

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓
O.A./T.A No. 35/101

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E.P/M.A No.....

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SECTION OFFICER (Judl.)

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

Original APPLICATION NO. 351/2001

Applicant (s) A. C. Deb Nath

Respondant(s) A. C. I. Roy

Advocate for the Applicant: M. Chanda, Mrs. K. D. Goswami
A. N. Chakraborty, H. D. Datta

Advocate for the Respondant: Case.

Notes of the Registry

Date

Order of the Tribunal

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH, GUWAHATI. 31.8.01 Present: The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.

This application is in form
but not in time Condonation
Petition is filed not filed vide
M. P. No. 79548948 C.F.
for Rs. 50/- deposited vide
IPO/BQ No. 79548948
Dated 30.8.2001

Respondant(s) A. C. I. Roy

Advocate for the Applicant: A. N. Chakraborty

Advocate for the Respondant:

Notice preferred and sent
to D/s for issuing the order
dent No 1408 by Regd
A/D.

3/9/01

Issued vide O/N No 3423 W

3428 W 6/9/01

ORDERS SHEET

Issue notice on the respondents

to show cause as to why the application
shall not be admitted. Returnable by
4 weeks. Mr A. Deb Roy, learned Sr.C.G.
S.C for the respondents accepts notice
on behalf of the respondents.

List on 4.10.2001 for admission.
In the meanwhile, the applicant is not
to be repatriated till the returnable
day.

[Signature]
Vice-Chairman

Order of the Tribunal

List on 12/11/01 for admission. In the
mean time, the respondents may file written stat-
ement or submit instructions. Interim
order shall continue.

[Signature]
Member

[Signature]
Vice-Chairman

No. reply has been
filed.

3/10/01

Order dtd. 4/10/01
Communicated to the
Karties Council
by
5/10/01.

No written statement
has been filed.

9.1.02.

~~no response filed~~

An affidavit in opposition
has been filed on behalf
of the respondents NO.
1 & 2 at p. 36-62. B
file is incomplete submitted
4/2/02.

12.11.01

It has been stated at bar that
written statement submitted in O.A.
258/2001 is similar in this O.A. also.

List on 4/12/01 alongwith O.A.
No. 258/2001 for order.

K. L. Sharma
Member

[Signature]
Vice-Chairman

mb

***28*

4.12.01

Four weeks time is allowed to the
respondents to file written statements.

List on 10.1.02 for order.

[Signature]
Member(J)

K. L. Sharma
Member(A)

mb

10.1.02

List the matter for hearing on
18.2.2002. The applicant may file
rejoinder, if any, within 2 weeks from
today.

K. L. Sharma
Member

[Signature]
Vice-Chairman

mb

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Date of Order: This the 18th Day of February, 2002

1. Original Application No. 258 of 2001

Mr. Jummi Kamun
S/O Sri T. Kamun
I.F.C.D. Daporijog
Upper Subansiri District
Arunachal Pradesh Applicant

By Advocate Mr. B. Banerjee, Mr. M. Chanda, Mr. S. K. Ghosh

-Vs-

1. Union of India
Through Secretary, Govt. of India,
Ministry of Finance
New Delhi.
2. Accountant General (A&E)
Mdghalaya etc.
Shillong.
3. State of Arunachal Pradesh
(Represented by the Secretary to the
Govt. of Arunachal Pradesh,
P.W.D. Naharlagun A.P.)
4. Chief Engineer, PWD
Arunachal Pradesh.
Naharlogun, A.P.
5. Director of Accounts and Treasuries
Arunachal Pradesh Naharlagun
Arunachal Pradesh
6. Executive Engineer
Daporijog P.W.D. Division
Arunachal Pradesh. ... Respondents.

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

2. Original Application No. 351 of 2001

Sri Upendra Chandra Debnath
Son of Late Sarbananda Debnath
working as Divisional Accountant,
Office of the Executive Engineer,
Rural Works Division
Tawang, Arunachal Pradesh Applicant

By Advocate Mr.M.Chanda, Mrs. N.D.Goswami,
Mr.G.N.Chakraborty.

-Vs-

1. Union of India
through Secretary, Govt. of India,
Ministry of Finance
New Delhi
2. Accountant General(A&E)
Mdghalaya etc.
Shillong
3. State of Arunachal Pradesh
Represented by the Secretary to the
Govt of Arunachal Pradesh,
P.W.D., Naharlagun A.P.)
4. Chief Engineer, PW.D.
Western zone, Itanagar,
Arunachal Pradesh
5. Director of Accounts and Treasuries
Arunachal Pradesh, Naharlagun
Arunachal Pradesh
6. Executive Engineer
Office of the Executive Engineer,
Rural Works Division,
Tawang, Arunachal Pradesh Respondents.

By Advocate MR.A.Deb Roy, Sr.C.G.S.C.

HON'BLE MR.JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN

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

O R D E R.

D.N.CHOWDHURY(J)V.C.:

These two applications are squarely covered by
the Judgment and Order of this Tribunal in O.A.No.

contd/-

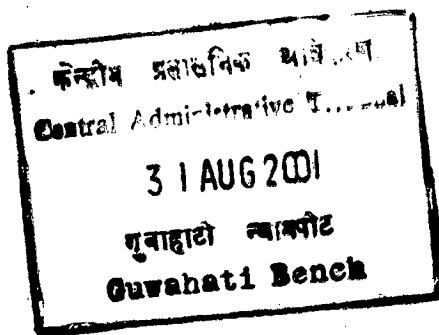
230 of 2001, O.A.No.234 of 2001, 276 of 2001 which were disposed of on 11th January, 2002.

In the light of the said orders these applications stands disposed. No order as to costs.

Sd/VICE CHAIRMAN

Sd/MEMBER (Admn)

LM



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act,
1985)

Title of the case : O.A. No. 351/2001

Sri Upendra Chandra Debnath: Applicant

- Versus -

Union of India & Others: Respondents.

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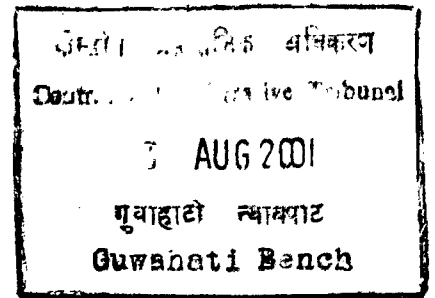
Date : 31.08.2001

Filed by

Maiti Chandra
Advocate

Upendra

Filed by the applicant -
Maiti Chandra - Advocate
31.8.01



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act,
1985)

O.A. No. 351/2001

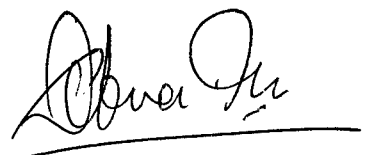
BETWEEN

Sri Upendra Chandra Debnath
Son of Late Sarbananda Debnath
Working as Divisional Accountant,
Office of the Executive Engineer,
Rural Works Division
Tawang, Arunachal Pradesh.

..Applicant

-AND-

1. Union of India
through secretary, Govt of India,
Ministry of finance
New Delhi
2. Accountant General (A&E)
Mdghalaya etc.
Shillong.
3. State of Arunachal Pradesh
(Represented by the Secretary to the
Govt. of Arunachal Pradesh,
P.W.D. Naharlagun A.P.)
4. Chief Engineer, P.W.D.
Western Zone, Itanagar,
Arunachal Pradesh



5. Director of Accounts and Treasuries
Arunachal Pradesh Naharlagun
Arunachal Pradesh

6. Executive Engineer
Office of the Executive Engineer,
Rural Works Division,
Tawang, Arunachal Pradesh

..... Respondents.

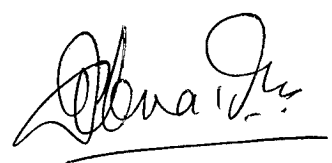
DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:-

i. Illegal and arbitrary action of the Respondent No. 1 whereby the applicant is sought to be repatriated to his parent department, namely, P.W.D. Arunachal Pradesh, Itanagar with effect from 31.8.2001 without considering the case of the applicant and others who are similarly situated for extending the period of deputation for a further period of two years from the date of the expiry of their respective tenure of the deputationists including the present applicant in the interest of public service in pursuance of the OM No. DA Cell/101/93-94/99-2000/485-490 dated 03.08.01 and praying for direction upon the respondents to allow the applicant in the same capacity in his present place of posting in terms of the letter No. DA/TRY/15/99 dated 16th November 1999 and also in terms of the letter No. DA/TRY/15/1999 dated 15.11.1999.

2. Jurisdiction.

That the applicant declares that the application is well within the jurisdiction of this Hon'ble Tribunal.



3. Limitation

That the present applicant further declares that this application is filed within the prescribed period of limitation as per Administrative Tribunals Act, 1985.

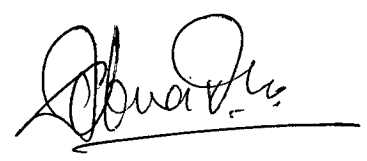
4. Facts of the Case

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights and privileges as guaranteed under the Constitution of India and other legal rights accrued there under.

4.2 That the applicant begs to state that the State of Arunachal Pradesh came into existence in the year 1987. In the year 1986 the applicant was appointed as a Upper Division Clerk.

