 7 of the Police Act against him on the charge that while posted at Pithoragarh he had in November, 1954, contracted a second marriage while his first wife was alive and as this was done without obtaining prior permission of the Government, the appellant had violated Rule 29 of the U.P. Government Servants Conduct Rules, 1956. The appellant filed a reply and denied the charge. The oral testimony of about 12 witnesses for the prosecution and an almost equal number for the defence was recorded. But in January, 1970, the Superintendent of Police, Shahjahanpur wrote to the Deputy Inspector General of Police, Bareilly Range that as the act alleged against the appellant related to the district of Pithoragarh the disciplinary proceedings taken by him would be without jurisdiction unless there was an existing order of transferring the proceedings from Pithoragarh to Shahjahanpur. About that time the Inspector General of Police, Uttar Pradesh issued a circular letter to the Superintendents of Police throughout the State requiring them to submit a list of Sub Inspectors who fell in any of the following three categories :

- 1) Whose reputation and integrity is very low and/or
- 2) Who are generally involved in scandals, like drinking, immorality, etc. which blackens the face of the U.P. Police and/or
- 3) Everywhere they are a big problem because they encourage gambling, excise offences, brothels, criminals etc.

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The Superintendent of Police, Shahjahanpur drew up a list of such Sub Inspectors on February 5, 1970 and directed them to appear before the Deputy Inspector General of Police, Bareilly Range on February 10, 1970 during his inspection of the district. The list included the name of the appellant with the note "a corrupt officer, who is not straight-forward. Worried two wives against Government Servants' Conduct Rules. Does not do his duty sincerely. Whichever he goes creates problems." The aforesaid facts were there before the authority and after that the impugned order dated 27.4.70 was passed by the Deputy Inspector General of Police, Bareilly Range purporting to be under the rules published by "Notification No. 230/II-P-1953 dated January 30, 1953 that the appellant's services were not required any more and were terminated with one month's pay in lieu of notice. In the case no attempt was made after the initial enquiry to institute a proper enquiry by the appropriate authority. It was held that with the dropping of the enquiry the allegation remained unverified. The Supreme Court while setting aside the impugned order expressed in the following terms :

"We may observe that where allegation of misconduct are levelled against a Government servant, and it is a case where the provisions of Art.311(2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the of enquiry contemplated by that clause would be a bother or a nuisance and that therefore it is entitled to avoid the mandate of that provision and resort to the guise of an ex facie, innocuous termination order. The Court will view with great disfavour any attempt to circumvent the Constitutional provision of Art.311(2) in a case where that provisions comes into play."

8. In Jarnail Singh (sure), the question of termination of appointment of certain Government servants who were appointed on ad-hoc basis was held to be bad on the ground that such order was passed on the basis of adverse remarks and allegations of embezzlement. The order of termination was held to be illegal for non-compliance of Article 311(2) of the Constitution. There the order of termination of the services

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of the petitioners was prima facie passed without casting any stigma against them. In that context, the Supreme Court held that mere form of the order is not sufficient to hold that "the order of termination was innocuous and the order of termination of the services of a probationer or of an adhoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e.: the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not." In that case there were certain allegations of serious misconduct against the petitioners and also in the service records of the petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Art. 31 (2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1920. Thus, the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" were held to be made by way of punishment. The Supreme Court considered the counter-affidavit filed by the authority and took into consideration the contents of the statement made therein to come to a conclusion.

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that "the impugned order of termination of service of the petitioners had been made on the ground that there were adverse remarks in the service records of the petitioners as well as there were serious allegations of embezzlement of funds against some of the petitioners." On considering the entire matter the Supreme Court finally came to the conclusion that "the impugned orders of termination of the services of the petitioners were really made by way of punishment and they are not termination simpliciter according to terms of the appointment without any stigma." It was further held that "it is undisputed that the respondents Nos. 2 and 3 did not follow the mandatory procedure prescribed by Art. 311(2) of the Constitution making the purported orders of termination of services of the petitioners on the ground of misconduct and thus there has been a patent violation of the rights of the petitioners as provided in Art. 311(2) of the Constitution." The Supreme Court also came to the categorical finding, on considering the facts found from the entire materials that "there is no room for any doubt that the impugned order of termination of services of the petitioners had been made by way of punishment as the allegations of embezzlement of funds as well as adverse remarks in the service records of these petitioners were the basis and the foundation for not considering the petitioners to be fit for being regularised in their services in accordance with the Government Circular dated October 28, 1960."

9. In Anup Jaiswal (supra), the Supreme Court had to consider a similar matter. There according to the authorities the appellant was considered to be one of the ring leaders who was responsible for the delay for which explanation was called for from all the probationers. In the explanation the appellant sincerely regretted the lapse while denying the charge of

instigation.....

instigating others in reporting late, on the basis of the explanation and interview but without holding any proper enquiry the Director recommended to the Government of India that the appellant should be discharged from the service.

The Government accordingly passed an order of discharge of the appellant on the ground of unsuitability for being a member of the IPS. When this order was challenged their Lordships made the following observations :

"Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employees."

10. On consideration of the facts and circumstances of the case discussed above, we have no hesitation to come to the conclusion that the impugned order is passed by way of punishment on the basis of certain allegations of misconduct as noticed above for which the petitioner was not given any opportunity to prove his innocence. Therefore the impugned order is not sustainable in law. Accordingly, this impugned order is liable to be set aside which we accordingly do.

11. The other ground of challenge is that in passing the order the authorities have violated the principle enshrined in Articles 14 and 16 of the Constitution, inasmuch as, some 35 of his juniors were retained in service and the petitioner has been singled out for discrimination by terminating his service

without any reasonable cause. In the impugned order, the authority does not give any reason as to why the petitioner was thus visited with such harsh treatment which is demonstrably a case of flagrant discrimination.

12. The petitioner has filed a further affidavit on 17.9.85. In that further affidavit, the petitioner has stated in paragraph 1 that no less than 35 persons who were appointed

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in Work Charge and much after his appointment were confirmed in service. He has given a list of the names of the persons annexed as Annexure 'A' to the further affidavit. In paragraph 2 of the further affidavit, the petitioner has stated that not a single employee of his category of post though appointed later than him is or was removed from service by exercise of such powers. In paragraph 3, the petitioner has stated that though the termination letter does not contain any stigma, in fact, that was passed to punish him because he incurred displeasure for his officers for reasons best known to him. It is stated that there could not be any justification to retain his juniors in service and to disperse his service except for the purpose to punish him. The respondents have filed counter reply to the further affidavit given by the petitioner. In paragraph 3 of the counter reply dated 20.10.1986, it has been stated that it is not correct that 25 persons, as stated by the applicant, who were appointed in work charged category and much after the appointment of the applicant, were confirmed in service in this circle. It is clarified that there are different circles of the Central Water Commission through out India and every such circle is headed by the Superintending Engineer, who is the appointing and dismissal authority of the work charged employees of the circle. The circle where the applicant was posted on transfer on humanitarian ground was called Tipaimukh Investigation Circle, which is now renamed as North Eastern Investigation Circle, Shillong. Every circle is a unit for seniority of work charged personnel in each category separately. Further, no transfer of work charged employee can be made normally from one unit to another unit except in a very special circumstances with the approval of the Chief Engineer, in which case such employees are not given benefit on past services in the new unit for the purpose of seniority. That apart, work charged employees are appointed against....

against the Project temporarily and the moment the Project is completed, all the employees, so appointed, are retrenched if there is no scope to absorb them in other circles. It may further be stated that the 35 persons named by the applicant in this paragraph ~~are~~ not there in this circle. The applicant is put to strict proof of it. In paragraph 4, it has been stated that the service of the petitioner was terminated due to his long unauthorised absence from duty with effect from 25.3.83 till the date of his termination from service. And as such, any comparison of the other employees of the same category, as made by the petitioner is irrelevant. It is stated in this paragraph that the petitioner's case stands on a complete different footing from that of other employees of the same category appointed before or after him.

13. It is submitted by the learned counsel for the petitioner that the action of the authority in passing the impugned order is clearly violative of the provision of Articles 14 and 16 of the Constitution of India. In support of his submission the learned counsel relies on Manager, Government Branch Press vrs. D.B. Belliappa, AIR 1979 SC 429, where the Supreme Court had to consider the termination of one temporary Government employee while retaining some others junior to him in service. In that context on those facts it was held by the Supreme Court that "the protection of Articles 14 and 16 of the Constitution will be available even to a temporary

Government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly circumstanced. In that case the service of Belliappa, a temporary Class IV employee was terminated without assigning any reason although in accordance with the conditions of his service, three other employees similarly situated, junior to Belliappa in the said temporary cadre, were retained." The order of termination was held

to.....

to be bad as "it offended the equality clause in Arts.

14 and 16 of the Constitution." It is submitted by the learned counsel for the petitioner that the Central Water Commission is one organisation, where the employees are working under the Commission, although there are units of the Commission yet employees from one unit to another are transferable. Appointment of the employees in the Commission are transferable. It is not a fact, submitted by the learned counsel, that if an employee is working under one unit thereby he is not transferable to another unit. Even in the affidavit of the respondents, it has been stated that in exceptional cases, an employee of one unit can be transferred to another unit. It is, therefore, submitted that while some of the juniors of the same class and category are retained in service dispensing with the services of the petitioner without any justifiable cause is a case of flagrant discrimination. It is further submitted that the petitioner has been singled out for discriminative treatment by terminating his services while retaining many of the juniors to him in service.

14. We find ~~some~~ force in the contention raised by the learned counsel for the petitioner. But as we have already held that the impugned order is punitive in nature and sustainable in law without holding an enquiry, we do not express any opinion on the second contention raised by the petitioner.

15. The facts leading to G.C.No.116 of 1984 & C.P.No.1122 of 1983 and the facts of the petition that we have just noticed are almost identical, which have ^{been} discussed above. We do not like to burden this judgment by repeating the facts which are already stated above in the other petition. In this petition, the petitioner has asked for giving direction to the respondents (1) to pay salary from July, 1972 and transfer travelling allowances as may be due to him, (2) to withdraw the wireless message....

message dated 14.4.83 and to take necessary order of posting of the petitioner, (3) to post the petitioner if possible beyond the jurisdiction of the present Superintending Engineer, and (4) to regulate the service of the petitioner as a permanent non-technical staff. The petitioner has stated that he received a wireless message wherein it was stated that the petitioner has not joined his posting place and violated official rule and that he insulted the Engineer in-charge and that he was asked to submit explanation. He has stated that the allegation raised by the aforesaid wireless message was also and he submitted necessary explanation on 16.4.83 which was received in the Office of the Executive Engineer on 18.4.83. He has averred that on 18.4.83, the petitioner went to the office of the Executive Engineer at Silchar for informing him the fact of the non-receipt of the salary of the petitioner but the Executive Engineer at Silchar refused to meet the petitioner and as the petitioner had no other alternative he filed an application on 18.4.83 at Silchar stating the grievance and refusal to meet with the petitioner. It is stated by the petitioner that he was not getting his salary and transfer travelling allowances since July, 1982 and as such he had nothing to eat and maintain himself and his family members and under the compelling circumstances he filed an application before the Executive Engineer for granting leave on and from 18.4.83 stating therein to grant earned leave and any other leave with effect from 9.4.83 till the matter is settled. He has also complained about the frequent transfers from one place to another without considering the difficulties of the petitioner. He has stated that he was transferred nine times between 25.7.81 and 26.2.83, which is in clear violation of the circular issued by the Government of India, Ministry of Irrigation, Central Water

Commission,

Commission, dated 2.5.81, which provides that frequent transfer would not take place and the official/staff should remain at the place of posting at least for three years unless the officer is promoted and posted elsewhere. But, in the present case, the petitioner was transferred as stated above 9-times, within a span of 7 months. It is submitted that these frequent transfers ^{him} has harassed to great extent. In the 'Miscellaneous Application No.797 of 1983 in Civil Rule No.1122 of 1983, before the Gauhati High Court, the petitioner prayed for some interim order. In that 'Misc. Application, the High Court passed the following order on 25.11.1983 :

"Register the application as a separate 'Misc. Case. By this application the petitioner crays for payment of his due salary and other allowances upto 7.4.83. Mr. J.N. Sarma, learned counsel for the petitioner submits that the petitioner has not received his salary and other allowances since July, 1982, and that he has a legal right to get his salary and allowances.

Heard Mr. S. Ali, learned Sr. Standing Counsel, Central Government. If the petitioner has really worked upto 7.4.83 and there is no legal cause for refusing to grant him his salary and allowances upto 7.4.83, the respondents shall pay the arrears within a month from the date of receipt of this order.

In the result, the petition is accepted to the extent indicated above. However, liberty is granted to the parties to file application for alteration, modification or cancellation of this order, if so advised.

This disposes of the 'Misc. Case.

Sd/- K. Lahiri,

Judge.

Sd/- T.C. Das,

Judge.

On 11.1.1984, the respondents filed an application before the Gauhati High Court, praying for modification, alteration or cancellation of the order dated 25.11.83 in 'Misc. Application No.797 of 1983 - Civil Rule No.1122 of 1983. This application was registered as 'Misc. Application No.203 of 1984 - C.R.No.1122 of 1983. On that 'Misc. Application, the Gauhati High Court passed the following order on 27.3.1984 :

" Register the application filed by the respondent as 'Misc. Case.

On 25.11.1983 in 'Misc. Case No.797 of 1983, we made the following order, which is relevant for the

purpose...

purpose of this petition. We ordered :

Heard Mr. S. Ali, learned Sr. Standing Counsel, Central Government. If the petitioner has really worked upto 7.4.83 and there is no legal cause for refusing to grant him his salary and allowances upto 7.4.83, the respondents shall pay the arrears within a month from the date of receipt of this order.

Mr. S. Ali, learned Standing Counsel, Central Government, submits that the petitioner did not work upto 7.4.83 and he is not entitled to any salary and allowances upto the said period. If in fact the petitioner Bhagwan Lal Prasad Gupta has not worked upto 7.4.83 and there exists legal cause for refusing to grant his salary and allowances upto 7.4.83, as ordered, the question of making the payment does not arise. As such, the order is very clear and requires no modification or alteration. We have examined the petitioner. We do not express any opinion on it in respect of the averments made therein nor do we accept the same as correct and/or incorrect. We hold that if the respondents think that the petitioner is not entitled to any salary or allowances at all in that event they may not pay the salary and allowances to him.

With these observations, the petition is disposed of.

Sd/- K. Lohiri,
Judge.

Sd/- T. C. Das,
Judge.

In the Misc. Application before the Gauhati High Court for modification, alteration or cancellation of the order, the respondent has given in details about the order of transfer of the petitioner from different places. In paragraph 3 of the said Mis. Application, the respondent has stated that the petitioner was transferred by the Superintending Engineer, Tipaimukh Investigation Circle, Central Water Commission, Shillong, dated 24.3.82 from Tipaimukh Investigation Division No.2, Imphal to Tipaimukh Investigation No.1, C.W.C., Silchar, with a direction.

for further posting at Tuivai Gauge Discharge site. The Executive Engineer, Tipaimukh Investigation Division No.1, Silchar, issued the posting order to Tuivai Chuva site in Mizoram. The petitioner was relieved by the Executive Engineer, Tipaimukh Investigation Division No.2, Imphal, with effect from 20th April 1982 (afternoon) with an instruction to report for duty to the Assistant Engineer,

Tipaimukh.....