4.3 That the applicant begs to state the case of the applicant is that the Accountant General, Meghalaya, Arunachal Pradesh etc., Shillong i.e., the Respondent No.1, invited applications from the candidates who were willing to serve temporarily as Divisional Accountant either in Manipur, Tripura and Arunachal Pradesh in Public Works Department for a period of one (1) year on deputation basis. In fact, a circular bearing No. DA CELL/2-49/97-98/Vol. II/245 dated 20.1.98 was issued whereby the said applications were invited for the post of Divisional Accountant. According to the said Circular, Upper Division Clerk of the said Public Works Department of the States of Manipur, Tripura and Arunachal Pradesh having a minimum 8 (eight) years of working experience as U.D.C. and holding the post of equivalent to Sr. Accountant or Accountant were eligible to apply for the said post of Divisional Accountant. It was also made clear that the deputationists will be selected on the basis of selection made through competitive examination which would be held on 26th and 27th March, 1998.

4.4 That in pursuance of the aforesaid circular dated 20.1.98, the applicant through proper channel applied for the post of Divisional Accountant. He appeared in the written examination which was held on 26th and 27th March ' 98 and finally he was selected by the Respondent



No.1 for the post of Divisional accountant in the pay scale of Rs. 5000-8000 in the combined cadre of Divisional Accountant General, Meghalaya, Shillong. The applicant who was earlier posted in the office of the Executive Engineer, Seppa, PWD, AP was appointed as Divisional Accountant and posted in the office of the Executive Engineer, Sangram, P.W.D., Arunachal Pradesh. But thereafter transferred and posted to R.W.D. Tawang, Arunachal Pradesh in the month of November, 1999. Copy of the said of appointment was issued by the Respondent No.1 vide letter No. DA Cell/2-49/94-95/1058-1064 dated 24.7.1998.

A copy of the said letter dated 24.7.1998 is annexed as **Annexure-1.**

4.5 That the applicant begs to state that the applicant was initially appointed as Divisional Accountant as a deputationist for a period of one year, but subsequently extension has been made on yearly basis. It may be pointed out that there was altogether 38 Public Works Divisions under p.W.D./R.W.D., Arunachal Pradesh and correspondingly there were 38 posts of Divisional Accountant which are manned by the deputationists. According to the State Government, without prior consultation, the recruitment as well as posting of Divisional Accountant were made by the Respondent No.1 though the said posts were borne in the establishment of the Executive Engineer and paid from the State Exchequer. However, the pay scale enjoyed by the said Divisional Accountant were enhanced without the prior approval of the State of Arunachal Pradesh which had caused a great problem in the form of pay and allowances to the said 38 Working Divisional Accountants. So the Government of Arunachal Pradesh was of the view that the serving Divisional Accountant in the Public Works Department on deputation basis may be allowed extension for further period of 2 (two) years from the date of expiry of the present respective tenure in the interest of public service since the Govt. of Arunachal Pradesh has not yet finally decided regarding recruitment as well as posting of Divisional Accountant for 38 working Divisions of Public Works Department. The aforesaid decision of the Government was communicated to the Respondent No.1 by the Joint Director of Accounts in the Directorate of Accounts, Government of Arunachal Pradesh, i.e.



Respondent No.4 vide letter No. DA/TRY/15/99 dated Naharlagun, theth 15 November, 1999.

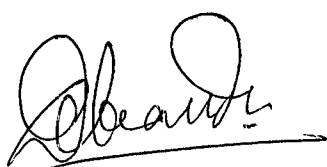
It will be pertinent to mention here that the Joint Director of Accounts, while endorsing a copy of the said letter dated 15.11.1999 to the Chief Engineer, P.W.D., the serving Divisional Accountant who are on deputation for a further period of 2 (two) years on expiry of their present term of deputation. Further extension of deputation for two years should be granted and meanwhile they were requested to direct the Executive Engineer concerned not to accept joining report of new appointee in the rank of Divisional Accountants without consulting the State Govt./Directorate of Accounts and Treasuries, Naharlagun.

A copy of the letter dated 15th November, 1999 and letter dated 16.11.1999 are annexed hereto and marked as **Annexure-2 and 3** respectively.

4.6 That the applicant begs to state that in spite of receipt of the aforesaid letter of request made by the Respondent No.4 in letter dated 15th November, 1999 the Respondent No.1 vide order No. DA. Cell/194-2000 dated 03.08.01 decided to repatriate the applicant to his parent department with effect from 31.8.2001. The applicant was requested to report for further duty to the Chief Engineer, P.W.D., Arunachal Pradesh, Itanagar. A copy of the said letter was also forwarded to the Chief Engineer, P.W.D., Arunachal Pradesh, Respondent No.3 to arrange the posting of the applicant.

A copy of the impugned order dated 11.6.2001 is annexed hereto and the same is marked as **Annexure-4**.

4.7 That the applicant begs to state and submit that though the applicant has been working on deputation, his appointment is against a permanent post in a substantive capacity. In the instant case, the applicant, being a deputationist, is being replaced by another deputationist and as such there is no reason as to why the applicant should be considered for permanent absorption to the post wherein he is presently working.



4.8 That the applicant begs to state that in the instant case, the Respondent No.1 has failed to take into account of the letter dated th15 November, 1999 which has been addressed to Respondent No.1 by Respondent NO.4 with a request to grant extension of the serving Divisional Accountant under the Public Works Department on deputation basis for a further period of two years from the date of expiry of the present respective tenure in the interest of public service. It may be further pointed out that the Respondent No.4 while forwarding the copy of the said letter dated 15th November, 1999 to respondent No.2 with a further request to give continuation to the serving Divisional Accountant who were on deputation for further period of two years on the expiry of the present term on deputation. It may also be further pointed out that the Chief Engineer, RWD, Itanagar, Respondent no.3 was further directed to direct the Executive Engineer concerned not to accept the joining report of the new appointee of Divisional Accountant without consulting the Sta Government/Director of Accounts, Treasury, Naharlagun. At this juncture, it may be pointed out that the pay scale of the deputationists who were working as Divisional Accountant is much higher than that of the Accountant or Upper Division Clerk. The Government of Arunachal Pradesh has not yet decided about the said anomalies in pay scale and, accordingly, request was made to continue their existing deputationists for another terms of two years. But the said aspect of the matter was completely over looked by the Respondent No.1 while issuing the impugned order of repatriation and, as such, the impugned order dated 03.08.2001 is bad in law and liable to be set aside and quashed.

4.9 That the applicant begs to state in the instant case, in case the applicant is repatriated to his parent department, then the applicant had to join as Upper Division clerk or a Senior Accountant or Accountant whose pay scale is much lower than that of the Divisional Accountant. Considering this aspect of the matter, in order to prevent such anomaly in the pay scale, the Govt. of Arunachal Pradesh requested the Respondent No.1 to allow the serving deputationists for another period of 2 years from the date of expiry of the tenure till necessary arrangement has been

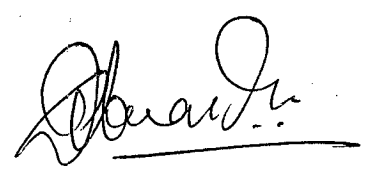


made in this regard. In fact, the Chief Engineer, Respondent No.3 was directed not to allow any new deputationist to work in the post of Divisional Accountant without the approval of the Respondent No.4 or Respondent No.2. The aforesaid factors were never taken into consideration by the Respondent No.1 while passing the impugned order of repatriation dated 03.08.2001 and as such, the said order was passed without application of mind on irrelevant consideration and same is therefore liable to be set aside and quashed.

4.10 That the applicant submits that the Respondent No.1 without application of mind arbitrarily, whimsically, capriciously and discriminatorily issued the order of repatriation and failed to take into consideration the relevant factors including the request made by the State Government for extension of the serving deputationists to prevent anomalies in their pay scale. As a result, the said impugned order or repatriation is bad in law and the same is liable to be set aside and quashed.

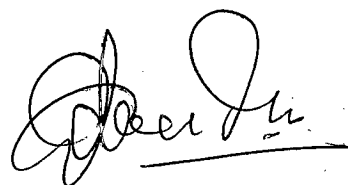
4.11 That the applicant begs to submit that in case the applicant joins the parent department in case of repatriation, then the applicant would have to join as a Upper Division Clerk, as a result he would draw a lesser pay scale than of a Divisional Accountant. This will amount to reduction in rank and the same is not permissible under the law as the same amounts to infringement of Articles 14,16, and 21 of the Constitution of India and, as such, the impugned order of repatriation is liable to be set aside and quashed.

4.12 That the applicant submits that the Respondent No.1 has illegally passed the impugned order of repatriation without following the procedures established by law and in violation of the existing circulars governing the services of the deputationists. Moreover they also failed to take into account the request made by the State Government and, therefore, under any circumstances the impugned order of repatriation is liable to be set aside and quashed.



4.13 That the applicant begs to state that as on date of filing of the present application, the applicant is still holding the post of Divisional Accountant in the office of the Executive Engineer, R.W.D., Rural Work Division, Tawang, Arunachal Pradesh on deputation basis. A prima facie case has been made out for causing interference with the impugned order of repatriation. Therefore, unless and until the interim order so prayed for is not granted, irreparable loss and injury shall be caused to the applicant. Balance of convenience lies in favour of the applicant.