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Tipaimukh Investigation Sub-division, Tipaimukh under Tipaimukh Investigation Division No.1, Silchar. The petitioner joined Tipaimukh Investigation Sub-division, Tipaimukh with effect from 11.5.82. On 13.5.82, the Supervisor in-charge informed the petitioner that he should report to Supervisor at Tuival Chuya site. Instead of joining the work site the petitioner proceeded on Casual Leave from 15.5.82 to 20.5.82. On return from Casual Leave the petitioner was allowed to join at Division Office at Silchar where he worked till 9.6.82. He was then directed to report to Tuival Chuya site immediately. But the petitioner applied for leave from 10.6.82 to 20.6.82 to proceed on Leave Travel Concession to Jammu and Kashmir and back. The petitioner gave an undertaking to join his place of posting at Tuival Chuya site at Mizoram after expiry of leave and the leave was granted with effect from 10.6.82 to 20.5.82, i.e. 21 days. On verification of the records, it revealed that he had only 14 days' Earned Leave at his credit on 10.6.82. As such the leave order was revised and 14 days Earned Leave from 10.6.82 to 23.6.82 and 7 days extraordinary leave from 24.6.82 to 30.6.82 without pay and allowances was granted. As such the excess leave salary for the period of 7 days, i.e. 24.6.82 to 30.6.82, is liable to be recovered from the petitioner as per rules. It is also stated by the respondent that after 7 months' absence from duty the petitioner resumed his duty at Silchar on 25.2.83 (forenoon) and at Tipaimukh on 5.3.83. On 6.3.83 the petitioner was given an advance intimation that he should proceed to Khokan G & D site since the site is established. On 12.3.83 the site was established by an Assistant Engineer and on 12.3.83 the petitioner was directed to join this site. The petitioner continued to stay at Tipaimukh defying the authority's order till 24.3.83. It is also stated that from 25.3.83 the petitioner willfully remained absent from duty.

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On 13.4.83 the Assistant Engineer informed through a wireless message that the petitioner had not joined the work site nor intend to join and the petitioner had insulted him. In a subsequent report the Assistant Engineer informed that on 7.4.83 the petitioner forcibly tried to put his attendance in the Attendance Register from 25.3.83 but the Assistant Engineer did not allow him to do so. The petitioner then demanded the pay for the entire month of March, 1983, when the Assistant Engineer was prepared to give his pay upto 17.3.83, the day on which the petitioner should have joined at the work site. But the petitioner refused to draw part payment for March, 1983. On 14.4.83 the petitioner came down to the Division Office at Silchar and started complaining against the Assistant Engineer and thereafter the petitioner submitted the complaints against the Assistant Engineer in writing on 15.4.83 itself stating that he is going to his native place as he has not been paid his salary for March 1983 and that he would be at his native place till he would not get the posting order out of the jurisdiction of Silchar Division as well as Tipaimukh Investigation Circle, Shillong. It is stated that since 25.3.83 the petitioner has not resumed his duty till date of filling of this Misc.

Application: In paragraph 6 of the aforesaid Misc. Application, it has been stated that the petitioner has been paid excess

leave salary for 7 days from 24.6.82 to 30.6.82 amounting to Rs. 224.25, which is recoverable from him and the order for

recovery has already been issued to him on 2.1.84 with a

direction to deposit the amount within a month from the date

of receipt of the order failing which penal interest shall be

charged and appropriate action taken for recovery of the amount.

In this paragraph, the respondent has also given the details

about the payment of transfer T.A. bill. In paragraph 11, the

respondents have also stated that the petitioner has not filed

the petition bonafide as the following dues are recoverable

from him:

Dues.....

- 48 -

SA

-- 30 --

Dues :

Salary :

From 25.2.83 to 28.2.83. - Rs. 158.60
From 1.3.83 to 24.3.83. - " 739.25
Arrear AD4 of 3/83
... " 61.90
1.6.83 to 23.6.83. " 32.30
Rs. 992.15

Allowances :

L.T.C. advance Rs. 2500.00
(pending adjustment for want of
authentic proof of having undertaken
journey from Guza-
ffarur to Dumpy
and back).
Excess T.T.C.
advance drawn in May, '83 " 91.00
Excess leave
salary drawn from 24.5.83 to 30.6.83
224.25
30.6.83.
Grand total Rs. 2015.25

In paragraph 12, the respondent has submitted that the petitioner wants his pay and allowances without doing any work in the Department. In fact, he desires that he should get his salaries and allowances without joining in his duty which is not permissible under the law and service rules.

On 18.2.1984, the petitioner filed another Misc. Application before the Gauhati High Court with a prayer for giving direction to the respondents to pay the salary and travelling allowances of the petitioner from July 1983 onwards and to give direction to the respondents to post the petitioner outside the jurisdiction of the respondent No. 4. This Miscellaneous Application has been filed after the respondents filed the Misc. Application on 11.1.1984 with the prayer for modification, alteration or cancellation of the order dated 25.11.1983.

In this Misc. Application, the petitioner has disputed some of the contentions raised by the respondents in the Misc. Application filed by the respondents on 11.1.1984. But the High Court did not pass any order.

15. After going through the counter-affidavit of the respondents, we find that the petitioner's salary and transfer travelling allowance had been paid to him in accordance with law. Further, no action has been taken by the authority on the wireless message dated 14.4.83 as complained in his petition and as such he should not have any grievance to make now on his...

his count. The question of regularisation of his service as permanent non-technical staff lies with the authority to consider, for which we do not think that we shall be justified to give any direction. Moreover, the learned counsel for the petitioner has not advanced any submission on the aforesaid grievances at the time of hearing. At the time of hearing of the application, the learned counsel for the petitioner has only urged that we should give a direction to respondents that the petitioner should be transferred out of the jurisdiction No. 4 - Superintending Engineer, Central Water Commission, Tepiawukh Investigation Circle, Shillong, due to the harassment which was met out to him by frequent transfers by respondent No. 4 and his subordinate officers.

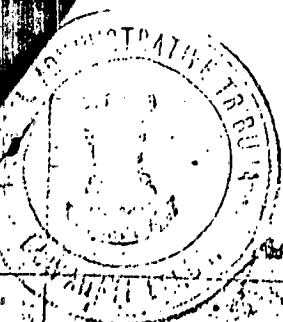
17. The learned counsel for the respondents submits that there was no harassment to the petitioner. All the transfer orders that were made by the respondents were in the interest of public service and transfer being the incidence of public service, such transfer order cannot give rise to any cause to seek for transferring him out of the jurisdiction of respondent No. 4. It is further submitted by the learned counsel for the respondents that no case of malafide of the respondent No. 4 has been made out calling for any action by way of giving any direction to the respondents to transfer the petitioner out of the jurisdiction of respondent No. 4.

18. After hearing the learned counsel for the parties and on going through the pleadings, we do not find any substance in the submissions made by the learned counsel for the petitioner to give a direction to the respondents to transfer him out side the jurisdiction of respondent No. 4.

On consideration of the entire matter we do not find any merit in the petition and accordingly this application is liable to be dismissed, which we accordingly do.

19. In the result, the Application No. G.C. No. 147 of 1933 - C.R. No. 704 of 1935 is allowed and the impugned order passed

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by the authority terminating the service is set aside and he shall be deemed to be in continuous service. It will however be open to the authorities to determine whether the petitioner during the interregnum was gainfully engaged, for the purpose of considering the extent of relief to which he may be entitled pursuant to our present order quashing the impugned order.

The Application No. G.C. 116 of 1985 & G.C. No. 1122 of 1983 is dismissed. In the facts and circumstances of the cases, we pass no order as to costs.

Sarma
21.1.87

MEMBER :

R. D. D.
21/1/87

VICE-CHAIRMAN :

Sarma

Certified to be true copy

26/1/87
Deputy Registrar,
Central Administrative Tribunal,
Guwahati Bench.

Certified to be true

Reddy
Advocate

Annexure - 31

No. 2/10/78-W.C.

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G.vt. of India
Central Water Commission.

Sewa Bhawan R.K.Puram,
New Delhi-22 Dt. 24-12-80

Bd/- Ram

Under Secy.
for Chairman, Central Water Commission.

Sub: Conversion of temporary workcharged posts into permanent ones.

Sir,

I am to say that the workcharged establishment in most of the circle office of the CWC has so far largely been functioning on a temporary basis. One result of this is that the W/C employees even after tendering more than 10 years continuous services have to retire without pensionary benefits which they would have been entitled to had they been declared permanent in some post. The Govt. order contained in the Ministry of Finance O.N. No. 8 Ett. (Spl) / 60 dt. 12-8-60 provide that among industrial categories on the W/C Establishment permanent posts may be created to the extent of 50% of posts which have been in existence for more than 3(three) years and which are likely to continue on a long term basis enabling confirmation of workcharged staff whose service are likely to be required on permanent basis.

In regards non-industrial categories which are envisaged to be brought on the regular Ett. the extent of conversion of temporary posts into permanent is 90% therefore

contd--

50% of the W/C posts which fulfil the above CCC/CSS criteria can't be safely converted into permanent posts without any formal classification into industrial, and non-industrial.

With a view to giving the pensionary benefits to as many ~~as~~ of our W/C employees as possible with-in the ambit of the rules referred to above, it is requested that proposal for conversion of 50% of temporary W/C posts into permanent ones ~~in your circle~~ may please be made to us in the enclosed proforma to enable us to issue the requisite sanction of the Chairman, CWC.

In the event of 50% of W/C posts having been converted into permanent posts necessary action to conform the individual employees against these posts keeping in view their seniority etc. will have to be taken by you. In this connection a copy of the pattern of the procedural follow up action being taken in CPNG, Puna etc is enclosed. Further your attention is also invited to the following provision of para 20-03 of Appendix 2/2 of CWC, and power commission Manual 2973 edition.

"The liberalised pension Rules 1950 were made applicable to the work charged staffs who retired/died or drafted were given option to elect the liberalised pension Rules or to retain the old pension rules 6/8/1955. The temporary employees who were in service on 18-11-60 were also given option to elect the liberalised Pension Rules or to retain contributory provident fund benefits at the time of their confirmation. However, if no option was

contd--

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enrolised within 6 months, the workers were deemed to have opted for liberalised pension Rules 1950, workers appointed in service on or after 18-11-1960 were to be governed by the liberalised pension Rules after their confirmation. It will mean that the Superintending Engineer, as the appointing authority in respect of W/C posts/staffs, will also be the competent authority to work out and sanctioned their pension and for taking into account all the qualifying service rendered by such W/C employees according to rules 60 of the C.C.S. Pension Rules, 1972. The proposals may kindly be arranged made forwarded to us in respect of the circle as whole and in no case Division wise, by the 15.1.81.

Yours faithfully

80/- Mahanga Ram

Under Secy.

For Chairman Central Water
Commission.

Certified to be true
Rs. 100/-
Advocate

NO. 27

Para-28

b5/

Copy of the Ministry of Finance O.M. NO. 8(1) Lett. (SPL)/60 dated 12th August, 1960 and as ~~subsequently~~ amended by subsequent O.M. of even number dated the 27th March, 1963.

Subject : Workcharged staff: Recommendation of the pay Commission regarding .

The Govt. of India have had under consideration the recommendations of the pay commission regarding workcharged staff contained in Chapter XIVI of their report .

2. In acceptance of the pay commission's recommendations the following decisions are recommended for the for the information of all concerned .

3. W.C. staff who are engaged on a casual or daily rates basis should be classified into industrial and non-industrial categories depending on the nature of their duties.

4. For the purpose of such classification the following types of categories may be considered to be non-industrial:

1. Supervisory staff the minimum of scale of pay is not less than Rs.200/-

2. Circle staff .
3. Watch and ward staff.
4. Conservancy staff .
5. Fire fighting staff .
6. Messengerial Staff .
7. Medical staff.

5. Workcharged staff in non-industrial categories may be brought on to the Regular establishment thus entitling them to all the concessions admissible to regular non-industrial staff .

-2-

6. As regards industrial categories permanent posts may be created to the extent of 50% of posts which have been in existence for more than 3 years and which are likely to continue on a long term basis enabling confirmation of workcharged staff whose services are likely to be required on a permanent basis.

7. Adequate safeguards for the proper administration of work charged staff should also be taken by proper maintenance of their service records, drafting recruitment rules for each category/grade, fixing of posts, prescribing standard trade tests wherever necessary, and also fixing yard-stick for the creation of posts on the workcharged establishment, wherever feasible.

8. Workcharged staff in industrial categories would have the same conditions of service which are or may be prescribed for regular industrial staff.

9. Ministries/Depts. employing workcharged staff whose employment is not casual and whose services are likely to be required on a long term basis are requested to take action as indicated in paras 3-7 above and issue necessary orders (on the lines already issued by the M.W.B. & S in respect of workcharged Estt. of the C.P.W.D) in consultation with the Min. Finance.

Sd/-

(D.B.Bhatia)

Under Secretary to the Govt.
of India.

ANNEXURE NO. 28
Page - 29

No. A- 32014/1/00-Estt. V.

Government of India.
Central Water Commission.

309, Sewa Bhawan, A.K.Puram,
New Delhi, the August, 81,

2.9.1981.

OFFICE MEMORANDUM

Subject :- Transfer of officers and staff of the Central Water Commission.

Cases have come to notice where certain persons had been transferred quite frequently from one station to another. Such cases, a part from causing inconvenience in the administration, as also to the individual concerned, also entail avoidable expenditure. As such frequent transfers are not desirable and should be avoided as far as possible.

The Ministry of Irrigation have in recent reference advised the commission to ensure that frequent transfers do not take place and that officers/staff should remain at the places of posting for at least three years unless the officer is promoted and posted elsewhere or unless his transfer becomes inevitable for any unavoidable circumstances.

Sd/- (G.S.Jakhado)
Secretary,
Central Water Commission.

Copy to :-

1. All the Chief Engineers,
2. Directors (Admn.) C.W.C.
3. All under Secretaries /Estt. Sections,
4. All Heads of subordinate offices.
5. P.S. to Chairman.
6. Sr. P.A.S to Members.

Certified to be true
R.Das.
Advocate

No. 17 (S) /81- P & I / 55

Government of India

Central Water Commission

P & I Organisation

West Block No. 1.R.K. Puram.

N/ Del 10/ 11/ 81

OFFICE ORDER

Sub:- Transfer of non- gazetted technical and non-technical staff and workcharged staff from one station to another.

Sir,

It has been noticed that Technical non-technical staff working under your circle are sometimes transferred from one station to another within a very short period of their posting at one place. As a result of which frequent representations are received in this organisation of humanitarian grounds for reconsideration of their postings at new places and requesting posting at the place of their choice.

The Chief Engineer (P & I) has desired that uniform transfer policy consistent with the C.W.C. circular in this respect may be followed in case of transfer of staff.