4.14 That it is stated that the Director of Accounts & Treasuries, Govt. of Arunachal Pradesh have decided to take over the aforesaid cadre of Divisional Accountant under the direct control of the Director of Accounts and Treasuries, Govt. of Arunachal Pradesh with immediate effect and further decided that persons those who are born on regular basis in the cadre of Divisional Accounts Officer/Divisional Accountants in the State of Arunachal Pradesh on regular basis and opt to come over Arunachal Pradesh State Cadre will be taken over on status quo subject to acceptance of the State Govt. and also decided that hence forth no fresh Divisional accountant on deputation will be entertained. Cases of those who are presently on deputation and serving in the State, shall be examined at this end for their future continuation even after completion of existing term of deputation and further requested to take necessary action so that the process of the transfer of due cadre along with the willing personnel can be completed immediately. Formal notification is under issue and shall be communicated in due course. The aforesaid decision of the Director of Accounts and Treasuries (A&E), Govt. of Arunachal Pradesh would be evident from the letter bearing No. DA/Tres/15/99 dated 12.1.2000 addressed to the Accountant General (A&E) Arunachal Pradesh, Meghalaya, Shillong. The relevant portion of the letter dated 12.1.2000 is quoted below :



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

Sir,

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

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

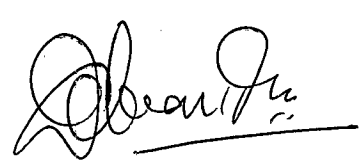
It is, therefore, requested to take necessary action at your level so that the process of the transfer of the Cadre along with the willing personnel can be completed immediately.

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

Yours faithfully,

Sd/-

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

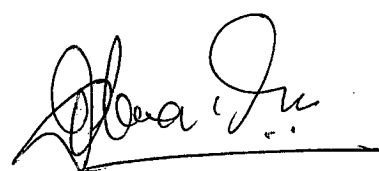


From above, it is quite clear that under the changed circumstances, the applicant who is an employee of the Govt. of Arunachal Pradesh, Meghalaya, is now required to be considered for absorption by the Govt. of Arunachal Pradesh instead of Accountant General, (A&E), Arunachal Pradesh, Meghalaya, Shillong.

In these compelling circumstances the applicant finding no other alternative withdrawn the Original Application pending before this Hon'ble Tribunal with the liberty to make appropriate application in appropriate forum. Therefore under the changed circumstances the present Writ petitioner is approaching this Hon'ble Court being the appropriate forum for redressal of his grievances more particularly with the prayer for absorption in the cadre of Divisional Accountant under the Govt. of Arunachal Pradesh.

Copy of the letter dated 12.1.2000 issued by the Govt. of Arunachal Pradesh is annexed as Annexure-4.

4.15 That it is stated that similarly situated Divisional Accounts who were appointed earlier than the present applicant on deputation basis from the State of Arunachal Pradesh under administrative control of Accountant General (A & E), Meghalaya, Arunachal Pradesh etc., on completion of their term of deputation, they were sought to be repatriated to their parent organisation without providing any opportunity for consideration of their permanent absorption in the changed circumstances as stated above, approached this Hon'ble Gauhati High Court under Article 226 of the Constitution challenging the impugned order of repatriation, those Writ Petitions were subsequently transferred before this Hon'ble Tribunal under Section 29 of the Administrative Tribunals Act, 1985 which were renumbered as O.A. 200/2001, O.A. 201/2001, O.A. 202/2001(T), O.A. 203/2001, O.A. 204/2001, O.A. 205/2001, O.A. 206/2001, O.A. 207/2001 and O.A. 208/2001. However all the aforesaid cases were disposed of by this Hon'ble Tribunal, vide Judgment dated 22.6.2001 wherein it is held that since the State Government has extended the period of deputation and



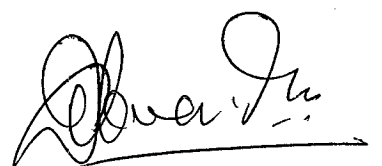
further has taken a decision to absorb the applicants in the State Cadre by order dated 12.1.2001, therefore nothing is left to be decided in those Original Applications and accordingly disposed of all the original application holding that the order of repatriation impugned in those Original Application stands superseded vide order dated 15.11.1999 and liberty also granted to those applicants to approach this Tribunal if there any change in the present situation.

In the similar facts and circumstances another applicant namely Shri Tashi Namgey, Divisional Accountant (on deputation) approached this Hon'ble Tribunal being aggrieved with the order of repatriation dated 30.5.2001. The said matter came up for admission before this Tribunal on 28.6.01 and the Hon'ble Tribunal was pleased to admit the said Original Application and as an interim measure also directed the respondents that applicant be allowed to continue on deputation to the post till the next date. It is further submitted that similar issues also involved in O.A. 258 of 2001 (J. Kamun Vs. Union of India & Ors.) and the same is now pending before this Hon'ble Tribunal.

In view of the above factual position, the present applicant being similarly situated, entitled to an interim order to continue on deputation basis till the case of the applicant is considered for absorption. It is further stated that all formalities for taking over the entire Account set up by the Government of Arunachal Pradesh from the administrative control of Accountant General, (A & E), Arunachal Pradesh is under progress and only the Cabinet decision is awaited in this regard. It is further expected that the Cabinet decision will be communicated shortly.

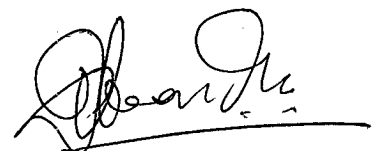
Copy of the Hon'ble Tribunal's order dated 22.6.2001, order dated 28.6.2001 and order dated 13.7.2001 are annexed hereto and marked as Annexures-5, 6 and 7 respectively.

4.16 That this application is made bona fide and for the cause of justice.



5. GROUND'S FOR RELIEF WITH LEGAL PROVISIONS :

- 5.1 For that the action of the respondent authority in denying consideration of the case of the applicant as per the request made by the Govt. of Arunachal Pradesh to extend the period of deputation for a further period of two years from the date of the expiry of the respective tenure of the deputationists including the applicant in pursuance of O.M. No. DA/TRY/15/99 dated 15.11.99, present tenure of the applicant will expire on 8.9.2001 is illegal, arbitrary and highly discriminatory and as such this is a fit case where this Hon'ble Tribunal will exercise jurisdiction and grant relief otherwise due to him.
- 5.2 For that the applicant, if repatriated to his parent department at this juncture, will have to join as Upper Division clerk only and in such a contingency he would draw a lesser pay scale than that of a Divisional Accountant. This will amount to reduction in rank which is not permissible under the law in as much as the same will amount to infringement of the provisions contained in Article 14, 16 and 21 of the Constitution of India and as such the impugned order of repatriation is bad in law and liable to be set aside and quashed.
- 5.3 For that the applicant is sought to be replaced by another deputationist in the rank of Divisional accountant without considering his case for permanent absorption and as such the action of the authorities is bad in law and liable to be set aside.
- 5.4 For that the impugned order dated 03.08.2001 issued by the Respondent No.1 directing repatriation of the applicant to his parent department, (PWD), Arunachal Pradesh) with effect from 31.8.2001 will create serious civil consequences and as such the action of the authorities is bad in law and liable to be set aside.



5.5

For that the applicant will have to join as Upper Division Clerk on repatriation to his parent department whose pay scale is much lower than that of the Divisional Accountant and as such it will create serious anomalies in the pay scale to be given to the applicant on repatriation and that was why the State Govt. of Arunachal Pradesh took up the matter with the Respondent No.1 requesting him to allow the serving deputationists for another period of 2 years from the date of expiry of the present tenure till necessary arrangements are made by the State Govt. in this regard. The Respondent No.3 was also directed by the State Govt. to ensure that no new deputationist to work in the post of Divisional Accountant is allowed without approval of the Respondent Nos 2 and 4. The respondent No.4 while issuing the impugned order dated 03.08.2001, never took into consideration these factors and the impugned order was passed arbitrarily and without proper application on irrelevant consideration and as such the order is liable to be set aside and quashed.

5.6

For that in view of the decision now taken by the Govt. of Arunachal Pradesh to take over the cadre of the Divisional Accounts Officer/Divisional Accountants, the applicant is entitled to continue in the post of Divisional accountant till a decision is taken and as such the impugned order is bad in law and is liable to be set aside.

5.7

For that the applicant had joined on 9.8.98 and as such he would be completing the deputation period of 3 years on 8.8.2001 and as such the impugned order holding that the period of deputation would expire on 31.8.2001 is apparently erroneous and is liable to be set aside.

5.8

For that in any view of the matter the impugned order is bad in law and is liable to be set aside.

5.9

For that the similar matter has already been decided by this Hon'ble Tribunal in a series of case vide order dated 22.6.2001, as such the applicant is entitled to similar benefit.

5.10 That the similar matter is pending before this Hon'ble Tribunal for consideration i.e. O.A. No. 230 of 2001 (Tashi Namgey Vs. Union of India & Others) and an interim order was passed in the said O.A. directing the respondents to allow the applicant to continue in the existing post on deputation basis, as such the applicant is also entitled to the similar benefits.