Part time transfer of workcharged of supervisor, technical and Ministerial may be done after 3 years of posting in the same station if necessary.

Contd-2

2. In case of transfer of workcharged staff, it is desired that individuals may not be posted to far off places away from their home station. 69

It has also been desired that normally, the transfer under your circle should be ordered during the month of April and June after the examination of the children, so that no difficulty is encountered by the officials for enrolment of their children in the schools at the new place of their posting.

All the pending cases of transfer posting within your jurisdiction may be dealt with on the basis of above instructions accordingly.

Sd/-

(A.K. CHAKRABORTY)
LIAISON OFFICER (P & I)
FCR
CHIEF ENGINEER (P & I)

Gen. SETHIC SHILLONG

PHONE 62452

GOVERNMENT OF INDIA
CENTRAL WATER COMMISSION
TIPAIMUKH INVESTIGATION CIRCLE
HUNOLE NONGSHILLIANG
SHILLONG- 293014

No. TIC /Circular- 19/81/4122-24 Dt. Shillong the 23rd November 81
Copy forwarded to the following for information and
Guidance please.

1. The Exe. Engr. Tipaimukh Inv. Division, No. 11 C.W.C. Imphal
2. The Exe. Engr. Tipaimukh Inv. Division, No. 1 C.W.C. Sdeshawang
MEPA Inv. Division Tezpur.

Sd/-

(N.S. Gangachar, S.S.)

Certified to be true
R.D.
Advocate

No. 2/10/78-w.e. 18x

ANNEXURE NO. 24

Part - 26

GOVERNMENT OF INDIA
Central Water Commission ,..... Sewa Bhavan , R.K. Puram,
New Delhi -22 Dt; 24.12.80.

Sd/-

(MEHNGA RAM)

Under SECRETARY (C)

For CHAIRMAN , CENTRAL WATER COMMISSION.

Sub:- Conversion of temporary workcharged posts into
permanent ones. ✓

Sir ,

I am to say that the workcharged establishment in most of the circle office of the CWC , has so far largely been functioning on a tempoary basis. One result of this is that the W/C Employees even after rendering more than 10 years continuos service have to retire without pensionary benefits which they would have been entitled to had they been declared permanent in some post. The Govt. order contained in the Ministry of Finance O.M.NO.8 Estt. (SPL) . /60 dt. 12.8.60 provide that among industrial categories on the W/Cd. Estt. permanent posts may be created to the extent of 50% of posts which have been in existence for more than 3 years and which are likely to continue on a long term basis enabling confirmation of workcharged staff whose service are likely to be required on permanent ~~base~~ basis.

As regards non- industrial categories which are envisaged to be brought on the regular Estt. the extent of conversion of temporary posts into permanent is 90% therefore 50% of the W/c Posts which fulfil the above CCC/CSS criteria can be safely converted into permanent posts without any formal classification into industrail and non-industrial.

With a view to giving the pensionary benefits to as many of our W/C employees as possible with in the ambit of the rules referred to above , it is requested that proposal for conversion of 50% of temporary W/C. posts into permanent ones in your circle may please be made to us in the enclosed proforma to enable us to issue the requisite sanction of the Chairman, CWC.

-2-

In the event of 50% of W/C. posts having been converted into permanent posts, posts, necessary action to dismiss the individual employees against these posts keeping in view their seniority etc. will have to be taken by you. In this connection a copy of the pattern of the procedural follow up action being taken in C.W.P.R.S. Puna etc. is enclosed. Further your attention is also invited to the following provision of para 24-03 of Appendix 2/2 of CWC and power Commission Manual 2973 edition.

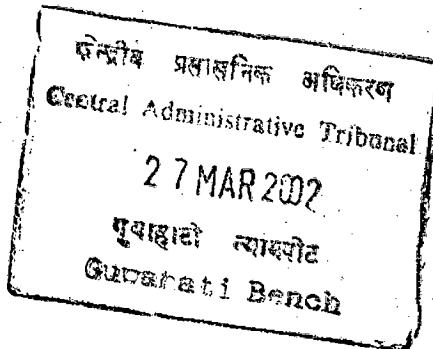
" The liberalised pension Rules 1950 were made applicable to the work charged staff who retired/died on or after were given option to elect the liberalised pension Rules or to retain the old pension Rules of 6/8/1955. The temporary employees who were in service on 18/11/60 were also given option to elect the liberalised pension Rules or to retain contributory provident fund benefits at the time of their confirmation. However, if no option was exercised within 6 months, the workers were deemed to have opted for liberalised pension Rules 1950. Workers appointed in service on or after 18/11/1960 were to be governed by the liberalised pension rules after their confirmation. It will mean that the Superintending Engineer, as appointing authority in respect of W/C staff, will also be the competent authority to work out and sanctioned their pension after taking into account all the qualifying service rendered by such W/C. employees according to rules 60 of the C.C.S. pension rules, 1972. The proposals may kindly be arranged made forwarded to us in respect of the circle as whole and in no case Division-wise, by the 15/1/81.

Yours faithfully,
Sd/- MEHANGA RAM)

UNDER SECRETARY (C)

FOR CHAIKRIANIL, CWC.

Certified to be true
(R.D.)
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

OA No. 333/2001

Shri Bhagwan Lal Prasad Gupta Applicant
v/s

Union of India & others Respondents

IN THE MATTER OF

A petition praying for acceptance of written statement submitted by the
respondents in OA No.333/2001.

AND

IN THE MATTER OF

Union of India & others Petitioners
v/s Respondents

Shri Bhagwan Lal Prasad Gupta Opposite Party
..... Applicant

The humble petition of the above named petitioners

X9

MOST RESPECTFULLY SHEWETH

1. That the petitioners/respondents beg to state that they could not file the written statement within the period allowed to file the same by the Hon'ble Tribunal.
2. That delay in filing the written statement is not due to negligence, but as the matter involved different branches of the Department, so it could not be filed within the time limit.

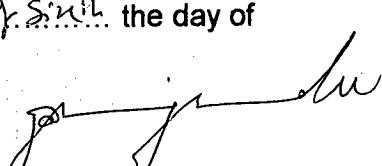
It is, therefore, respectfully prayed that the Hon'ble Tribunal may be pleased to accept the written statement filed by the respondents for the ends of justice.

And for this act of kindness the petitioners as in duty bound shall ever pray.

VERIFICATION

I, Amalendra Ghosh Majumdar being authorised do hereby solemnly declare that the statements made in this petition are true to my knowledge, belief and information and no material fact has been suppressed.

And I sign this verification on this 26 Twenty sixth the day of March, 2002 at Guwahati.


DEPONENT
Executive Engineer
C.W.C. NELD-III
Manager

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI**

OA No. 333 OF 2001

APPLICANT : **SHRI BHAGWAN LAL PRASAD GUPTA**
V/S

RESPONDENTS : (1) **SECRETARY,
MINISTRY OF WATER RESOURCES
REPRESENTING UNION OF INDIA**

(2) **CHIEF ENGINEER,
BRAHMAPUTRA & BARAK BASIN, CWC,
MARANATHA, UMLPLNG (MEGHALAYA)**

(3) **EXECUTIVE ENGINEER,
NORTH EASTERN INV. DIVN. NO.III, CWC,
ITANAGAR (ARUNACHAL PRADESH)**

IN THE MATTER OF

Written Statement submitted by respondents.

BACKGROUND OF THE CASE -

Background of the case may be treated as part of written statement.

Shri B.L.P. Gupta, Work Sarkar Gr.I who has been working at MSTLC Inv. Sub Divn-I, CWC, Alipurduar under this division

X

since 7.7.97 (FN) on his transfer from North Eastern Investigation Circle, CWC, Shillong / North Eastern Investigation Division No.1, CWC, Silchar vide Superintending Engineer, North Eastern Investigation Circle, CWC, Shillong Office Order No. NEIC/2009/Vol.V/1457-63 dt. 12/6/97 has filed a case in CAT, Guwahati Bench under OA No.333/2001 seeking following relief :-

- i) To bring him into regular cadre w.e.f. 25.7.76.
- ii) He be given posting at Mazaffarpur (Bihar) or to Varanasi, Lucknow, Agra, Faridabad or Delhi.

Shri B.L.P. Gupta was initially appointed as Work Sarkar Gr.II in workcharged establishment in the pay scale of Rs.110-180/- w.e.f. 24/7/73 in Lower Lagyap Project, CW&PC, Gangtok (Sikkim) and subsequently promoted as Work Sarkar Gr.I in workcharged establishment in the pay scale of Rs.380-560/- w.e.f. 13/3/75. On closure of the project in July 1981 he was facing retrenchment. However, on humanitarian grounds he was transferred to Tipaimukh Investigation Circle, Shillong against a vacant post. His division wise postings are given as under :-

Sl. No.	Name of office where worked	Designa-tion	Period	Remarks
1.	Lower Lagyap Construction Division No.I, CW&PC, Ranipul(Sikkim)	W/S Gr.II (Temp.)	24/07/73 to 22/01/74	
2.	Lower Lagyap Electrical & Mechanical Division, Ranipul, Sikkim	-do-	23/01/74 to 12/03/75	
3.	Lower Lagyap Electrical & Mechanical Division, Ranipul, Sikkim	W/S Gr.I (Temp.)	13/03/75 to 25/07/81	
4.	Tipaimukh Investigation Division No.II, CWC, Imphal	-do-	26/07/81 to 10/05/82	
5.	Tipaimukh Investigation Division, CWC, Silchar / North Eastern Inv.Circle, CWC, Shillong	W/S Gr.I	11/05/82 to 16/06/97	J/Time and E.L. from 17/6/97 to 6/7/97
6.	North Eastern Investigation Division No.III, CWC, Itanagar (MSTLC Inv. Sub Divn-I/II, CWC, Alipurduar)	W/S Gr.I	07/07/97 to till-date	

During his incumbency under North Eastern Investigation Division No.I, CWC, Silchar, Shri Gupta had remained absent from duty since 10.6.82 during various periods of time & had remained continuously absent without any intimation since 18.3.83. As a result, he was terminated from service by Superintending Engineer, North Eastern Investigation Circle, CWC, Shillong to be effective from 24.2.84 after giving one month's notice vide Office order No. NEIC/2001/83/258-61 dated 25.1.84.

The above termination was challenged by Shri Gupta in CAT, Guwahati, which was admitted & the termination order was quashed. Shri Gupta, had at that time, filed another petition also seeking regularization of his service as a permanent non-technical staff in regular establishment and also his transfer outside jurisdiction of the Superintending Engineer, Tipaimukh Investigation Circle (Now North Eastern Inv. Circle), CWC, Shillong. This petition was, however, dismissed by the Hon'ble CAT, Guwahati.

Shri Gupta, in his present application, has stated that he had filed application to Chairman, CWC, for placing him in the post of Supervisor/Design Assistant, which was not considered, whereas other W/C employees junior to him were appointed to

the said post. No record in support of his claim has, however, been submitted by Shri Gupta in his application before the Tribunal. The post of Work Sarkar Gr.I is not the feeder grade for these posts. Moreover, he does not possess any technical qualifications which would have entitled him for appointment to the post of Supervisor/ Design Assistant.

As regards his transfer to his choice place, he was duly informed vide CWC O.M. No. 1/12/80-Estt.XII Dt. 2.2.83 that his case could not be considered due to non-availability of vacant post of Work Sarkar Gr.I in his choice places. Also, as per policy decision, transfer requests of W/C staff for inter-circle transfer are not entertained as it affects promotional avenue of W/C staff in the Circle, where they request for transfer.

The written statement of the respondents are as follows :-

1. That the deponent is working as Executive Engineer and he has been authorized to file this counter reply on behalf of respondents and as such he is fully conversant with the facts of the case deposed here under.

2. That the answering respondent has read over the content of the original application filed by the applicant, has understood the content thereof and he is submitting preliminary observations and parawise reply as under :-

PRELIMINARY OBSERVATIONS

3. Shri Bhagwan Lal Prasad Gupta working as Work Sarkar Gr. I in workcharged Establishment under Central Water Commission, Alipurduar (West Bengal) has filed applications under Section 19 of the Central Administrative Tribunal Act, 1985. He has sought relief to bring him to a regular establishment and to consider his case to transfer him to Bihar or Varanasi, Lucknow, Agra, Faridabad or Delhi.

The applicant is contending that he may be brought to a regular establishment and also he may be given posting in Mazaffarpur or Varanasi or Lucknow or Agra or Faridabad or Delhi.

4. Shri B.L.P.Gupta was recruited as Work Sarkar Gr. II in work-charged establishment and subsequently promoted as work Sarkar Gr.I in same work charged establishment.

As per recruitment rules, persons are recruited against specific vacant posts in Group 'C'&'D' of regular establishment from amongst eligible departmental candidates or candidates sponsored by Employment Exchange, who fulfill all educational and other required criteria. For vacant posts in Group 'A'&'B' of regular establishment, the recruitment is done from amongst the eligible departmental candidates of Group 'B'&'C' respectively who fulfill educational & other required criteria or through All India level examination conducted by Union Public Service Commission. From the records submitted by the applicant, it is seen that he has not made any application at any time for considering him for recruitment to any specific vacant post in regular establishment Group A, B, C or D, for which vacancy circulars were issued from time to time by the

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department. As such, his application for bringing him to regular establishment can not be acceded to.

As per service conditions of the workcharged establishment, persons on W/C establishment are recruited only for a specific work or a sub-works of a specific work and seniority of W/C staff are maintained Circle wise in Circle office headed by a Superintending Engineer. The circle, under which the applicant is presently working, has no work-site at Bihar, UP, Haryana and Delhi. In this connection, copy of O.M.No.1/12/80-Estt-XII dated 2.2.1983 of Central Water Commission is enclosed as ANNEXURE-I. In the said O.M., it was informed to Shri B. L. P. Gupta that as per the provisions of the Rules, each circle is a Unit for seniority of Work-charged personnel in each category of staff. Furthermore, normally no transfer of Work-charged employee can be made from one Unit (Circle) to another except in very special circumstances with the approval of the Chairman/CWC in which case such employee is not given benefit of past service in the new Unit. The applicant was

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also informed that there is no vacancy of work Sarkar Gr.I in any of the Field Offices of CWC in Bihar/UP. As such, his appeal for transfer to Bihar or UP or Haryana or Delhi can not be acceded to.

5. In their judgment in the case of Shri Hiranmoy Sen and others Vs Union of India & others delivered in O. A. No. 85 of 2000, the Hon'ble CAT, Guwahati Bench has observed that a decision rendered by Tribunal, which has attained finality, shall operate as res judicata against subsequent disputes between the same parties and cannot be allowed to be reopened on any ground. The copy of relevant publication under case-Law section of Swamy's News of September,2001 under Serial No.145 is enclosed as ANNEXURE-II.