6. Details of remedies exhausted :

That the applicant states that he has no other alternative or other efficacious remedy available before him than to file this application.

7. Matters not previously filed or pending with any other Courts/Tribunal.

The applicant further declares that he had not filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition, or suit is pending before any of them.

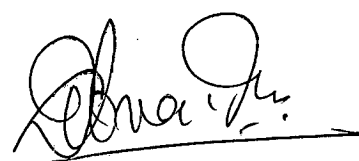
8. Reliefs sought for :

8.1 That the Hon'ble Tribunal be pleased to set aside the impugned order of repatriation issued under letter No. DA CELL/10 1/93-94/99-2000/485-490 dated 03.08.01 (Annexure- 4).

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue on deputation basis to the post of Divisional Accountant in the office of the Executive Engineer, Rural Works Division, Tawang. District Tawang Arunachal Pradesh till consideration of his case for permanent absorption to the post of Divisional Accountant.

8.3 To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.

8.4 Cost of the case.



9. Interim Prayer:

During the pendency of this application, the applicant prays for the following interim relief :

- 9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned order of repatriation issued under letter No. DA CELL/10-1/93-94/99-2000/485-490 dated 03.08.01 (Annexure- 4) till disposal of this Original Application.
- 9.2 That the respondents be directed to allow the applicant to continue to work on deputation basis to the post of Divisional Accountant till disposal of this application.

The above interim reliefs are prayed on the grounds explained in paragraph 5 of the Original Application and if the same is not granted the applicant will suffer irreparable loss and injury.

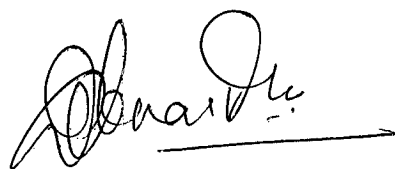
10.
This application is filed through Advocate.

11. Details of Postal Order :-

- i. Postal Order No.: 76 548948
ii. Date of Issue : 30-8-2001
iii. Issued from : G.P.O., Guwahati
iv. Payable at : G.P.O., Guwahati

12. List of enclosures :

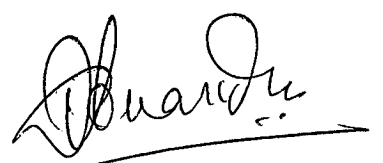
As per Index.



V E R I F I C A T I O N

I, Sri Upendra Chandra Debnath, son of Late Sarbananda Debnath, aged about 41 years, permanent resident of Dharmanagar, North Tripura District, Tripura,, do hereby verify and declare that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are the legal advice which I believe to be true and I have not suppressed any material fact.

And I sign this verification on this the 31st day of August, 2001.


Signature

OFFICE OF THE ACCOUNTANT GENERAL (AGE) MEGHALAYA ETC. SHILLONG.

E.C. NO. DA CELL/ 99

Dated. 24.7.98

Consequent on his selection for the post of Divisional Accountant (on deputation) basis) in the Pay scale of Rs. 5000-150-8000/- in the combined cadre of Divisional Accountants under the administrative control of the office of the Accountant General (A&E) Meghalaya etc., Shillong, Shri

Upendra Chandra Deb Nath, UDE at present working in the Office of the Executive Engineer, Seppa Purni, Seppa, Arunachal Pradesh is appointed to the post of Divisional Accountant on deputation basis and posted in the Office of the Executive Engineer, Sangram Purni, Sangram, Arunachal Pradesh.

2. This offer of appointment is subject to the acceptance of all the terms and conditions stipulated in this appointment letter.

3. Shri Upendra Ch. Deb Nath will have to join to the post of Divisional Accountant in the O/o the Executive Engineer, Sangram Purni, Sangram, A.P. within 30 days, from the date of issue of this order, failing which this offer of appointment as Divisional Accountant on deputation, will automatically stand cancelled and position may be offered to some other eligible and selected candidate.

4. No request for extension of joining time, shall ordinarily be entertained.

5. Before joining as Divisional Accountant on deputation Shri Upendra Ch. Deb Nath is directed to submit his acceptance to the offer of appointment (Acceptance letter is to be addressed to the A.G. (A&E) Meghalaya etc., Shillong) and in the letter of acceptance to the offer he will also have to intimate clearly that he has accepted all the terms and conditions stipulated in the appointment letter. The letter of acceptance is to be submitted to the Executive Engineer, Sangram Purni, Sangram, A.P. for onwards transmission to the Accountant General (A&E) Meghalaya etc., Shillong.

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Adv

6. The period of deputation of Shri Lipendra Ch. Debnath will be for a duration of 1(one) year only, from the date of joining as Divisional Accountant on deputation and no way he shall accrue any right to claim for Permanent absorption as Divisional Accountant. The period of deputation may be extended upto 3 years, if his service is considered to be needed. But in no case, the period of deputation will be extended beyond the period 3 years.

8. No representation for change of place of posting will be entertained, under any circumstances.

8. The pay and deputation (duty) allowances in respect of Shri Lipendra Ch. Debnath

will be governed by the Government of India, Ministry of Finance Grievances and Pension, (Department of Personnel and Training) letter No.2/12/87-Estt(Pay-II) dated 29.4.1988.

and as amended and modified from time to time. While on deputation Shri Lipendra Ch. Debnath may elect to draw either the pay in the scale of pay of the deputation post or his basic pay in the parent cadre plus personal pay, if any, plus deputation (duty) allowance. Shri Lipendra Ch. Debnath

Debnath, on deputation, should exercise option

in this regard within a period of 1(one) month from the date of joining the assignment (i.e. the aforesaid post of deputation). The option once exercised by Shri Lipendra Ch. Debnath

Debnath shall be treated as final and cannot be altered/changed later under any circumstance whatsoever.

9. The Dearness Allowance, CCA, Children Education Allowance, T.A., L.T.C., Leave, Pension, etc will be governed by the Govt. of India, Ministry of Finance OM No.F1(6)E-IV(A) 62 dtd.7.12.1962 (incorporated as Annexure to Govt. of India decision No.L in Appendix 31 of Choudhury's G.S.R. Volume 17 (13th Edition) and as amended and modified from time to time).

10. Shri Lipendra Ch. Debnath

on deputation will be liable to be transferred to any place within the State of Arunchal Pradesh, Manipur and Tripura, in the combined cadre of Divisional Accountants under the administrative control of the Accountant General(A&S) Meghalaya etc., Shillong.

- 3 -

11. Prior concurrence of this office must be obtained by the Divisional Officer before Shri Upendra Ch. Sebnath (on deputation) is entrusted additional charges, appointed or transferred to a Post/Station other than that cited in this Establishment Officer.

[Signature]
Senior Accounts Officer,
i/c DA Cell.

Memo No. DA Cell/2-49/94-95/108-1069 Dt. 27.7.98

Copy forwarded for information and necessary action to :-

1. The Chief Engineer, PWD Deptt.; Itanagar, Arunachal Govt. of Arunachal Pradesh. Itanagar. He is requested to release Shri Upendra Ch. Sebnath and instruct him to join in the O/o the Executive Engineer, Sangram PWD. He is also requested to forward to this office the copy of the release order.

2. The Chief Engineer,

3. The Executive Engineer, Seppa PWD; Seppa; Arunachal Pradesh. He is requested to release Shri Upendra Ch. Sebnath and instruct him to join in the O/o the Executive Engineer

4. The Executive Engineer, Sangram PWD; Sangram PWD; Sangram PWD. He is requested to intimate the date of joining of Shri Upendra Ch. Sebnath. He is also requested to forward the offer of acceptance of Shri Upendra Ch. Sebnath as mentioned Para 5 of this appointment letter. Unless the offer of acceptance is submitted by Shri Upendra Ch. Sebnath he is not to be allowed to join in his Division.

5. Shri Upendra Ch. Sebnath i/c the Executive Engineer, Seppa PWD; Seppa; A.P.. He is directed to join within 30 days, in the O/o the Executive Engineer, Sangram PWD; Sangram PWD; Sangram PWD. He is also directed to submit his acceptance of offer as mentioned in Para 5 of this appointment letter and arrange to forward the same to this office.

6. P.C. File of Shri Upendra Ch. Sebnath.
7. E.C. File.
8. S.C. File.

[Signature]
Senior Accounts Officer.

ANNEXURE-2

GOVT OF ARUNACHAL PRADESH
DIRECTORATE OF ACCOUNTS & TREASURIES : NAHARLOGUN

(THROUGH FAX/SPEED POST)

No.DA/TRY/15/99/9629

Dated Naharlogun the 15th Nov'99

To,

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

Sub :-Recruitment/posting of regular Divisional Accountants.

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

Sir,

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

The Govt of Arunachal Pradesh is of the view that recruitment and posting of the DAOs/DAs for 38 working Divisions of PWD may not be done at this stage, since final decision of the Govt is still awaited. The serving Divisional Accountants in the works Deptts on

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deputation basis may be allowed extension for a further period of two years from the date of expiry of their present respective tenure in the interest of public service. This will provide succor to the poor financial position of the state prevailing at the present time. This arrangement is proposed till view of the State Govt in final shape could be put forward to your esteem office.

Yours faithfully,

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

Fax No 0360 244281

Copy to :-

- 1.. The P.S. to the Hon'ble Chief Minister, Arunachal Pradesh, Itanagar for information of the Hon'ble Chief Minister.
- 2.. The P.S. to the Commissioner (Finance), Govt of A.P., Itanagar for information.
- 3.. The P.S. to the Commissioner (Finance), Govt of A.P., itanagar for information.
- 4.. The Accountant General (Audit) Arunachal, Mehalaya etc, Shillong for favour of information.
- 5.. The Chief Engineer PWE (EZ/WZ)/RWD/PHED/IFCD/Power for information please. They are requested to give continuation to the serving Das who are on deputation, for a further period of 2 years on expiry of their present term of deputation & meanwhile they may please direct the Executive Engineer concerned not to accept joining report of new appointee (DA) without consulting the State Govt/Directorate of Accounts and Treasuries, Naharlogun.
- 6.. The Chief Accounts Officer PWD (EZ/WZ)/RWD/PHED/IFCD/Power for information.
- 7.. Office copy

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

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MOST URGENT

GOVT OF ARUNACHAL PRADESH
DIRECTORATE OF ACCOUNTS & TREASURIES
NAHARLAGUN.

NO.DA/TRY/15/99

Dated Naharlagun the 15th NOV. 1999

To,

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

Sub:- Divisional Accountant / Divisional Accounts
Officer - regarding

Sir,

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

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

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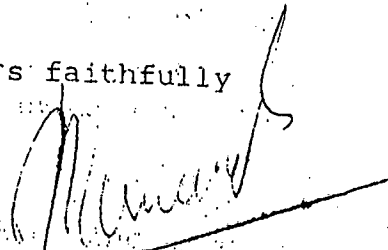
5.(b) Whether regular or on deputation :-

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

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

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

Yours faithfully



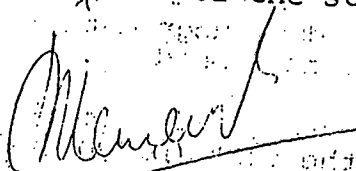
(C.M. Mongmaw)

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

Copy to:-

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

1. FAS/



(C.M. Mongmaw)

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

Annexure-4

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

No. DA CELL/34

Dated 3.8.2001

On expiry of the period of deputation to the post of Divisional Accountant under the administrative Control of the accountant General (A&E) Meghalaya etc., Shillong Shri Upendra Chandra Debnath at present posted in the office of the Executive Engineer, Rural Works Division, Tawang, Arunachal Pradesh is repatriated to his parent Department i.e. O/o the Chief Engineer, P.W.D. Itanagar, Arunachal Pradesh with effect from 31.08.2001 (A/N).

On being relieved of his duties on 31.08.2001 (A/N) from the office of the Executive Engineer, Rural Works Division, Tawang, Itanagar, Arunachal Pradesh.

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

Authority : AG's order dated 17.05.2001 at p/83N in the file No. DA Cell/1---1/93-94/98-99/Vol.V.

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Sr. Deputy Accountant General (Admn.)

Memo No. DA Cell/10-1/93-94/99-2000/485-490 Dated 3.8.01

Copy forwarded for information and necessary action to :

1. The Chief Engineer, P.W.D. Arunachal Pradesh, Itanagar. He is requested to arrange for posting of Sri Upendra Chandra Debnath, Divisional Accountant on deputation on his repatriation to his

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parent department. The concerned Executive Engineer has been asked to release Shri Upendra Chandra Debnath on or before 31.08.2001.

2. The Executive Engineer, Rural Works Division, Tawang, Arunachal Pradesh. He is requested to release Shri Upendra Chandra Debnath of his Division on or before 31.08.2001 as his term of deputation expires. He is also requested to instruct Shri Upendra chandra Debnath to report to his Parent Department i.e. O/o the Chief Engineer, P.W.D., Arunachal Pradesh, Itanagar.
3. Sri Upendra Chandra Debnath, Divisional accountant on depuration, O/o the Executive engineer, Rural Works Division, Tawang, arunachal Pradesh. He is hereby asked to report to his Parent Department i.e. O/o the Chief Engineer, P.W.D. arunachal Pradesh, Itanagar.
4. Personal File of Shri Upendra Chandra Debnath, DA (on deputation.
5. E.O. file.
6. S.C.File.

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Senior Accounts Officer

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Chandra
B.D.

ANNEXURE-5

GOVERNMENT OF ARUNACHAL PRADESH
Director of Accounts & Treasuries
Naharlagun-791110

No. DA/TRY/15/99

Dated, the 12th January, 2000

To:

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

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

Sir,

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

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

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

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

Yours faithfully,

Sd/-

(Y. Megu)

Director of Accounts & Treasuries
& Ex-Officio Dy. Secy(Finance)
Govt. of Arunachal Pradesh
NAHARLAGUN''

Attested
@
for

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

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

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

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

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

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

R. Prathapan . . . Applicant.

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

- Vs -

State of Arunachal Pradesh & Ors . . Respondents.

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

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

Shri Habung Lalin . . . Applicant.

By Advocate Mr. Tagia Michi

- Vs -

Union of India & Ors. . . Respondents.

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

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

Sri Keshab Chandra Das . . . Applicant.

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

- Vs -

State of Arunachal Pradesh & Ors . Respondents.

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

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

Sri Gamboh Hagey . . . Applicant.

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

- Vs -

The State of Arunachal Pradesh & Ors. Respondents.

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

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


Shri Rathindra Kumar Deb . . . Applicant.

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

- Vs -

The State of Arunachal Pradesh & Ors. Respondents.

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



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

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

- Vs -

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

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

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

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

- Vs -

Union of India & Ors. . . Respondents.
Mr.A.Deb Roy, Sr.C.G.S.C.

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

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

- Vs -

Union of India & Ors. . . Respondents.
Mr.A.Deb Roy, Sr.C.G.S.C.

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

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

- Vs -

The State of Arunachal Pradesh & Ors. . . Respondents.
Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R

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

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

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

contd..

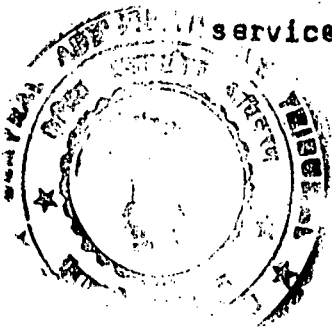
order, against which learned counsel for the parties have no objection.

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

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

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

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



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

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

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

Sir,

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

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

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

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

Yours faithfully,

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

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

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

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



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Sd/VICE CHAIRMAN
Sd/MEMBER (Adm)

Certified to be true Copy

प्रमाणित प्रतिलिपि

Section Officer (J)
आनुमान अधिकारी (अध्यक्ष)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati
गुवाहाटी बेंच, गुवाहाटी

11/7/2001

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

ORDER SHEET

APPLICATION NO 230 ... OF 2001.

Applicant (s) **Tashi Namgye**

Respondent (s) **Govt. of Arunachal Pradesh**

Advocate for Applicants (s) **Mr. G.K. Bhattacharyya**
Mr. B. Choudhury

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



Notes of the Registry

Date

Order of the Tribunal

28.6.01

We have heard Mr. G.K. Bhattacharyya, learned counsel for the applicant.

The application is admitted.
Issue notice fixing on 1-8-2001.

We have also heard learned counsel on question of the interim order. It appears that applicant Tashi Namgye was initially appointed on adhoc basis as U.D.C. vide order dated 14.8.89. He was regularised as U.D.C. on temporary basis vide letter dated 26.12.96. By order dated 24.7.98, the applicant was selected for the post of Divisional Accountant (on deputation basis) in the pay scale of Rs.5000-150-8000/- in the combined cadre of Divisional Accountants under the administrative control of the office of the Accountant General (A&E) Meghalaya etc. The applicant was posted to the Divisional Accountant at Seppa, P.W.D., Arunachal Pradesh. The

Contd..

28.6.01

period of deputation was for one year which was subsequently extended for another two years. The applicant is now aggrieved by the order dated 30-5-2001 by which he has been repatriated to the parent department with effect from 30-6-2001. Learned counsel has invited our attention to the judgment of this Tribunal dated 22-6-2001 by which several matters relating to regularisation / absorption of Divisional Accountant, serving on deputation basis, has been decided. The learned counsel also relies on order by the State Govt. of Arunachal Pradesh dated 12-1-2001 which indicates that all the Divisional Accountants totalling 91, serving on deputation basis are being absorbed. The learned counsel has submitted that at this juncture, if repatriated, he shall suffer irreparable loss and injury. It is stated that the applicant is one of the 91 persons mentioned in the order dated 12-1-2001.

Considering this aspect we direct that applicant shall be allowed to continue on the post on deputation till next date.



Certified to be true Copy,
प्रमाणित प्रतिलिपि

Section Officer (A),
प्रमुख अधिकारी (अतिरिक्त शाखा)
Central Administrative Tribunal
Guwahati Bench, Guwahati-8
गुवाहाटी न्यायपीठ, गुवाहाटी-८

11/7/2001

Sd/-
Vice-Chairman
Sd/-
Members (A)

FORM NO. 4

(See Rule 42)

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

ORDER SHEET

APPLICATION NO. 258 OF 2001

APPLICANT (S) Jummi Kamun

RESPONDENT (S) Union of India & Ors.