A similar case of the applicant had been examined earlier by the Hon'ble CAT, Guwahati Bench, Guwahati. The Hon'ble CAT in their judgment passed on 21.1.1987 (ANNEXURE-III) (Page-31) has stated that "The question of regularization of

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his services as permanent non-technical staff lies with the authority to consider, for which we do not think that we shall be justified to give any direction..... After hearing the learned counsel for the parties and on going through the pleadings, we do not find any substance in the submissions made by the learned counsel for the petitioner to give a direction to respondents to transfer him out side the jurisdiction of respondent No.4 (Unquote i.e. from the present circle which is North Eastern Investigation Circle, CWC, Shillong which has jurisdiction in North Eastern Region only). On consideration of the entire matter, we do not find any merit in the petition and accordingly this application is liable to be dismissed, which we accordingly do".

The present case submitted by the applicant is barred by limitation as above and is, therefore, liable to be dismissed.

PARAWISE COMMENTS

Para 6

Facts of the Case:

Parawise reply to OA No.333/2001 are as under :-

Para 6(I)

That with regard to Para 6(I) the respondents have no comments to offer except that the offer of appointment is dated 23.7.1973 and not 23.7.75.

Para 6(II)

That with regard to Para 6(II) the respondents have no comments to offer, being matter of record.

Para 6(III)

It is submitted that the statement made by the applicant has no relevance to the present case under consideration. The same statement was given by the applicant in his earlier application- GC No. 147 of 1986, which was considered by the Hon'ble Tribunal in their judgement dated 21.1.87. (ANNEXURE-III).

It is, however, stated that the applicant was a temporary employee under workcharged establishment in the project work under Lower Lagyap Hydel Project Circle, where he worked as work Sarkar Gr. I in Lower Lagyap Construction Division No.I. On completion of the works of the Lower Laygap Hydel Project, the Division was finally closed in July. 1981. The petitioner, being a temporary employee, was to be retrenched on completion of the Project work. But the authority, on humanitarian ground, transferred and posted him under Tipaimukh Investigation Circle, Shillong. The petitioner's prayer for retaining him for ten days in the said Division was not accepted in view of the closure of the Project and consequential closure of the division.

Para 6(IV),

6(V) &

6(VI)

It is submitted that the statement has no relevance to the present case under consideration. The statement is a mere repetition of what he has stated in his earlier application – GC No.147 of 1986 which have already been considered by

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Hon'ble Tribunal in their judgment delivered on 21.1.1987 (ANNEXURE-III).

However, no comment is offered as far as his working at places mentioned by him in paras 6(IV) & 6(V) is concerned.

Para 6(VII) It is submitted that the statement has no relevance to the present case under consideration. The first part of his statement has already been stated by him in his earlier application – GC No. 147 of 1986. The same were considered analogously by the Hon'ble Tribunal in matter of GC.No. 147 of 1986 & GC No. 116 of 1986 and judgment delivered on 21.1.1987 (ANNEXURE-III). The Hon'ble Tribunal, in their order has passed order to set aside the order of termination due to not following prescribed procedure of holding proper enquiry etc. As regards his application under GC. No. 116 of 1986 the Hon'ble Tribunal made following observations :-

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"16. After going through the counter-affidavit of the respondents, we find that the petitioner's salary and transfer traveling allowance had been paid to him in accordance with law. Further, no action has been taken by the authority on the wireless message date 14.4.83 as complained in his petition and as such he should not have any grievance to make now on his count. The question of regularisation of his services as permanent non-technical staff lies with the authority to consider, for which we do not think that we shall be justified to give any direction. Moreover, the learned counsel for the petitioner has not advanced any submission on the aforesaid grievances at the time of hearing.

At the time of hearing of the application, the learned counsel for the petitioner has only urged that we shall give a direction to respondents that the petitioner should be transferred out of the jurisdiction No.4 – Superintending Engineer, Central Water Commission, Tipaimukh Investigation Circle, Shillong, due to

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the harassment which was met out to him by frequent transfers by respondent No.4 and his subordinate officers.

17. *The learned counsel for the respondents submits that there was no harassment to the petitioner. All the transfer orders that were made by the respondents were in the interest of public service and transfer being the incidence of public service, such transfer order cannot give rise to any cause to seek for transferring him out of the jurisdiction of respondent No.4. It is further submitted by the learned counsel for the respondents that no case of malafide of the respondent No.4 has been made out calling for any action by way of giving any direction to the respondents to transfer the petitioner out of the jurisdiction of respondent No.4.*

18. *After hearing the learned counsel for the parties and on going through the pleadings, we do not find any substance in the submissions made by the learned counsel for the petitioner to give a direction to the respondents to transfer*

him out side the jurisdiction of respondent No.4. On consideration of the entire matter we do not find any merit in the petition and accordingly this application is liable to be dismissed, which we accordingly do."

Para 6(VIII)

The contents of Para 6(VIII) are incorrect, misleading and hence denied. The Central Water Commission's letter No.21/10/78-WE dated 24.12.80 has not been properly interpreted by the applicant. Copy of the letter is enclosed as ANNEXURE-IV. The letter gives guidelines regarding mode of conversion of temporary work- charged posts into permanent ones for facilitating extension of liberalised pensionary benefits to W/C staff. The letter gives no direction for converting W/C establishment into regular establishment.

The applicant has stated without any documentary proof that he has applied for the post of Supervisor/Design Assistant which was not considered. In Central Water Commission, the posts of Supervisor/Design Assistant are filled through

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interview from amongst eligible candidates sponsored by Employment Exchange as also from amongst departmental candidates who fulfill the educational / technical qualification & other criteria in case they apply for the same in response to the circulars issued by the department. The applicant did not/ does not possess requisite technical qualification for the post of Supervisor/ Design Assistant. Also he has not submitted any document in support of his claim of applying for the above posts at the time of circulation of such vacancy circular by the department. The applicant has not mentioned specifically, the names and designation of the work charged employees, stated to be junior to him but brought into the regular establishment.

Para 6(IX)

It is submitted that the workcharged establishment means that establishment whose pay, allowances etc. are directly chargeable to "Work". Work-charged staff is employed on the actual execution of a specific work, sub-work of a specific work, etc. The cost of workcharged establishment is invariably shown under a separate sub-head of the estimate for a work.

In all other respects, the Workcharged staff is quite comparable to the regular categories. But their services are liable to be retrenched on completion of work against which they are engaged, by giving retrenchment compensation.

Regular establishment means a post carrying a definite rate of pay sanctioned without limit of time. But they can also be retrenched, whenever declared surplus. The regular establishment and workcharged establishment are entirely different establishments.

However, workcharged staff are considered as departmental candidates for recruitment to any post in regular establishment if they fulfill the terms and conditions of the recruitment rules. The applicant has not submitted any document with his application in support of his claim that he ever applied for a specific post in regular establishment in response to any circular issued by the department from time to time.

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The letter dated 27.3.63 of the Ministry of Finance as quoted by the applicant in this para is a general policy guideline of the Government, in the matter, and is not applicable on individual service matters. The same has been misinterpreted by the applicant. The spirit of the said letter was to bring as many workcharged staff in non-industrial category to the ambit of providing pensionery and other service benefits to such employees, subject to the fulfillment of other conditions. As being a regular employee in the workcharged establishment, the applicant is also entitled to such service benefits at par with regular establishment.

Para 6(X) It is submitted that the issue of harassing the applicant by frequent transfers was raised by the applicant in his earlier application-GC No. 116 of 1986 which was considered by the Hon'ble CAT in their single judgment delivered on 21.1.1987 (ANNEXURE-III) in respect of GC-147 of 1986 & GC No.116 of 1986. Finding no merit in the claims of the Applicant, the said

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application No. GC 116 of 1986 had been dismissed by the Hon'ble Tribunal.

Para 6(X)(i) The averments made are misleading and hence denied. The applicant has been declared confirmed w.e.f. 5.9.81 in the grade of Work Sarkar Gr.II against sanctioned vacant posts in the same grade. As regards absorbing him in regular establishment, it is once again stated that work-charged staff, who apply for a particular vacant post in regular establishment, for which vacancy circular has been issued by the department in accordance with the provision of relevant Recruitment Rules and who fulfill all required eligibility criteria required for the particular post, are considered as one of the departmental candidate for filling up of the said post.

The applicant has not furnished any document in proof of his ever applying for any specific post in regular establishment. The relevant details, such as their designation in workcharged and regular establishments, dates of their regularisation in regular establishment etc. have not specifically been given by

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the applicant, in absence of which the respondents have no comments to offer.

It is further stated that services of no person junior to the applicant in work-charged establishment had been simply transferred to regular establishment in the department.

Para 6(XI) It is submitted that his request for transfer to sites nearer to his home place was duly considered by the Commission and in CWC's letter No. B-11015/2/94-E. XII/1137 dated 29.8.2001 (enclosed as ANNEXURE-V) it was clarified that "transfer requests of workcharged staff are not being entertained as it effects promotion avenues of W/C staff in the Circle, where they request for transfer."

Para 7(i) The respondents beg to submit that the applicant was confirmed on 5.9.81 and not on 25.7.76 as stated by him. As stated at Para 6 (VIII), the applicant has not submitted any application for recruitment to any specific vacant post in

regular establishment. As such the relief sought for is not tenable under law.

Para 7(ii)

The respondents beg to submit that as per service conditions of the workcharged establishment persons of W/C establishment are recruited only for a specific work or a Sub-works of a specific work and seniority of W/C staff are maintained circle wise in Circle office headed by a Superintending Engineer. The circle, under which the applicant is presently working, has no work site at Bihar, UP, Harayana and Delhi. Moreover, as per the provisions of the rules, each circle is a Unit for seniority of W/C personnel in each category separately. Further more, normally no transfer of W/C employee can be made from one Unit to another except in very special circumstances with the approval of the competent authority, in which case such employee is not given benefit of past service in the new Unit. As such, the relief sought for by the applicant may not be entertained.

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Para 8. Matter of records.

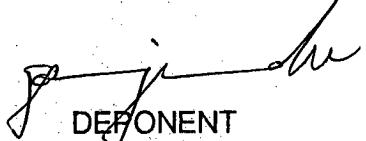
Para 9. The rules & guidelines issued by the department from time to time has not been violated at any time in service matters of the applicant.

Para 10 to 13: No comments to offer being matter of record.

PRAYER

In view of the submissions made herein above, the averments made by the petitioner in the instant OA are devoid of any merit and not maintainable under law. It is submitted that the petitioner is resorting to tactics by misinterpreting the valued order dated 21.01.87 passed by this Hon'ble Tribunal in similar issue as explained in the 'Written Statement' above, to his advantage, ignoring the actual rule position. Hence, it is prayed that, this Hon'ble Tribunal be pleased to dismiss the said OA with costs.

Date :
Place :

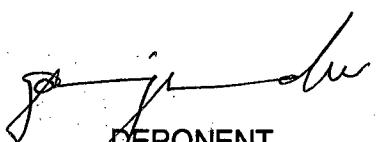

DEPONENT
THROUGH THE GOVT. COUNSEL
Executive Engineer
G.W.C. NED-III
Manager

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VERIFICATION

Amalendra Ghosh Majumdar, Presently
I, working as Executive Engineer, NEID-III, CWC, Itanagar being duly
authorized and competent to swear and sign this verification, do hereby solemnly
affirm and state that the statements made in Para 6(IX), 6(X)(i) & 6(XI) are true to
my knowledge and belief, those made in Paras 6(I), 6(II), 6(III), 6(IV), 6(V), 6(VI),
6(VII), 6(VIII) & 6(X) being matter of records, are true to my information derived
there from and the rest are my humble submission before this Hon'ble Tribunal. I
have not suppressed/concealed any material facts.

And I sign this verification on this (26) Twenty Sixth the day of
March, 2001 at Guwahati.


DEONENT
THROUGH THE GOVT. COUNSEL
Executive Engineer
C.W.C. NEID-III
Itanagar

ANNEXURE - I

(Copy)

-159-

No. 1/12/80-Batt. XII
Government of India
Central Water Commission

Room No. 304, New Bhawan
R. K. Puram, N. Delhi-110008

Dated :- 2.2.1983

OFFICE - MEMORANDUM

With reference to his representation dated 29.9.82, received directly in this Office regarding his transfer to any Central Water Commission Office in the State of Bihar/I.P., Shri R.T.P. Gupta, Work-Sarkar Sr. I, Tinnimukh Investigation Circle is hereby informed that as per the provisions of the rules, each Circle is a Unit for non-resident of Work-Share personnel in such authority separately. Furthermore, normally no transfer of work-share employee can be made from one Unit to another, except in very unusual circumstances with the approval of the Head of Department, in which case such an employee is not given benefit of such service in the new Unit for the purpose of seniority.

2. Secondly, as per Rules and procedures, all representations from Government servants concerning their service matters should be routed through Proper Channel and are not to be submitted directly to the higher authorities.

3. However, notwithstanding the submission of a representation by Shri R.T.P. Gupta to the Chairman, C.W.C., directly for his transfer to Bihar/I.P., enquires from the Office of Head Engineer, I.W.C., Patna have revealed that no post of Work-Sarkar Grade-I is annanated for any of the Water Resources & Flood Control Divisions at Patna. Also as per the records available in this Office there is no vacancy of work-Sarkar Grade-I in any of the Field Offices of C.W.C. in Bihar/I.P. As such, his request for transfer to a C.W.C. office in Bihar/I.P. cannot be acceded to. However, it is being ascertained from all Circles whether any post of Work-Sarkar Grade-I is available currently which he could be considered.

4. He is also hereby advised to submit all his future representations through Proper Channel. His complaint regarding frequent transfers is also being investigated. In the meantime he is advised to join the place of his posting and his request for transfer to other Circles will be considered subsequently.

91/-
(R.N. Arvind)
Under Secretary
for Chairman, C.W.C.

Sh. R.T.P. Gupta, Village Ohajan Gonu,
P.O. Chhajon, Hari Shankar, Va-Turki,
District. Muzaffarpur (Bihar)

Copy to :- The Superintending Engineer, Tinnimukh Investigation Circle, C.W.C., Nuhoma, Nonahills, Ghillons.

Contd....?

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A decision rendered by the Tribunal which has attained finality shall operate as *res judicata* against subsequent disputes between the same parties and cannot be allowed to be reopened on any ground.

Held: The decision of the respondents communicated through D.O. No. PCC/FT/97, dated 4-2-2000, by the Deputy Director (Legal), Office of the Comptroller and Auditor-General of India, New Delhi informing the Government decision declining to revise the pay scale of Senior Auditors in the Indian Audit and Accounts Department is the subject matter of the present proceeding. The Tribunal disposed of O.A. No. 45 of 1992 by its order, dated 2-11-1994 and turned down the contention of the respondents refusing to grant parity in pay scale to these applicants and upheld the claim of the applicants. The Tribunal, while adjudicating the above O.A., framed the following specific issues:

(i) Whether the applicants are entitled to get parity of pay scale with the Assistants and Stenographers, Grade 'C' of the Central Secretariat Service on the principle of equal pay for equal work and on the basis of other grounds raised by them? (ii) Whether the refusal to grant the applicants pay parity by the respondents is in violation of Articles 14, 16 and 39 (d) of the Constitution of India? (iii) Whether the respondents have acted contrary to the recommendation of the Fourth Pay Commission arbitrarily and illegally? (iv) Whether any relief can be granted to the applicants and if so what relief?"