ADVOCATE FOR APPLICANT(S) Mr. M. Chanda, B. Banerjee & B. Ghosh.

ADVOCATE FOR RESPONDENT(S) C.G.S.C.

Notes of the Registry	dated	Order of the Tribunal
	13.7.01	<p>Issue notice on the respondents to show cause as to why the application shall not be admitted. Returnable by 4 weeks. Mr. A. Deb Roy, Learned Sr. C.G.S.C. for the respondents, accepts notice on behalf of the respondents. In the meanwhile, the applicant is not to be repatriated till the returnable day.</p> <p>List on 16-08-2001 for admission.</p>



Sd/VICE CHAIRMAN
Sd/MEMBER (Adm)

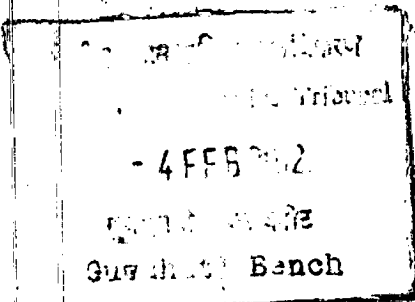
Certified to be true Copy
সত্যনির্ণয় প্রমাণিত

13/7/2001

Section Officer (Adm)
গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
Central Administrative Tribunal
গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
Guwahati Bench, Guwahati-8
গুৱাহাটী বেঞ্চ, গুৱাহাটী-৮

13/7/2001

Atty at Law
[Signature]



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IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL, GUWAHATI
(BENCH AT GUWAHATI)

IN THE MATTER OF

O.A. NO.351/2001

Shri Upendra Chandra Debnath,

Applicant

Versus

The Union of India & Ors.

Respondent

IN THE MATTER OF

An affidavit in opposition on behalf of Respondent No. 1 & 2

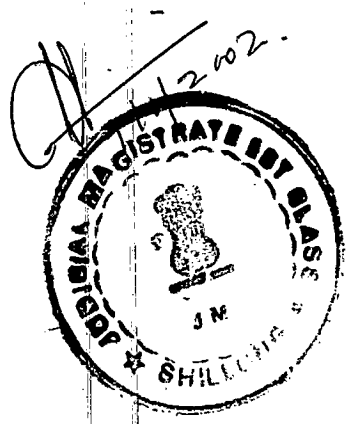
Filed by
31/1/02

WRITTEN STATEMENT

The humble Respondent submit the Written Statement as follows :-

1. That with regard to the Statement made in the Paragraphs 1,2,3 of the application the Respondent No.2 has no comments to offer.
2. That with regard to the Statement made in Paragraphs 4.1 and 4.2 of the application the Respondent No.2 has no comments to offer. The comments made in Para is matter of records.
3. That the Respondent No.2 humbly state that with regard to the Statement made in Paragraphs 4.3, the applicant is regular employee of the Government of Arunachal Pradesh who was posted on deputation as Divisional Accountant to the posts under the Administrative Control of Respondent No.2 for a specific period only.
4. That with regard to the Statements made in Paragraphs 4.4. and 4.5 of the application the Respondent No.2 humbly submit that a circular bearing No. DA Cell/2-47/97-98/Vol.II/245 dated 20.1.98 was issued inviting application from the interested Candidates for consideration to serve temporarily on deputation as Divisional Accountant initially for a period of 1 (One) year. The offer of appointment was subject to the acceptance of all the terms and condition stipulated in the appointment letter. (Annexure-I to the application)

In the appointment order dated 24.7.98 it was clearly mentioned that the



Period of deputation will be for a duration of one year, the period of deputation may n be extended upto three years and in no case the period of deputation will be extended beyond three years and no way applicant shall accure any right to claims for permanent absorption.

The applicant accepted all the terms and condition mentioned appointment order No.DA Cell E.O. No. DA Cell/99 dated 24.7.98, and joined as Divisional Accountant on deputation in the office of the Executive Engineer, Sangram P.W.D., Arunachal Pradesh.

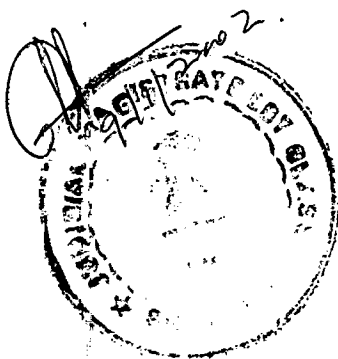
(A copy of the appointment letter dated 24.7.98 Annexed as Annexure-I and acceptance letter dated 9.9.98 annexed as Annexure-II)

5. That with regard to the Statement made in Paragraph 4.6 of the application the Respondent No.2 humbly submit that the applicant who was a Divisional Accountant on deputation reverted to his parent department in the Govt. of Arunachal Pradesh was carried out in keeping with the terms of deputation offered to the Applicant was reasonable.
6. That the statcmnt made in Paragraph 4.7 of the application the Respondent No.2 humbly state that the answering Respondent has right to bring fresh deputationist as per existing rules. Further regular Divisional Accountant are likely to be appointed through Staff Selcction Commission. This discretionary power of the Respondent No.2 which cannot be questioned by the petitioner and this is matter of Govt. policy.

It is most respectfully submitted that if the present deputationist is allowed to continue on deputation he would block the appointment of those to be appointed regularly. It may also be stated that appointment of Divisional Accountant on deputation is only a stop gap arrangement.

As per Recruitment Rules which came into force w.e.f. 24.9.1988, the period of deputation cannot be extended beyond three years. Thus the Applicants expectation of permanent absorption in the cadre of Divisional Accountants does not arise as he is on deputation. Hence the petitioners claim for considering permanent absorption is not tenable in law. He could make no claim for permanent absorption or that his deputation terms would not be extended beyond three years as this was clearly mentioned in his appointment order. (Annexure-I to the application)

In the instant case the applicant is seeking further extension as well as permanent absorption in the post of Divisional Accountant.



(A copy of recruitment rules dated 24.9.88 is annexed as Annexure-III)

7. That the Statements made in Paragraphs 4.8 of the application is denied, it is submitted that as per recruitment rules the period of deputation cannot be extended beyond the period of three years. That in the appointment order (Annexure-I of the application) issued to the applicant on 24.7.98, in the Paragraph 6 it was clearly mentioned that "in no case the period of deputation will be extended beyond three years" also the terms and condition offer to the applicant for appointment as Divisional Accountant on deputation had been accepted by the applicant.

That it is most respectfully submitted that the Applicant's claim is premature and Conjecture and hence in terms of the law as applicable, cannot be given effect to. That the Govt. of Arunachal Pradesh made a request vide their letter No.DA Cell/TRY/15/9029 dated 15.11.1999 (Annexure-2 of the application) to extend the tenure of deputation two years beyond the period of three years, but this was not agreed to by the Respondent No.2 keeping with the terms of deputation issued to the applicant on 24.7.98 (Annexure-I to the application). Post of Divisional Accountant is Central Civil Post and cadre controlling authority for Divisional Accountant is Accountant General and not the State Government. The Government was accordingly informed vide letter No.DA Cell/2-46/92-93/1698 dated 7.1.2000

A copy of the letter dated 7.1.2000 is Annexure -IV.

8. The Statement made in Paragraphs 4.9 and 4.10 are denied as misleading and misconceived. It is submitted that besides what has been stated herein above they have not resorted to any irrelevant, discriminatory or arbitrary action as claimed in the petition. The applicant having accepted all the terms and condition of deputation offered to him Vide his acceptance letter dated 9.9.98 should have carried out and abided by the order (Annexure-3 to the application) reverting him to his parent department in the Govt. of Arunachal Pradesh on expiry of deputation period.
9. That with reference to the Statements made in Paragraphs 4.11. and 4.12 that the applicant was a permanent employee of Govt. of Arunachal Pradesh and on his repatriation from deputation posts he will have to go to his parent cadre/post/department, and the pay and allowances enjoyed as applicable as deputationists cannot be protected in law after repatriation to his parent post/cadre/department.

Further the applicant was reverted back to his parent department in the



Govt. of Arunachal Pradesh as his full tenure of deputation of three years is keeping with terms of his appointment letter dated 24.7.98 had expired and hence the

"order of repatriation is not violative of Article 14 of the Constitution"

as has been held by the Hon'ble Apex Court in State M.P. Vs Ashok Deshmukh (AIR 1988 SC1240)

The request of extension of deputation period by the Govt. of Arunachal Pradesh has already been explained above.

It is denied that repatriation of a deputationist to his parent post/cadre/department amounts to reduction in rank and is violative of Art. 14, 16 and 21 of the Constitution.

10. That with regard to the Statement made in Paragraph 4.13 of the application the Respondent No.2 has no comments to offer.