The Tribunal answered the issue Nos. 1, 2 and 3 in the affirmative, but as regards issue No. 4, the Tribunal directed the respondents to look into the matter and take an appropriate decision afresh without postponing the issue to the report of the Fifth Central Pay Commission. The aforesaid decision of the Tribunal was not modified at any stage.

The key question in this proceeding is the admissibility for pay parity of the applicants with the Assistants in the Central Secretariat Service. The question is no longer *res integra* in view of the decisions rendered by the Tribunal in O.A. No. 45 of 1992, dated 2-11-1994, as well as the Judgment and order, dated 14-9-1999 passed in O.A. No. 63 of 1997. The Bench in clear terms, in O.A. No. 45 of 1992, came to a positive conclusion that the applicants were entitled to get parity in the revised scale of pay with the Assistants and Stenographers in the Central Secretariat Service and that refusal of the respondents, to grant the parity in pay scale to the applicants was in violation of Articles 14, 16 and 39 (d) of the Constitution of India. The Tribunal also held that by refusing the parity in pay scale the respondents had acted arbitrarily and illegally.

The decision rendered by the Tribunal has attained its finality and is binding on the parties and the decision rendered by it shall operate as *res judicata* against subsequent disputes within the same parties before the Court or Tribunal. A decision on merit rendered between the parties cannot be permitted to be reopened on any ground whatsoever. Neither law nor logic, nay, any administrative exigency or political compulsion should withstand the implementation of the lawful decision of the Competent Authority that has attained finality. The application is allowed and the respondents are ordered to pay Rs. 5,000 as cost.

[Hiranmoy Sen and others v. Union of India and others, 9/2001, Swamysnews 64, (Guwahati), date of judgment 19-1-2001.]

O.A. No. 85 of 2000

ANNEXURE

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Shri Bhagwan Lal Prasad Gupta,

Petitioner in both the
cases.

vrs.

Union of India and others.

Respondents.

REBUTTAL

The Hon'ble Shri D. Pathak, Vice-Chairman,
The Hon'ble Shri S. P. Hazarika, Member.

For the petitioner in both
the cases.

Mr. R. F. Sharma, Advocates.

For the respondents

Mr. S. Ali, Central Government
Standing Counsel.

Date of Judgment & Order

The 21st day of January 1987.

JUDGMENT & ORDER

These two Writ Petitions filed by Shri B. L. Prasad
Gupta before the Gauhati High Court, have come on transfer
by operation of the provision of section 29 of the Central

Administrative Tribunals Act, 1983, for adjudication. In

writ petition No. O.C. 147 of 1986 - Civil Rule No. 704 of 1986,

the petitioner has challenged the order of appointment of

his service passed on 22.4.1984 by the Superintending Engineer

for Chief Engineer (P. & I) C.W.C., Shillong. In writ petition

No. O.C. No. 116 of 1986 - Civil Rule No. 1132 of 1983, the

petitioner has asked for a direction (1) to pay arrears from

July, 1982 and transfer travelling allowance as may be due

to him; (2) to withdraw the wireless message dated 14.4.83

(Annexure No. 1) and "to make necessary order of posting of the

petitioner; (3) to post the petitioner if posted beyond

the jurisdiction of the present Superintending Engineer

(Respondent No. 4); and (4) to regularise the service of the

petitioner as a permanent non-technical staff; both the

petitions are largely analogous and as such we propose to dispose

of them by a common judgment.

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2. The petitioner took to petition No. 60, 107 of 1981
submitted on 19th January 1981 in the present petition on
that the petitioner was appointed as a work master grade II
under Lower Lalyop Construction Division No. 1 of Central
Water and Power Commission, Government of India and posted
at Gangtok (Sikkim) in the pay scale of Rs. 110-100/- plus
other allowances admissible from time to time vide appointment
letter dated 23.7.73, issued by the Executive Engineer of the
said Division. Due to his professional competence for his
satisfactory service record he was promoted to Work Master
Grade I in the project An. 8/1981 from 13.3.75 upto 26.7.81.
During this service period there, he also received the
certificates of competency and ability. By an order dated
23.7.81, the petitioner was transferred from Sikkim to
Timapurh Investigation Circle, Central Water Commission,
Shillong. The aforesaid transfer and relieving order was
received by the petitioner on 26.7.81 (Sunday) at about
7.15 a.m. at his residence and he filed an application on
27.7.81 before the Executive Engineer of the said Division
wherein the petitioner stated that as the petitioner was living
with his family at Gangtok he may be granted/retdained in
the said Division at least for 10 days to enable him to
get train reservation but the just demand of the petitioner
was not considered at all by the authority and the petitioner
was compelled to take earned leave from 26.7.81 to 19.8.81.

Thereafter the petitioner had reported the Superintending
Engineer, Timapurh Investigation Circle, Shillong on
17.8.81 and submitted his joining report before the Superinten-
ding Engineer, but the Superintending Engineer directed the
petitioner verbally to report to the Executive Engineer,
Timapurh Investigation Division No. 13, Central Water
Commission, Imphal. The petitioner requested the Superintending
Engineer, Shillong, to give order in writing but the said
Engineer refused to give the order in writing. Then the
petitioner

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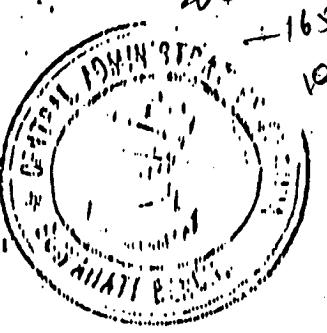
petitioner reported to the Executive Engineer at Imphal Divisional Office on 20.8.01 and joined his post on the same day. The petitioner worked at Imphal till 3.9.2001. But, subsequently thereafter the Executive Engineer, Imphal, transferred the petitioner to Tipaimukh Investigation Sub-division No. II about 210 kilometers away from Imphal and the petitioner joined there on 7.9.01 and worked there till 6.11.2001. Thereafter, the petitioner was again transferred to Imphal vide letter dated 10.11.2001 but the petitioner joined at Imphal on 9.11.2001 at the request of the Executive Engineer, Imphal, and the written transfer order was given later on 16.11.2001. The petitioner was again transferred to Billehur vide letter dated 30.3.02 and the petitioner had submitted an application on 29.3.02 to the Superintending Engineer, Shillong, through Executive Engineer, Imphal, wherein the petitioner stated that he may be retained at Imphal as he was staying at Imphal with his family members and two school going children had been admitted in the school recently and the wife of the petitioner was under treatment in the Regional Medical College Hospital at Imphal, but the authorities turned down the just demand of the petitioner. The petitioner was relieved on 30.4.02 from Imphal with a direction to report to the Assistant Engineer Tipaimukh Investigation Sub-division No. III under Billehur Division vide letter dated 30.4.02 and the petitioner joined his new posting on 11.5.02 under the Assistant Engineer, Tipaimukh under Billehur Division. On 14.5.02, the Assistant Engineer, Tipaimukh directed the petitioner to join at Tulva Chuiya site under Shri D. B. Hatti, Supervisor and the petitioner went to the aforesaid site but curiously enough to the petitioner found it to be in a vacuum as the site was not opened at Tulva Chuiya at that time. He went to Tulva Chuiya covering a distance of 150 kilometers passing through thorny jungles but was surprised to see that there was no shadow or

the site and the petitioner came back and reported to the Executive Engineer, Tipaimukh Investigation Division, Silchar on 29.3.1982. That the petitioner remained at Silchar till 9.6.1982 and thereafter the petitioner was again directed to report at Tuival Chuva site at 12.00 A.M. vide letter dated 29.3.82. Being faced with such transfers, the petitioner took leave on personal ground as he had to make arrangements for his family members who were getting harassment like anything and after availing the leave the petitioner reported for duty at Silchar Division but the petitioner was informed that the Tuival Chuva site has already closed and the petitioner was again asked to report to Tipaimukh gauge and discharge site vide letter dated 26.2.83. The petitioner went to Khokan passing through jungles but he was disappointed to know that there was no site at all at Khokan at that time. He came back from Khokan and reported to the Assistant Engineer, Tipaimukh Investigation Sub-Division III, who instructed the petitioner to become ready to go to Khokan vide letter dated 6.3.83. When the petitioner was ready to leave for Khokan for the second time, the Assistant Engineer of Tipaimukh did not release him from Tipaimukh and the Assistant Engineer, wrote a letter to the Executive Engineer,

Tipaimukh Investigation Division N.1 of Silchar vide letter dated 10.3.83, wherein he informed the Executive Engineer, Silchar that the petitioner had been temporarily engaged at Jinnimukh due to some urgent official works for the time being and the Assistant Engineer of Tipaimukh requested the Executive Engineer for the permission for retaining the petitioner at Tipaimukh and as the petitioner was not released from Tipaimukh, he continued to work there. The petitioner contends that his duty was at Tipaimukh till 3.4.83 and as he was not getting his salary from July, 1982, he filed an

application for

application on 7.4.83 before the Assistant Engineer, Tinsukia, praying for permission to leave the Head Quarter on 8.4.83 so that the petitioner may meet the Executive Engineer at Silchar for getting the salary and transfer travelling allowances but the Assistant Engineer refused to reply anything and he did not even like to talk with the petitioner. That on 16.4.83 the petitioner received a wireless message wherein it was stated that the petitioner had not joined his posting place and violated official rule and that he insulted the Engineer in-charge. The petitioner was asked to submit explanation. The petitioner submitted explanation on 19.4.83 stating that the allegation was false. He said explanation was received on 19.4.1983. On 15.4.83 the petitioner went to the office of the Executive Engineer at Silchar for informing him the fact of the non-receipt of the salary of the petitioner, but the Executive Engineer at Silchar refused to meet the petitioner and as such the petitioner had no other alternative but to file an application on 19.4.83 at Silchar stating the grievances and the refusal of the Executive Engineer to meet with the petitioner. As the petitioner was not getting his salary and transfer travelling allowances since July 1982 he had nothing to eat and maintain himself and his family members and under the compelling circumstances he filed an application before the Executive Engineer for granting leave on and from 10.4.83 stating therein to grant earned leave and any other leave with effect from 9.4.83 till the matter was settled. Thereafter the petitioner left for his native place after filing the leave application to the Executive Engineer, Silchar. On 24.9.82, the petitioner submitted an application to the Chairman through the Executive Engineer of Imphal for onward transmission wherein the petitioner had stated that due to very frequent travelling the petitioner was unable to maintain



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in this family being a low paid employee that the petitioner had school going children and now under transfer to Tigraymalukh the petitioner had no other alternative but to stop the education of the children as there was no school at Tigraymalukh site. It is also stated in the said application that the petitioner did not have sufficient money to maintain two establishments, i.e. one for the petitioner and the other for his family, and that the petitioner may be posted to a place where the petitioner could give education to his children. That the letter dated 20.1.02 was duly received by the Executive Engineer of Jhalak and the same was forwarded to the Superintending Engineer, Bhillong, vide letter dated 21.2.02 but the Superintending Engineer, Bhillong did not forward the said letter to the Chairman. In paragraph 27 of the petition he has a catalogue of his frequent transfers to show the vindictive nature of the opposite parties to harass him. On 2.2.03, the petitioner received a letter from the Chairman, wherein the Chairman has written as follows : "His complaint regarding frequent transfers is also investigated. In the meantime he is advised to join the place of his posting and his request for transfer to the Circles will be considered sympathetically for other Circle."

On the advice of the Chairman the petitioner reported for his duty on 23.2.03 to the Executive Engineer, Bhillong and the said Engineer told the petitioner that Tulval Chyun site had been selected and the petitioner was re-posted at Khokan in Alkhrain about 800 kilometers away from Bhillong and the petitioner went to Khokan by passing through jungles by walking through days on foot as there is no road communication. But the petitioner was surprised to know that he was posted in a vacuum as till then the site was not opened and there was neither any sign of a hut nor any other employer was present there. He has stated that the aforesaid order shows the vindictive, malicious, capricious, arbitrary and hateful attitude of the opposite parties in transferring him to a place where the site was not opened.

He has referred to a circular No. 2/16/70/12, dated 14.12.02 issued by the Chairman of the Central Water Commission, where....

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where it is stated that in regard to non-industrial categories which are envisaged to be brought in the regular establishment, the extent of conversion of temporary posts of work charged into permanent is 90%. Therefore 90% of the work charged posts which fulfil the Central Civil Services Criteria can be safely converted into permanent posts without any formal classification into Industrial and non-Industrial. The petitioner filed an application before the Chairman of the Central Water Commission on 7.5.00 and 21.1.02 for the appointment of the petitioner to the post of Supervisor/Design Assistant in view of the aforesaid circular, but the genuine case of the petitioner was not considered, whereas other work-charged employees, junior to the petitioner, were appointed to the said post. The petitioner has also averred that in another circular dated 2.9.01 issued by the Ministry of Irrigation, Government of India, Central Water Commission to the effect that the authorities are to see that frequent transfers do not take place and the officers/staff should remain at the place of posting at least for three years, unless the officer is promoted and posted elsewhere. But, in the present case, the petitioner has been transferred nine times within a span of seven months between 25.7.01 and 26.2.03, which is a clear violation of the aforesaid circular and the Service Rules. Being faced with such predicament, the petitioner was compelled by the inevitable circumstances to file a writ Application under Article 226 of the Constitution of India before the Gujarat High Court and the name has been registered as Civil Rule No. 1122 of 1983 and the High Court was pleased to pass an order on 25.1.1993 directing the opposite parties to pay the arrear salary within a month from the date of the receipt of the order. It is stated that the opposite parties were silent on the aforesaid representation and nothing was heard from the opposite parties till 7.4.1994, when the petitioner had received 5 letters all dated 7.1.1994 from the

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the Executive Engineer, Silchar, which was received by the petitioner on 19.4.04. The copies of the letter are annexed as Annexures, 11-12, 13, 14 & 15. The petitioner has also annexed to the petition a copy of the letter dated 9.6.02 by which it is stated that the petitioner was granted earned leave for 21 days from 10.6.02 to 30.6.02 by the Executive Engineer, Silchar, vide his letter dated 9.6.02. On 19.4.04, the petitioner received the notice of the order of termination of his services vide letter dated 23.1.1984. As the aforesaid order of termination of service was not sent to his present address, the same ^{was} received only on 19.4.04 at Silguri the present address given to the authority. The petitioner submitted an appeal under Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1955, against the order dated 23.1.1984 terminating his services. The petitioner received the order of termination only on 19.4.04 and the appeal was filed only on 20.5.04. It is contended that the order of termination is clearly in violation of Article 311 of the Constitution of India and also in violation of the principle of natural justice. It is contended that the authority had no right whatsoever to terminate the petitioner without holding an enquiry and without proper charges. Annexures 11, 12, 13, 14 and 15 show that he was still in service till the termination order was passed. The termination order shows that the order is passed by the Superintending Engineer for Chief Engineer, C.W.C. stating that the service of the petitioner shall stand terminated with effect from the date of expiry of a period of one month from the date on which the notice is served on or as the case may be tendered to him.

3. It is submitted on behalf of the petitioner that although the order of termination is shown to be innocuous and termination simpliciter, it is in fact illegal in nature and as such it is not sustainable in law as there was no enquiry held against....

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against the petitioner before the order of termination was served on him.

4. The respondents I to D have filed written statement. In paragraph 3 of the written statement, it has been stated that the petitioner was a temporary employee and a member of the Work Charge staff in the project work under Lower Lalyap Hydel Project (H.P.), when he worked as Head Barber, Grade 1 under Lower Lalyap Construction Division No. 1. This Lower Lalyap Hydel Project work was completed and the Division was finally closed in July, 1981. The petitioner being a temporary employee, was to be retrenched along with the completion of the project work, but the authority on humanitarian ground transferred and posted him under Tipaimukh Investigation Circle, Shillong. As regards, the frequent transfer of the petitioner, the respondents have stated in paragraph 8 of the written statement that the petitioner was transferred in public interest with immediate effect and as such the respondent No. 4 could not comply with the request made by the petitioner for his retention at Imphal by cancelling the transfer order. In paragraph 11 of the written statement it has been stated that no order on 14.5.82 was issued to the petitioner by the Assistant Engineer to join at Tuivela Chuva site as alleged by the petitioner. The petitioner did not visit Tuivela Chuva site and no question of travelling at a distance of 180-kilometers through thorny jungle by the petitioner arises. In fact, instead of proceeding for opening the site at Tuivela Chuva, the petitioner went on annual leave from 12.8.82 to 30.8.82. The petitioner directly came to Shillong after expiry of annual leave and he was allowed to join at Division Office at Shillong on 20.8.82 purely on his own request and to save him from unauthorized going to Shillong. At Shillong the petitioner had submitted two joining reports, one to the Executive Engineer dated 20.8.82, stating that he is joining in Division Office on 20.8.82, which was initialed by Assistant Engineer on 24.8.82 and by the Executive Engineer

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on 9.6.81. The second one is addressed to the Assistant Engineer, T.I. sub-division No. 111, saying that he is joining in the sub-division on 20.6.82, which was initialised by the Assistant Engineer, Executive Engineer, Head Clerk on 9.6.82. By the two joining reports, he created confusion regarding his so called joining report at Silchar. In paragraph 12 of the written statement, it has been stated that the petitioner was allowed to stay at Silchar upto 9.6.82, but in the said order he was directed to join at Tuival Chuwa after 9.6.82. But he again applied for leave from 10.6.82 to 20.6.82 to proceed on L.T.C. to visit a holy temple in Jammu & Kashmir. The petitioner also gave an undertaking dated 9.6.82 that he would join at the place of posting at Tuival Chuwa after expiry of leave. So his leave was granted and advance payment was made as admissible under the rules. After expiry of the leave granted to him he did not honour his own commitment and did not join accordingly at Tuival Chuwa, but extended his leave upto 24.6.82. In the meantime, the petitioner sent two telegraphs, first one mentioning that "leave extended for two months" sent from Bilkuri junction and received in Division Office on 9.7.82. No post copy in confirmation was received by the Office. The second telegram from Samastipur saying "leave extended", received in the Division on 7.9.82, without any post copy in confirmation. A doubt was created in the mind of the Department about the visit of the petitioner to the holy temple at Jammu & Kashmir.

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In paragraph 13 of the written statement it has been stated that after 7 months' absence from duty, the petitioner resumed his duty at Silchar on 24.2.83 by a joining report without mentioning the place. He was directed to join at Khokon as the Tuival Chuwa site was already closed. But the petitioner never went to the Khokon site. The petitioner joined at Tipamukh on 8.3.83 for non-opening of Khokon GND site....

site at that time and his joining-report was accepted by the Department. Further, on a careful consideration of the petitioner's case, the authority reckoned his joining date with effect from 20.3.83. (uruuvi). In the meantime, the Assistant Engineer vide his letter dated 6.3.83, instructed the petitioner to be ready for proceeding to Khokon as soon as the site is established. The Khokon GSD site was established on 12.3.83 by the Assistant Engineer himself as the petitioner did not accompany the Assistant Engineer. Subsequently, the Assistant Engineer directed the petitioner to proceed Khokon GSD site vide letter dated 10.3.83. In paragraph 14 of the written statement, it has been denied that the Assistant Engineer did not release the petitioner to proceed to Khokon site. It is clear from the letter dated 6.3.83 which is Annexure G to the petition that the petitioner was asked to be ready to proceed to Khokon site as soon as the site is established. In paragraph 19 of the written statement it has been stated that a wireless message was sent on 13.4.83 by the Assistant Engineer, TID-I, Tigrimukh to Executive Engineer, TID-I, Silchar that the petitioner neither joined at Khokon nor is intending to join there and insulted the Assistant Engineer badly. Subsequently, the Assistant Engineer, TID-I was instructed by Executive Engineer TID-I on 14.4.83 through wireless to stop the petitioner's payment till he joins at his place of posting and to take effective measures in case of threaten for physical assault. Similarly, the Executive Engineer, TID-I sent another wireless message to the petitioner on 14.4.83, instructing him to submit explanation on the reports of the Assistant Engineer and any attempt for assault will be dealt severely. This fact was reported to the Superintending Engineer, TID-I, Silchar by Executive Engineer, TID-I, Silchar vide his letter No. TID/PP-116/492 dated 19.4.83. The full report was received in the

Divisional.....

divisional office on 23.4.03 wherein the Assistant Engineer vide his letter TINB-111/utt-9/201 dated 9.4.03 intimated that while disbursing the payment of the staff at Tipaimukh on 7.4.03, the petitioner attempted to snatch away the Attendance Register and intended to sign. He was allowed to receive his pay upto 10.4.03, i.e., the day after which he is supposed to join at Khokon GCD site. The petitioner refused the payment and insulted him with challenge. In this letter, the Assistant Engineer enclosed the application of the petitioner dated 9.4.03 addressed to him Chairman, U.V.O., New Delhi. The charges made therein are all false and fabricated as could be seen from the report of the Assistant Engineer. No action was taken on the petition dated 7.4.03 by the Assistant Engineer as the petitioner was not at his duty place and having no authority to permit him to go to Silchar. In paragraph 17 of the written statement, it has been stated that on 9.4.03, the petitioner submitted a departure report to the Assistant Engineer, saying that he is going to his native place via Silchar due to over harassment. This was received by the Sub-divisional Clerk on 9.4.03, which was submitted to the Assistant Engineer on 17.4.03. The petitioner came to Silchar Office on 16.4.03 and tried to report to the Executive Engineer against the Assistant Engineer. The Executive Engineer told him that he may submit his points in writing through proper channel or examination in this office. So, the petitioner submitted his application dated 16.4.03. This application is annexed as Annexure 20 to the petition and that the facts stated therein are incorrect. On 16.4.03, he filed another application, stating that he is going to his native place and he will neither work under the jurisdiction of this office as well as of Circle Office. The petitioner has never gone to Khokon GCD site. His mention about the fact that the Executive Engineer has refused to meet the petitioner is not correct. In paragraph 10 of the written statement, it has been stated that the petitioner has

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been paid from the Government a sum of Rs. 11,115.00 under
various heads. It is stated that the Department is to recover
an amount of Rs. 1,023.70 from the petitioner. It is also
stated that all his earnings salaries etc. have been paid
regularly. In paragraph 27 of the written statement it has
been stated that the behaviour of the petitioner is wholly
objectionable in view of the fact that he has stolen a D.O.
confidential letter dated 20.4.68 written by H. D. Hingachar,
respondent No. 1 to respondent No. 2 for which criminal action
is warranted. No question of vindictive, malicious, arbitrary
and ill motive of the authorities is there on alleged.

2. In paragraph 10 of the written statement, it has been
stated that the petitioner being a temporary employee, a
notice under Rule 5(1) of the Central Civil Services (Temporary
Service) Rule, 1963, was served on him giving one month's
time which is legal and proper. It is submitted that there
is no illegality, impropriety or irregularity in terminating
his service as stated above and no such claim petition is
liable to be dismissed.

3. In a counter-reply filed by the respondents on
29.10.68, it has been stated in paragraph 9 that the
termination of the petitioner from service was due to his
long unauthorized absence from duty with effect from 23.3.68
till the date of his termination from service. The petitioner
was asked to resume duties, vide Annexure 43, annexed to the
petition by the petitioner, but the petitioner unilaterally
remained unauthorized absence and did not join duty. Thereafter
the Superintending Engineer issued termination notice
as required under rule 5(1) of the Temporary Service Rule,
though the rule has not been quoted. There is also Annexure
17 annexed to the petition of the petitioner.

4. The impugned order reads as under :—

"No. 1430/2701/68/250.

Government.

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Government of India, Central Water Commission,
North-Eastern Irrigation Circle, Itanagar
Tinangitlong, Shillong - 793004.

Dt. the 25th Jan/04.

NOTICE OF TERMINATION OF SERVICE

I, hereby give notice to Shri P. L. L. Gupta
that his services shall stand terminated with
effect from the date of expiry of a period of
one month from the date on which this notice
is served on or, as the case may be tendered
to him.

H. S. Rangachar,

Superintending Engineer
for Chief Engineer (E.I.) CWC

State - Shillong.

Signature of the
Appointing authority.

To
Shri P. L. L. Gupta
Works Officer Gr. I (absenting from duty from 25.3.04)
Vill. Chhajan Gom
P.O. Chhajan Harishankar
via Tukif
District - Meghalaya.

On a perusal of the impugned order, it is found that the order
appears to be termination of the service of the petitioner
simpliciter. But the attending facts as noticed above from
the pleadings of the parties, it is seen that prior to the
passing of the impugned order there were allegations raised
about his misconduct. Therefore, it is contended by the
learned counsel for the petitioner that the foundation of the
impugned order is based on some allegations of misconduct of
the petitioner for which in order to punish him for those
misconducts, the impugned order was passed. It is submitted
that the impugned order although ex-facie an order of termina-
tion simpliciter, circumstances now disclosed it is found
that the notion in passing the impugned order was penal in
nature. It is submitted by the learned counsel for the
petitioner that in paragraph 27 of the written statement, the
respondents have raised allegations that the petitioner's
behaviour is wholly objectionable in view of the fact that
he has stolen a D.O. confidential letter dated 25.4.02 written

By.....

by H. S. Nanjachar, respondent No. 4 to respondent 5 for which criminal action is warranted. This is a very serious allegation of misconduct of the petitioner. If such a serious allegation is raised by the respondents, an enquiry is to be held in order to absolve or to punish him of such serious allegation. The learned counsel has drawn our attention to paragraph 4 of the counter reply filed by the respondents on 29.10.86. The learned counsel for the petitioner has also drawn our attention to Annexure 42 to the petition. This is an Office memo of the Executive Engineer. It reads as under:

GOVERNMENT OF INDIA : "CENTRAL" INVESTIGATION COMMISSION :
NORTH EASTERN INVESTIGATION DIVISION, F.O.,
RONGPUR (PART I) SILCHAR DISTRICT,
CACHAR (ASSAM).

No. MEID/HC/PF-115/7. Dated Silchar 2nd Jan '84.

Sd/- S. C. Math,
Executive Engineer.

To
Shri B. L. Gupta, Work Sarker - G. I.
(Absenting from duty from 25.3.1923 onwards) "

On a perusal of the aforesaid memo, it is seen that there is allegation of unauthorised absence of the petitioner from duty from 25.3.03 till he resumes his duty. Here, serious allegation has been raised about his unauthorised absence. In this paragraph 4 of the counter reply referred to above, the respondents have

..... said that the termination of the petitioner from service was due to for his long unauthorised absence from duty with effect from 28.2.86 till the date of his termination from service.

This is another serious allegation which is correctly called for enquiry. Without holding such enquiry, the petitioner's services cannot be terminated by invoking the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1963. The learned counsel has drawn to our notice the contents

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of an independent labour, which is a necessary to the petition.

WIRELESS MESSAGE

To
Shri D. L. P. Ojha, Work Borkor Ordnance
Khokan G.I.C.D. Site.
(Through A. E. TISD-III, TJAIIUKH)

IT IS REPORTED THAT YOU HAVE NOT JOINED YOUR
POSTING PLACE AND VIOLATED OFFICIAL RULE AND
INSULTED ASSISTANT ENGINEER IN-CHARGE (.) YOU SHOULD
SUBMIT YOUR EXPLANATION (IN THE ABOVE CHARGES TO ASST.
ENGINEER TISD-III WITHIN 10 HOURS OF 15.3.84 (.) ANY
ATTEMPT BY YOU ASSAULT TO ANY STAFF WILL BE DEALT
SEVERELY (.)

S/- S.C. Nath,
Executive Engineer

Message transmitted
to Tjaiukh on 14.4.1984
at 10.00 hrs. Schedule
Illegible

G15: TIDIV'SILC 1187

A fair reading of the wireless message shows that the petitioner
has been charged with for not joining the place of posting,
violation of official rules and also there is allegation
of insult meted out to the Assistant Engineer in-charge. The
above allegations of misconduct if correct it was only fair
and proper to hold an enquiry, before taking any action against
him. But, instead of doing that the authorities have chosen
easy method of termination of the service of the petitioner
by passing the impugned order banning them thought that the
launching of an enquiry would be a great bother or nuisance
for them. In support of his submission, the learned counsel
for the petitioner relies on three cases of the Supreme Court

In *Nepal Singh vrs. State of U.P.*, AIR 1983 SC 84, *Jarnail Singh vrs. State of Punjab*, 1986 Labour and Industrial Cases 1986
and also *Arup Jit Singh vrs. Govt. of India*, AIR 1984 SC 636.

In *Nepal Singh (supra)*, the Supreme Court had to
consider an order of termination of a temporary Government
servant. There it was held that if the circumstances under
which the impugned order of termination of service is passed
although such order prima-facie does not put any stigma shall
be...

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be liable to be quashed on the ground that the first or
posting of the order was on certain allegation of misconduct
which can be found from the attending circumstances. In that
case, the appellant Nopol Singh was employed in a temporary
capacity as Sub Inspector of Police. He was serving at
Shahjhanpur in 1950 when the Superintendent of Police, Shahjhan-
pur initiated disciplinary proceedings under section 7 of the
Police Act against him on the charge that while posted at
Pithoragarh he had in November, 1954, contracted a second
marriage while his first wife was alive and as this was done
without obtaining prior permission of the Government, the
appellant had violated Rule 28 of the U.P. Government Servants
Conduct Rules, 1956. The appellant filed a reply and denied
the charge. The oral testimony of about 12 witnesses for the
prosecution and an almost equal number for the defense was
recorded. But in January, 1970, the Superintendent of Police,
Shahjhanpur, wrote to the Deputy Inspector General of Police,
Bengaluru Range that as the act alleged against the appellant
related to the district of Pithoragarh the disciplinary
proceedings taken by him would be without jurisdiction unless
there was an existing order of transferring the proceedings
from Pithoragarh to Shahjhanpur. About that time the Inspector
General of Police, Uttar Pradesh issued a circular letter to
the Superintendents of Police throughout the State requiring
them to submit a list of Sub Inspectors who fall in any of the

following three categories:

- 1) Whose reputation and integrity is very low and/or
- 2) Who are generally involved in scandals, like
drinking, immorality, etc. which brings the name of the
U.P. Police and/or
- 3) Everywhere, they are a big problem because they
encourage gambling, excise offences, brothels, criminals etc.