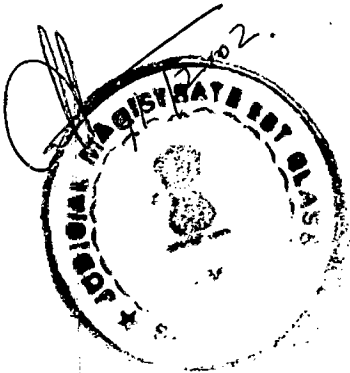
11. That the statement made in Paragraph 4.14 are denied as misleading and misconceived. That the Respondent No.2 humbly submit that the Govt. of Arunachal Pradesh has unilaterally mooted the idea of take over of the cadre of Divisional Accountant in 1999, and transfer of cadre of Divisional Accountant (Annexure 4 of the application) but till date has not come with firm proposal.

12. That with regard to the letter DA Cell/TRY/15/99 dated 12.1.2000

(Annexure 4 of the application) it is most humbly submitted that this office till date has not yet received any gazetted or any letter from Govt. of Arunachal Pradesh for transfer/taking over the cadre of Divisional Accountants as stated in Annexure 4 of the application.

Further, it is respectfully stated that the recruitment of Divisional Accountant is governed by statutory Recruitment Rules 1988 framed by the President under Art. 148 (5) of the Constitution after consultation with Comptroller and Auditor General of India. He being the Deputationist is attempting to misuse the process of law and by misleading this Hon'ble Tribunal in seeking extension as well as absorption. The Govt. of Arunachal Pradesh has yet to come with concrete decision of taking over the cadre of Divisional Accountants.

The Hon'ble Apex Court while laying down the law in Ratilal B Soni reported in AIR 1990 SC 1132 (1991) 15 ATC (85) and state of Punjab Vrs Inder Singh (1997) of SCC 372 1998 SCC (L&S) 34 and Kunal Nanda Vrs U.O.I. AIR 2000 SC 2076 held that



"a person on deputation can be reverted back to his parent department at any time and does not get any right to be absorbed in the deputation post".

Further it is humbly submitted that this office is yet to receive any Gazette or any further communication from the Govt. of Arunachal Pradesh regarding taking over the cadre of Divisional Accountants as stated in the letter No. DA Cell/Try/15/99 dated 12.1.2000 (Annexure 4 of the application). Further it is a policy matter between the two Governments and Applicant has no locus standi in the matter.

13. That with regard to the statement made in paragraphs 4.15 of the application, Respondent respectfully submitted that identical matters are pending before this Hon'ble Tribunal filed by various Applicants situated similarly against the Answering Respondents.

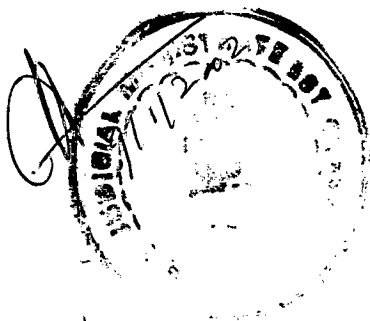
That the Answering respondents from the records vested them respectfully submit that the Applicants case appears of similar nature to those pending before the Hon'ble Tribunal.

Further to state that the order dated 12.1.2001, the Respondent humbly submit that though the case for permanent absorption has been initiated by the Govt. of Arunachal Pradesh but the matter has not yet been accepted by the Respondents. This proposal cannot be given any cognizance unless a final decision is arrived at. It is submitted that Govt. of Arunachal Pradesh cannot over the cadre of Divisional Accountant without the concurrence/consent of Union of India/Central Government. Post of Divisional Accountant is Central Civil Post under the Union of India.

That in view of the various other cases being sub-judice before this Hon'ble court the applicants case may be consolidated and made analogous order in order to prevent any conflicting judgment that may cause disparity.

14. That with regard to the statements made in paragraphs 4.16 of the applications the Respondents No.2 has no comments to offer.

15. That with regard to the contents made in paragraphs 5 of the application for grounds of relief with legal provisions, the respondent No.2 submit that all of them are misleading and thus denied. The Applicant was on deputation with the Respondent No.2 and terms of deputation is being clear that beyond three years his continuation will not be considered, and applicants having accepted these terms and conditions



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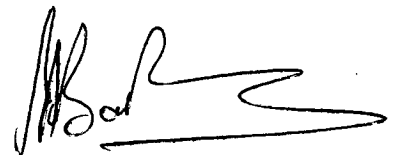
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must revert back to his parent department in the Government of Arunachal Pradesh. His claim for permanent absorption does not arise in light of what has been stated above. It has been held by this Hon'ble Tribunal is a batch of O.As 33/1993 vide letter from Govt of Arunachal Pradesh is neither addressed to the applicant nor us/creates any right in him. Government of India has not transferred the cadre of Divisional Accountant to the State Government of Arunachal Pradesh. Otherwise also, it is totally a policy matter between the State Government of Arunachal Pradesh and Central Govt. and applicant has no locus standi. order dated 16.1.1995 at the Divisional Accountants who are on deputation from State Government cannot refuse to go back to their substantive post when deputation is terminated. A copy of the order dated 16.1.95 is annexed hereto as Annexure V.

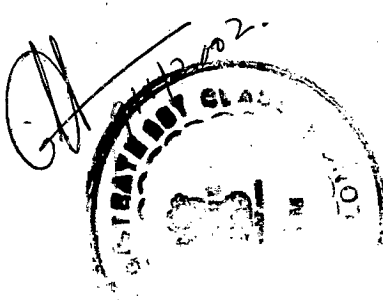
16. That with reference to the relief sought by the Applicant in paragraph 8, the Respondent No.2 submit that the Applicant is not entitled to any of the remedies sought for and the application is liable to be dismissed.
17. That with reference to the statement made in paragraph 9 of the application, the Respondents submit that in view of facts of the case the interim order dated 31.8.2001 granted in this case deserves to be vacated and the order dated 3.8.2001 be allowed to be implemented without any further delay.

VERIFICATION.

I, Shri S.A. Bathew, Sr.Dy. Accountant General (Admn) of the Office of the Accountant General (A&F) Meghalaya, Arunachal Pradesh, and Mizoram, Shillong, do hereby solemnly declare that the statements made above in the Written Statements are true to my knowledge, belief and information and I sign the verification on the 16th day of Nov. 2001 at Shillong.



DEPONENT.



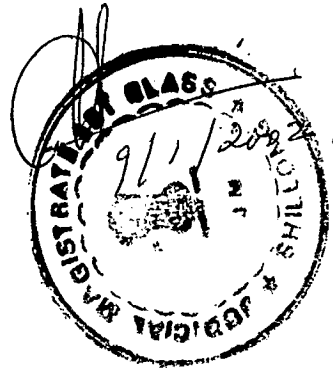
Identified by


ADVOCATE

Solemnly affirmed and sworn before me this day the 9TH

~~JANUARY~~ ~~2002~~ ~~2001~~ 2002 by the deponent abovenamed on being identified

Shri L. KHYRIEN, Advocate, Shillong.



OFFICE OF THE ACCOUNTANT GENERAL (AGE) MEGHALAYA ETC: SHILLONG.

E.C. NO. DA CELL/ 99

Dated. 24.7.98 - 43

Consequent on his selection for the post of Divisional Accountant (on deputation) basis) in the Pay scale of Rs. 5000-150-8000/- in the combined cadre of Divisional Accountants under the administrative control of the office of the Accountant General (AGE) Meghalaya etc., Shillong, Shri

Upendra Chandra Debnath ^{U.D.E.} at present working in the Office of the Executive Engineer, Seppa Dvn.
P.W.D.; Seppa; Arunachal Pradesh is appointed to the

post of Divisional Accountant on deputation basis and posted in the Office of the Executive Engineer, Sangram P.W.D.
Sangram; Arunachal Pradesh.

2. This offer of appointment is subject to the acceptance of all the terms and conditions stipulated in this appointment letter.

3. Shri Upendra Ch. Debnath

will have to join to the post of Divisional Accountant in the O/o the Executive Engineer, Sangram P.W.D.
Sangram; Arunachal Pradesh within 30 days, from the date of

issue of this order, failing which this offer of appointment as Divisional Accountant on deputation, will automatically stand cancelled and position may be offered to some other eligible and selected candidate.

4. No request for extension of joining time, shall ordinarily be entertained.

5. Before joining as Divisional Accountant on deputation Shri Upendra Ch. Debnath is directed to submit his acceptance to the offer of appointment (Acceptance letter is to be addressed to the A.G. (AGE) Meghalaya etc., Shillong) and in the letter of acceptance to the offer he will also have to intimate clearly that he has accepted all the terms and conditions stipulated in the appointment letter. The letter of acceptance is to be submitted to the Executive Engineer Sangram P.W.D.; Sangram; A.P. for onwards transmission to the Accountant General (AGE) Meghalaya etc., Shillong.

Contd...P/2.....

6. The period of deputation of Shri Upendra Ch. Deb Nath will be for a duration of 1(one) year only, from the date of joining as Divisional Accountant on deputation and no way he shall accrue any right to claim for Permanent absorption as Divisional Accountant. The period of deputation may be extended upto 3 years, if his service is considered to be needed. But in no case, the period of deputation will be extended beyond the period 3 years.