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The Superintendent of Police, Shahjahanpur, drew up a list of such sub-Inspectors on February 3, 1970 and directed them to appear before the Deputy Inspector General of Police, Bareilly, Banaganj on February 10, 1970 during his inspection of the district. The list included the name of the appellant with the note "a corrupt officer, who is not straight-forward. Boreified two wives against Government Servants' Conduct Rule. Was not on his duty, sincerely, whenever he goes greater trouble." The enforcement date were therefore the authority and after that the impugned order dated 37, 1, 70 was passed by the Inspector General of Police, Bareilly, Banaganj, purporting to be under the rules published by notification No. 330/II-U-1953 dated January 20, 1953 that the appellant's services were not required any more and were terminated with one month's pay and 15 days of notice. In the case no attempt was made after the initial enquiry to institute a proper enquiry by the appropriate authority. It was held that with the dropping of the enquiry the allegation remained unverified.

The Supreme Court while setting aside the impugned order expressed in the following terms:

"We may observe that where allegation of misconduct are levelled against a Government servant, and it is in offence where the provisions of Art. 311(2) of the Constitution should be applied, it is then open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a burthen or a nuisance and that therefore it is entitled to avoid the mandatory of that provision and resort to the rules of an ex facio iniquitous termination order. The Court will view with great disfavour any attempt to circumvent the constitutional provision of Art. 311(2) in cases where that provision comes into play."

In Jairam Singh (surro.), the question of termination of appointment of certain Government servants who were appointed on ad-hoc basis was held to be bad on the ground that such order was passed on the basis of adverse remarks and allegations of embezzlement. The order of termination was held to be illegal for non-compliance of Article 311(2) of the Constitution, where the order of termination of the services

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of the petitioners was prima facie made without attaching any stigma to them. In that context, the impugned order held that mere form of the order is not sufficient to hold that "the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointment is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e., the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not. In that case there were certain allegations of serious misconduct against the petitioners and also in the service records of the petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Art. 31 (2) of the Constitution of India, while considering the fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1950. Thus, the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" were held to be made by way of punishment. The Supreme Court considered the counter-affidavit filed by the authority and took into consideration the contents of the statement made therein to arrive at a conclusion that....

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that "the impugned order of termination of service of the petitioners had been made on the ground that there were adverse remarks in the service records of the petitioners as well as there were serious allegations of embezzlement of funds against some of the petitioners." On considering the entire matter the Supreme Court finally came to the conclusion that "the impugned orders of termination of the services of the petitioners were really made by way of punishment and they are not termination simpliciter according to terms of the appointment without any stigma." It was further held that "it is undisputed that the respondents Hon. 2 and 3 did not follow the mandatory procedure prescribed by Art. 311(2) of the Constitution making the purported orders of termination of services of the petitioners on the ground of misconduct and thus there has been a patent violation of the rights of the petitioners as provided in Art. 311(2) of the Constitution." The Supreme Court also came to the categorical finding, on considering the facts found from the entire materials that "there is no room for any doubt that the impugned order of termination of services of the petitioners had been made by way of punishment as the allegations of embezzlement of funds as well as adverse remarks in the service records of these petitioners were the basis and the foundation for not considering the petitioners to be fit for being regularised in their services in accordance with the Government Circular dated October 28, 1960."

85. In Anup Jaiswal (supra), the Supreme Court had to consider a similar matter. There according to the authorities the appellant was considered to be one of the ring leaders who was responsible for the delay for which explanation was called for from all the probationers. In the explanation the appellant however admitted the facts while denying the charge of instigation.

instigating others in reporting info. On the basis of the explanation and interview but without holding any proper enquiry, the Director recommended to the Government of India that the appellant should be dispensed from the service.

The Government accordingly issued an order of discharge of the appellant on the ground of unsuitability for being a member of the IPS. When this order was challenged, their Lordships made the following observations :

"...where the form of the order is merely a camouflage for an order of dismissal for misconduct, it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be 'defere', merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

10. On consideration of the facts and circumstances of the case discussed above, we have no hesitation to come to the conclusion that the impugned order is passed by way of punishment on the basis of certain allegations of misconduct as noticed above for which the petitioner was not given any opportunity to prove his innocence. Therefore the impugned order is not sustainable in law. Accordingly, this impugned order is liable to be set aside which we accordingly do.

11. The other ground of challenge is that in passing the order the authorities have violated the principle enshrined in Articles 14 and 16 of the Constitution, inasmuch as, some 35 of his juniors were retained in service and the petitioner has been singled out for discrimination by terminating his service without any reasonable cause. In the impugned order, the authority does not give any reason as to why the petitioner was thus visited with such harsh treatment which is a monstrosity a case of flagrant discrimination.

12. The petitioner has filed a further affidavit on 17.9.85. In that further affidavit, the petitioner has stated in paragraph 1 that 'no less than 30 persons who were appointed

in.....

in Work Charge and much after his appointment were confirmed in service. He has given a list of the names of the persons annexed as Annexure 'A' to the further affidavit. In paragraph 2 of the further affidavit, the petitioner has stated that not a single employee of his category of post though appointed later than him is or was removed from service by exercise of such powers. In paragraph 3, the petitioner has stated that though the termination letter does not contain any stigma, in fact, that was passed to punish him because he incurred disfavour for his officers for reasons best known to them. It is stated that there could not be any justification to retain his juniors in service and to dismiss his service except for the purpose to punish him. The respondents have filed counter reply to the further affidavit given by the petitioner. In paragraph 3 of the counter reply dated 26.10.1986, it has been stated that it is not correct that 35 persons, as stated by the applicant, who were appointed in work charged category and much after the appointment of the applicant, were confirmed in service in this circle. It is clarified that there are different circles of the Central Water Commission through out India and every such circle is headed by the Superintending Engineer, who is the appointing and dismissal authority of the work charged employees of the circle. The circle where the applicant was posted on transfer on humanitarian ground was called Tipaimukh Investigation Circle, which is now renamed as North Eastern Investigation Circle, Shillong. Every circle is a unit for appointment of work charged personnel in each category separately. Further, no transfer of work charged employee can be made normally from one unit to another unit except in very special circumstances with the approval of the Chief Engineer, in which case such employees are not given benefit on past services in the new unit for the purpose of seniority. That apart, work charged employees are appointed against....

against the Project temporarily and the moment the Project is completed, all the employees, be appointed, are retained if there is no scope to absorb them in other circles. It may further be stated that the 39 persons named by the applicant in this paragraph do not there in this circle. The applicant is not to strict proof of it. In paragraph 4, it has been stated that the service of the petitioner was terminated due to his long unauthorized absence from duty with effect from 25.3.03 till the date of his termination from service. And as such, any comparison of the other employees of the same category, as made by the petitioner is irrelevant. It is stated in this paragraph that the petitioner's case stands on a complete different footing from that of other employees of the same category appointed before or after him.

13. It is submitted by the learned counsel for the petitioner that the action of the authority in passing the impugned order is clearly violative of the provision of Articles 14 and 16 of the Constitution of India. In support of his submission the learned counsel relies on *Chhaganji Chavhan vs. D.B. Delliappa*, AIR-1979 SC 429, where the Supreme Court had to consider the termination of one temporary Government employee while retaining some other junior to him in service. In that context on those facts it was held by the Supreme Court that "the protection of Articles 14 and 16 of the Constitution will be available even to a temporary Government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly circumstanced. In that case the service of Delliappa, a temporary Class IV employee was terminated without assigning any reason although in accordance with the conditions of his service, three other employees similarly situated, junior to Delliappa in the said temporary cadre, were retained." The order of termination was held

to be

to be bad as "it offendeth the equality clause" in Arts. 14 and 16 of the Constitution." It is submitted by the learned counsel for the petitioner that the Central Water Commission is one organization, where the employees are working under the Commission, although there are units of the Commission yet employees from one unit to another are transferable. Appointment of the employees in the Commission are transferable. It is not a fact, submitted by the learned counsel, that if an employee is working under one unit thereby he is not transferable to another unit. Even in the affidavit of the respondents, it has been stated that in exceptional cases, an employee of one unit can be transferred to another unit. It is, therefore, submitted that while some of the juniors of the same class and category are retained in service dispensing with the services of the petitioner without any justifiable causes is a case of flagrant discrimination. It is further submitted that the petitioner has been singled out for discriminative treatment by terminating his services while retaining many of the juniors to him in service.

14. We find ~~some~~ ^{some} force in the contention raised by the learned counsel for the petitioner. But as we have already held that the impugned order is punitive in nature and sustainable in law without holding an enquiry, we do not express any opinion on the second contention raised by the petitioner.

15. The facts leading to G.C. No. 116 of 1986 - C.P. No. 1122 of 1983 and the facts of the petition that we have just noticed are almost identical, which have ^{been} discussed above. We do not like to burden this judgment by repeating the facts which are already stated above in the other petition. In this petition, the petitioner has asked for giving direction to the respondents (1) to pay salary from July, 1972 and transfer travelling allowances as may be due to him, (2) to withdraw the wireless

message.....

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me on 16.4.63 and to issue necessary order of posting of the petitioner, (3) to post the petitioner if possible beyond the jurisdiction of the present Superintending Engineer, and (4) to regulate the posting of the petitioner as a permanent non-technical staff. The petitioner has stated that he received a wireless message wherein it was stated that the petitioner has not joined his posting place and violated official rule and that he insulted the Engineer in-charge and that he was asked to submit explanation. He has stated that the allegation raised by the aforesaid wireless message was false and he submitted necessary explanation on 16.4.63 which was received in the Office of the Executive Engineer on 18.4.63. He has averred that on 14.4.63, the petitioner went to the office of the Executive Engineer at Silchar for informing him the fact of the non-receipt of the salary of the petitioner but the Executive Engineer at Silchar refused to meet the petitioner and as the petitioner had no other alternative, he filed an application on 15.4.63 at Silchar stating the grievance and refusal to meet with the petitioner. It is stated by the petitioner that he was not getting his salary and transfer travelling allowances since July, 1962 and as such he had nothing to eat and maintain himself and his family members and under the compelling circumstances he filed an application before the Executive Engineer for granting leave on and from 16.4.63 stating therein to grant earned leave and any other leave with effect from 9.4.63 till the matter is settled. He has also complained about the frequent transfers from one place to another without considering the difficulties of the petitioner. He has stated that he was transferred nine times between 25.7.61 and 25.2.63, which is in clear violation of the circular issued by the Government of India, Ministry of Irrigation, Central Water Commission.

Commission, dated 2.5.81, which provides that frequent transfers should not take place and the official/staff should remain at the place of posting at least for three years unless the officer is promoted and posted elsewhere. But, in the present case, the petitioner was transferred as stated above 9 times within a span of 7 months. It is submitted that these frequent transfers ^{him} has harassed to great extent. In the Miscellaneous Application No. 797 of 1983 in Civil Rule No. 1122 of 1983, before the Gauhati High Court, the petitioner prayed for some interim order. In that Misc. Application, the High Court passed the following order on 25.11.1983 :

"Register the application as a separate Misc. Case. By this application, the petitioner prays for payment of his due salary and other allowances upto 7.4.83. Mr. J.N. Sarma, learned counsel for the petitioner, submits that the petitioner has not received his salary and other allowances since July, 1982, and that he has a legal right to get his salary and allowances.

Heard Mr. S. Ali, learned Sr. Standing Counsel, Central Government. If the petitioner has really worked upto 7.4.83 and there is no legal cause for refusing to grant him his salary and allowances upto 7.4.83, the respondents shall pay the arrears within a month from the date of receipt of this order.

In the result, the petition is accepted to the extent indicated above. However, liberty is granted to the parties to file application for alteration, modification or cancellation of this order, if so advised.

This disposes of the Misc. Case.

Sd/- K. Lohiri,
Judge.

Sd/- T.C. Deka,
Judge.

On 11.1.1984, the respondents filed an application before the Gauhati High Court, praying for modification, alteration or cancellation of the order dated 25.11.83 in Misc. Application No. 797 of 1983 - Civil Rule No. 1122 of 1983. This application was registered as Misc. Application No. 203 of 1984 - C.R. No. 1122 of 1983. On that application, the Gauhati High Court passed the following order on 27.3.1984 :

"Register the application filed by the respondent as Misc. Case.

On 25.11.1983 in Misc. Case No. 797 of 1983, we made the following order, which is relevant for the

purpose....

purpose of this petition. We ordered:

"Held Mr. S. Ali, learned Sr. Standing Counsel, Central Government. If the petitioner has really worked upto 7.4.83 and there is no legal cause for refusing to grant him his salary and allowances upto 7.4.83, the respondents shall pay the arrears within a month from the date of receipt of this order."

Mr. B. Ali, learned Standing Counsel, Central Government, submitted that the petitioner did not work upto 7.4.83 and he is not entitled to any salary and allowances upto the said period. If in fact the petitioner Bhagwan Lal Prasad Gupta has not worked upto 7.4.83 and there exists legal cause for refusing to grant his salary and allowances upto 7.4.83, as ordered, the question of making the payment does not arise. As such, the order is very clear and requires no modification or alteration. We have examined the petitioner. We do not express any opinion on it in respect of the overrulings made therin nor do we accept the same as correct and/or incorrect. We hold that if the respondents think that the petitioner is not entitled to any salary or allowances at all in that event they may not pay the salary and allowances to him.

With these observations, the petition is disposed of.

Dr/- K. L. Hirlal,
Judge.

Dr/- T. S. Rao,
Judge.

In the aforesaid Application before the Gauhati High Court for modification, alteration or cancellation of the order, the respondent has given in details about the order of transfer of the petitioner from different places. In paragraph 3 of the said aforesaid Application, the respondent has stated that the petitioner was transferred by the Superintending Engineer, Tipaimukh Investigation Circle, Central Water Commission, Shillong, dated 24.3.82 from Tipaimukh Investigation Division No.2, Imphal to Tipaimukh Investigation No.1, C.W.C., Silchar, with a direction for further posting at Tuivai Gauge Discharge site. The Executive Engineer, Tipaimukh Investigation Division No.1, Silchar, issued the posting order to Tuivai Chuia site in Mizoram. The petitioner was relieved by the Executive Engineer, Tipaimukh Investigation Division No.2, Imphal, with effect from 30th April 1982 (afternoon) with an instruction to report for duty to the Assistant Engineer,

Tipaimukh.....

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Tipaimukh Investigation Sub-division, Tipaimukh under
Tipaimukh Investigation Division No.1, Silchar. The petitioner
joined Tipaimukh Investigation Sub-division, Tipaimukh with
effect from 11.5.82. On 13.5.82, the Supervisor in-charge
informed the petitioner that he should report to Supervisor at
Tuwai Chuya site. Instead of joining the work, site the petitioner
procured Concessional Leave from 13.5.82 to 20.5.82. On return
from Concessional Leave the petitioner was allowed to join at Tuwai
Chuya site at Silchar where he worked till 9.6.82. He was then
directed to report to Tuwai Chuya site immediately. But the
petitioner applied for leave from 10.6.82 to 27.6.82 to proceed
on Leave/Travel Concession to Jammu and Kashmir and back. The
petitioner gave an undertaking to join his place of posting at
Tuwai Chuya site at Silchar after expiry of leave and the leave
was granted with effect from 10.6.82 to 27.6.82, i.e. 18 days.
On verification of the records, it appeared that he had only
14 days' Earned Leave at his credit on 10.6.82. As such the
leave order was revised and 14 days Earned Leave from 10.6.82
to 23.6.82 and 7 days extraordinary leave from 24.6.82 to
30.6.82 without pay and allowances was granted. As such the
excess leave salary for the period of 7 days, i.e. 24.6.82 to
30.6.82, is liable to be recovered from the petitioner as per
rules. It is also stated by the respondent that after 7 months'
absence from duty, the petitioner returned to his duty at Silchar
on 22.2.83 (forenoon) and at Tipaimukh on 5.3.83. On 6.3.83
the petitioner was given an advance intimation that he should
proceed to Khokan G & D site since the site is established. On
12.3.83, the site was established by an Assistant Engineer and
on 18.3.83 the petitioner was directed to join this site.
The petitioner continued to stay at Tipaimukh defying the
authority's order till 24.6.83. It is also stated that from
20.6.83 the petitioner willfully remained absent from duty.

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On 13.4.83 the Assistant Engineer informed through a wireless message that the petitioner had not joined the work site nor intend to join and the petitioner had insulted him. In a subsequent report the Assistant Engineer informed that on 7.4.83 the petitioner forcibly tried to put his attendance in the Attendance Register from 25.3.83 but the Assistant Engineer did not allow him to do so. The petitioner then demanded the pay for the entire month of March, 1983, when the Assistant Engineer was prepared to give his pay upto 1.3.83, the day on which the petitioner should have joined at the work site. But the petitioner refused to draw part payment for March, 1983. On 13.4.83 the petitioner came down to the Division Office at Silchar and started complaining against the Assistant Engineer and thereafter the petitioner submitted the complaints against the Assistant Engineer in writing on 15.4.83 itself stating that he is going to his native place as he has not been paid his salary for March 1983 and that he would be at his native place till he would not get the posting order out of the jurisdiction of Silchar Division as well as Tipaimukh Investigation Circle, Shillong. It is stated that since 25.3.83 the petitioner has not resumed his duty till date of filling of this Misc.

Application: In paragraph 6 of the aforesaid Misc. Application, it has been stated that the petitioner has been paid excess leave salary for 7 days from 24.6.82 to 30.6.82 amounting to Rs.224.25, which is recoverable from him and the order for recovery has already been issued to him on 2.1.84 with a direction to deposit the amount within a month from the date of receipt of the order failing which penal interest shall be charged and appropriate action taken for recovery of the amount.

In this paragraph, the respondent has also given the details about the payment of transfer, T.A. bill. In paragraph 11, the respondents have also stated that the petitioner has not filed the petition on his side as the following dues are recoverable from him :

Dues

Salaries	Allowances
From 25.2.03 to 20.2.03. - Rs.1000.00	I.T.C. advance 10,000.00 (pending adjustment for want of authentic proof of having undertaken journey from Dibr to Dibr)
From 1.3.03 to 24.3.03 " 739.25	Advance T.T.C. advancing claim in May, 1983 " 91.00
Amount 424.00/203 " 61.00	Excess leave salary drawn from " 224.25
1.3.03 to 23.4.03. " 32.00	30.3.03 " 91.00
Rs.992.15	Grand total Rs.2015.25

In paragraph 12, the respondent has submitted that the petitioner wants his pay and allowances without doing any work in the Department. In fact, he desires that he should get his salaries and allowances without joining in his duty which is not permissible under the law and service rules.

On 10.3.1984, the petitioner filed another Misc. Application before the Gauhati High Court with a prayer for giving direction to the respondents to pay the salary and travelling allowances of the petitioner from July 1983 onwards and to give direction to the respondents to post the petitioner outside the jurisdiction of the respondent No. 4. This Miscellaneous Application has been filed after the respondents filed the Misc.

Application on 11.1.1984 with the prayer for modification, alteration or cancellation of the order dated 25.11.1983.

In this Misc. Application, the petitioner has disputed some of the contentions raised by the respondents in the Misc. Application filed by the respondents on 11.1.1984. But the High Court did not pass any order.

16. After going through the counter-affidavit of the respondents, we find that the petitioner's salary and transfer travelling allowance had been paid to him in accordance with law. Further, no action has been taken by the authority on the wireless message dated 14.4.03 as complained in his petition and as such he should not have any grievance to make now on this.

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16. This court, in the question of removal or dislocation of his services, is of the opinion that the technical officer with the authority to consider, for which it does not think that two shall be justified to give any direction. Moreover, the learned counsel for the petitioner has not advanced any submission on the foregoing ~~allegations~~ (at the time of hearing). At the time of hearing of the application, the learned counsel for the petitioner has only urged that we should give a direction to respondents that the petitioner should be transferred out of the jurisdiction No. 4 - Superintending Engineer, Central Water Commission, Tengnukh Investigation Circle, Shillong, due to the harassment which was met out to him by frequent transfers by respondent No. 4 and his subordinate officers.

17. The learned counsel for the respondents submits that there was no harassment to the petitioner. All the transfer orders that were made by the respondents were in the interest of public service and transfer being the function of public service, such transfer order cannot give rise to any cause to seek for transferring him out of the jurisdiction of respondent No. 4. It is further submitted by the learned counsel for the respondents that no case of malfeasance of the respondent No. 4 has been made out calling for any action by way of giving any direction to the respondents to transfer the petitioner out of the jurisdiction of respondent No. 4.

18. After hearing the learned counsel for the parties and on going through the pleadings, we do not find any substance in the submissions, namely, the ~~allegations~~ of harassment of the petitioner to give any direction to the respondents to transfer him out of the jurisdiction of respondent No. 4. On consideration of the entire matter, we do not find any merit in the petition and accordingly, the application in application No. 167 of 1976 C.R. No. 704 of 1976 is dismissed and the impugned order passed

by.....

by the authority terminating the service is not valid
and he shall be deemed to be in continuous service. It will
however be open to the authorities to determine whether
the petitioner during the interregnum was gainfully engaged,
for the purpose of considering the extent of relief to which
he may be entitled pursuant to our present order quashing
the impugned order.

The Application No. G.C.116 of 1985-SC, No. 1122
of 1983 is dismissed. In the facts and circumstances of the
cases, No. class no order as to costs.

Amos 21.1.87

MEMBER :

Shrikant 21/11/87
VICE-CHAIRMAN

Sarma :

Certified to be true copy

Deputy Registrar 26/11/87
Central Administrative Tribunal
Guwahati Bench

ANNEXURE -

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NO. 2/10/18-W.H. 28X

ANNEXURE NO.

Para - 26

GOVERNMENT OF INDIA
Central Water Commission.

..... Sowar Bhawan, N.K. Puram
New Delhi -22 Dt; 24.12.80.

Sd/-
(MEHNGA RAM)

Under SECRETARY (C)

For CHAIRMAN, CENTRAL WATER COMMISSION.

Sub:- Conversion of temporary workcharged posts into permanent ones.

Sir,

I am to say that the workcharged establishment in most of the circle office of the CWC, has so far largely been functioning on a temporary basis. One result of this is that the W/C Employees even after rendering more than 10 years continuous service have to retire without pensionary benefits which they would have been entitled to had they been declared permanent in some post. The Govt. order contained in the Ministry of Finance O.M.NO.8 Estt. (SPL) . /60 dt. 12.8.60 provide that among industrial categories on the W/Cd. Estt. permanent posts may be created to the extent of 50% of posts which have been in existence for more than 3 years and which are likely to continue on a long term basis enabling confirmation of workcharged staff whose service are likely to be required on permanent basis.

As regards non-industrial categories which are envisaged to be brought on the regular Estt. the extent of conversion of temporary posts into permanent is 90% therefore 50% of the W/C Posts which fulfil the above CCC/CSS criteria can be safely converted into permanent posts without any formal classification into industrial and non-industrial.

With a view to giving the pensionary benefits to as many of our W/C employees as possible with in the ambit of the rules referred to above, it is requested that proposal for conversion of 50% of temporary W/C. posts into permanent ones in your circle may please be made to us in the enclosed proforma to enable us to issue the requisite sanction of the Chairman, CWC.

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-2-

In the event of 50% of W/C. posts having been converted into permanent posts, posts, necessary action to confirm the individual employees against these posts keeping in view their seniority etc. will have to be taken by you. In this connection a copy of the pattern of the procedural follow up action being taken in C.W.P.R.S. Puna etc. is enclosed. Further your attention is also invited to the following provision of para 24-03 of Appendix 2/2 of G.W.C. and power Commission Manual 2973 edition.

"The liberalised pension Rules 1950 were made applicable to the work charged staff who retired/died on or after were given option to elect the liberalised pension Rules or to retain the old pension Rules of 6/8/1955. The temporary employees who were in service on 18/11/60 were also given option to elect the liberalised pension Rules or to retain contributory provident fund benefits at the time of their confirmation. However, if no option was exercised within 6 months, the workers were deemed to have opted for liberalised pension Rules 1950. Workers appointed in service on or after 18/11/1960 were to be governed by the liberalised pension Rules after their confirmation. It will mean that the Superintending Engineer, an appointing authority in respect of W/C staff, will also be the competent authority to work out and sanctioned their pension after taking into account all the qualifying service rendered by such W.C. employees according to rules 60 of the C.C.S. pension rules, 1972. The proposals may kindly be arranged made forwarded to us in respect of the circles as whole and in no case Division-wise, by the 15/1/81".

Yours faithfully,
Sd/- DHANGA RAM
UNDER SECRETARY (C)
FOR CHAIRMAN, CWC.

ANNEXURE -

No. B-11015/2/94-E.XII/1137
Government of India
Central Water Commission

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Room No. 312, Sewa Bhawan,
R.K. Puram, New Delhi-110066.

Dated, the 29 August, 2001.

To

The Executive Engineer,
N.E.I. Division-III,
Central Water Commission,
ITANAGAR.

Sub:- Grievance case of Smt. Pawan Gupta W/o Shri B.L.P. Gupta, Work-charged Gr.I regarding transfer of her husband from NEI Circle, CWC, Shillong to Muzaffarpur or anywhere Office situated in Bihar and non-supply of pay fixation order to her husband and withholding of pay arrears.

Sir,

I am to refer to the representation dated 6.9.1999 of Smt. Pawan Gupta on the above subject and to say that most of the grievances mentioned in her representation have already been settled and replied to vide CWC's letter of even number dated 5.12.1996 (Copy enclosed). It is reiterated that transfer requests of workcharged staff are not being entertained as it affects promotion avenues of workcharged staff in the Circle where they request for transfer.

With regard to pay fixation and withholding of pay arrears to Shri B.L.P. Gupta you have intimated vide your letter dated 27.1.2001 that pay fixation order on account of Fifth Central Pay Commission's recommendations have since been issued on 20.2.99, a copy of which was also endorsed to the Sub-division where Shri B.L.P. Gupta has been working and the arrears of payment for the period from 1.6.97 to 20.2.99 have also been paid to him.

As you are aware that representations from relatives and family members of Government servant in their unverified manner are violation of CWS (Conduct) Rule, 1964, Shri B.L.P. Gupta may be advised clearly to desist from such practice otherwise appropriate disciplinary action will be taken against him as per rule. Shri B.L.P. Gupta may also be informed accordingly under intimation to Commission.

Enclosed - An above.

Yours faithfully,

P. S. Tiwari,

(PREM NATH)
Under Secretary

EC-II P.R. (p.p. u/s only)

C/S

P/S JMD

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No. B-11011/2/94-E.XII/1358. 52

Government of India
Central Water Commission

Room No.312, Sewa Bhawan
R.K. Puram, New Delhi-66
and effects of health care issued to Shri Pawan Gupta, B.E. (Hons) M.A.,
B.Sc. (Hons) M.Sc. (Hons) in all branches of Dated, the 10th December, '96
stated that Sh. Gupta has been deputed to New Delhi
G.S.I.L. Thus all the pending dues would be settled
in New Delhi. A copy of letter No. B-11011/2/94-E.XII/1358
dated 21.7.96 received from The Secretary to the Govt. of India,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi-110001.

Attn: Sh. A.K. Barua, US(E-I), MOWR:

Sub: Representation of Smt. Pawan Gupta wife of Shri
B.L.P. Gupta, W/s Gr.I regarding transfer of her
husband and payment of dues etc.

Sir,

I am to refer to your DO letter No.19/6/96-E.I
dated 16.4.96 and in continuation of this Commission's
endorsement even No. dated 26.7.96 on the above subject
wherein the position with regard to the ban in the inter-
circle transfer of W/c staff has already been conveyed to
you via our letter quoted above.

With regard to payment of dues etc., is concerned
it is stated that the services of Sh.B.L.P. Gupta were
terminated w.e.f 24.2.84 and he was reinstated in service
on 2.2.87 by CAT order. He was paid arrear of Rs.52,483.
on 4.2.90 for the period of 24.2.84 to 1.2.87. In addition
to this he was paid Rs.23,342.00 for the period 10.6.82 to
23.2.84 by mistake. Thus he was paid total amount of Rs.
75,942.00. Later on, it was detected that excess payment
of Rs.23,342.00 was made to Sh.Gupta for the period 10.6.
to 23.2.84. Prior to termination from service Sh. Gupta
on EOL for 20 month 14 days and HPL for 40 days. The various
leaves availed by him were sanctioned by Executive Engi-
neer time to time. As this period is prior to his termina-
tion from service, hence, there is no implication of judge
Hon'ble CAT which impinged the termination order.
Hon'ble CAT which impinged the termination order.
arrears payment of Rs.23,342.00 was fully adjusted
instalments of Rs.586 p.m w.e.f 8.92 to 2.96. Hence
recovery was made due to over payment to Sh.Gupta in
of any prejudicial intention of the Department.

Contd...2/-

136 (3) With regardsto anomaly in Shri.Gupta's GPF account, SE, NEIC,CWC has stated that the G.P.F and Government contribution shown in the statement as Rs.5904 has been verified from the record of EE, P&I division CWC and found that the above amount is correct and there is no anomaly in his GPF account. SE has further stated that differences of leave salary has been paid to Shri B.L.P. Gupta on September '96 and direction has been issued to Executive Engineer to pay the children education allowances to Sh.Gupta. SE has also stated that Sh. Gupta has been declared permanent W.e.f. 5.9.81. Thus all the pending dues remain with the Department have been settled. A copy of letter No.NEIC/PR/26/96/3252-6 dated 5.11.96 received from SE,NEIC, Shillong alongwith relevant enclosures are enclosed for kind perusal.

Yours faithfully,

Encl: As above.

604/1196
(J.L. CHUGH)
Under Secretary.
CWC