7. No representation for change of place of posting will be entertained, under any circumstances.

8. The pay and deputation (duty) allowances in respect of Shri Upendra Chandra Deb Nath

will be governed by the Government of India, Ministry of Finance Grievances and Pension (Department of Personnel and Training) letter No.2/12/87-Estt(Pay-II) dated 29.4.1983.

and as amended and modified from time to time. While on deputation Shri Upendra Ch. Deb Nath may elect to draw either the pay in the scale of pay of the deputation post or his basic pay in the parent cadre plus personnel pay, if any, plus deputation (duty) allowance. Shri Upendra Ch. Deb Nath

Deb Nath, on deputation, should exercise option in this regard within a period of 1(one) month from the date of joining the assignment (i.e. the aforesaid post of deputation). The option once exercised by Shri Upendra Ch. Deb Nath

Deb Nath shall be treated as final and cannot be altered/changed later under any circumstance whatsoever.

9. The Dearness Allowances, CCA, Children Education Allowance, T.A., L.T.C., Leave, Pension, etc will be governed by the Govt. of India, Ministry of Finance OM No.F1(6)E-IV(A) 62 dtd.7.12.1962 (incorporated as Annexure to Govt. of India decision No.L in Appendix 31 of Choudhury's G.S.R. Volume IV (13th Edition) and as amended and modified from time to time).

10. Shri Upendra Ch. Deb Nath on deputation will be liable to be transferred to any place within the State of Arunachal Pradesh, Manipur and Tripura, in the combined cadre of Divisional Accountants under the administrative control of the Accountant General(A&C) Meghalaya etc., Shillong.

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DAU (J) 307

14
Annexure - 11

45

To,

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

(Through E.E. Sangram Division, PWD, AP, Sangram)

Sub:- Acceptance of Offer.

Sir,

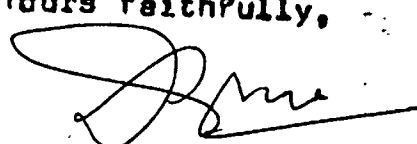
I have the honour to inform your honour that as per your offer of appointment issued vide NO. DA Cell/2-49/94-95/1058-1064 dtd. 27.7.98 and subsequent letter No. DA Cell/PC/UCDN/Deptn/1260 dtd. 4.9.98, I have reported for duty under Sangram P.W. Division, Sangram on 9th Sept/98 (A/N)

Meanwhile, I also beg to inform you that the terms and conditions as stipulated in the aforesaid offer of appointment has been accepted by me.

This is for favour of your information please.

Dated Sangram,
9th Sept'98.

Yours faithfully,


(U.C. Debnath)
Divisional Accountant,
Sangram Division,
PWD, AP, Sangram.

gfs

New Delhi, the 8th September, 1938.

46-53

1. Short title and commencement - (1) These rules may be called the Indian Audit and Accounts Department (Divisional Accountant) Recruitment Rules, 1988.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. Number of post, classification and scale of pay. - The number of the said post, its classification and the scale of pay attached thereto shall be as specified in columns 2 to 4 of the Schedule annexed to these rules.
3. Method of recruitment, age limit, qualifications, etc. - The method of recruitment, age limit, qualifications and other matters relating to the said post shall be as specified in columns 5 to 14 of the said Schedule.
4. Disqualifications - No person, -
- (a) who has entered into or contracted a marriage with a person having a spouse living; or
- (b) who, having a spouse living, has entered into or contracted a marriage with any person, ~~shall be eligible for appointment to the said post~~
- shall be eligible for appointment to the said post :
- Provided that the Comptroller and Auditor General of India may, if satisfied that such marriage, is permissible under the personal law applicable to such a person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.
5. Power to relax - Where the Comptroller and Auditor General of India is of the opinion that ~~it is~~ it is necessary or expedient so to do, he may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons.
6. Saving - Nothing in these rules shall affect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Ex-Serviceman and other special categories of persons, in accordance with the orders issued by the Central Government from time to time in this regard as applicable to persons employed in the Indian Audit and Accounts Department.

SCHEDULE

Name of post	No. of post	Classification	Scale of pay	Whether selection on post or non-selection on post	Whether benefit of added years of service admissible under rule 30 of the Central Civil Service (Pension) Rules 1972
1.	2.	3.	4.	5.	6.

Contd B.2.

1.	2.	3.	4.	5.	6.
Personal Accountant	2504*(1989) *Subject to variation dependent on work- load.	General Central Service Group 'C' Non-Gaze- tted Ministerial	Rs.1400-10- 1600-50- 2300-EE-60 -2600	Not applicable	No

Age limit for direct recruits	Educational and other qualifications required for direct recruits.	Whether age and educational qualifications prescribed for direct recruits will apply in case of promotees.	Period of probation, if any.
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7.	8.	9.	10.
Between 18 and 25 years Note: The crucial date for determining age limit shall be as advertised.	Bachelor's degree of a recognised University. Note: The educational qualifications is relaxable under the orders of the Comptroller and Auditor General of India for specified categories of staff in the Indian Audit and Accounts Department and State Public Works Accounts Clerks.	Not applicable	2 years

Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods.	11.	12.
	In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made.	

Direct Recruitment.

As stated in column 11

Note: 1. The direct recruits will be selected on the basis of an entrance examination conducted by an authority/by the Comptroller and Auditor General of India. During the period of probation, they should qualify in the prescribed Departmental Examination.

Note: 2. Vacancies caused by the incumbent being away on transfer on deputation or long illness or sudy leave or under other circumstances for a duration of one year or more may be filled on transfer on deputation from -

- (1) Accountants (Rs.1200-2040) and senior Accountants (Rs.1400-2600) (belonging to the Accounts and Entitlement Office in whose jurisdiction the vacancies have arisen) who have passed the Departmental Examination for Accountants and have 5 years regular service as Accountant/Senior Accountant including 2 years experience in Works section or

Contd..... p.3.

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- 48
- 1) State Public Works Clerks holding posts equivalent to or comparable with that of Accountant/Senior Accountant on a regular basis for 5 years including 2 years experience in Public Works Accounts.
 3. The period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/Department of the Central Government shall ordinarily not exceed 3 years.

If a Departmental Promotion Committee exists, what is its composition.	Circumstances in which Union Public Service Commission is to be consulted in making recruitment.
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13.

14.

Group 'C' Departmental Promotion Committee (for confirmations) consisting of :- Not applicable

- (1) Senior Deputy Accountant General/Deputy Accountant General (dealing with the cadre of Divisional Accountants).
- (2) Any other Senior Deputy Accountant General or Deputy Accountant General or officer of equivalent rank (from an office other than the one in which confirmations are considered);
- (3) An Accounts Officer.

Note: These senior officer amongst (1) and (2) above shall be the Chairman.

F.No.A-12018/13/88-EG-1)



OFFICE OF THE ACCOUNTANT GENERAL (Admn),
MEGHALAYA, MIZORAM & ARUNACHAL PRADESH, *Annexure-IV*
SHILLONG - 793 001

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-49-

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

Date : 07.01.2000

To

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

Sub.: Recruitment/Posting of regular Divisional Accountant.

Sir,

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

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

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

Yours faithfully,

Sd/-

Sr. Dy. Accountant General (Admn)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
(At Agartala)

ORIGINAL APPLICATION NO.33 of 1993
With

ORIGINAL APPLICATION NO.34 of 1993
ORIGINAL APPLICATION NO.35 of 1993
ORIGINAL APPLICATION NO.36 of 1993
ORIGINAL APPLICATION NO.37 of 1993
ORIGINAL APPLICATION NO.38 of 1993 ✓
ORIGINAL APPLICATION NO.44 of 1993
ORIGINAL APPLICATION NO.65 of 1993.

Date of decision: This the 16th day of January 1995.

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN
THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (ADMINISTRATIVE).

1. Shri P.K. Paul (in O.A.No.33/93)
Junior Grade Divisional Accountant
Office of the Executive Engineer
Southern Division No.3
Udaipur, Tripura. Applicant
2. Shri Deepak Chakraborty (in O.A.No.34/93)
Divisional Accountant
Office of the Executive Engineer
Rig Division, Agartala, Tripura. Applicant
3. Shri Bimal Biswas (in O.A.No.35/93)
Divisional Accountant
Office of the Executive Engineer
Flood Management Division No.1
Agartala. Applicant
4. Shri Sashi Ranjan Bora (in O.A.No.36/93)
Divisional Accountant
Office of the Executive Engineer
Gas Thermal Project, Rokhia,
North Benamalipur, Agartala, Tripura. Applicant
5. Shri Sushen Lal Saha (in O.A.No.37/93)
Divisional Accountant
Office of the Executive Engineer
Public Health Engineering Division No.V
Kumarghat, Tripura. Applicant
6. Shri Rakhal Krishna Dey (in O.A.No.38/93)
Divisional Accountant
Office of the Executive Engineer
Flood Management Division No.2
Kailashahar, Tripura. Applicant



7. Shri Bijit Bhushan Deb (in O.A.No.44/93)
Junior Grade Divisional Accountant
Office of the Executive Engineer
Flood Management Division No.III
Udaipur, Tripura, Agartala. Applicant.
8. Shri Tapan Lal Mukherjee (in O.A.No.65/93)
Office of the Executive Engineer
Gumti Electrical Division
Gumti Project, Tripura. Applicant.

By Advocate Shri J.L. Sarkar and
Shri M. Chanda for the applicants in the
respective applications.

-Versus-

1. The Union of India
(Through the Comptroller and Auditor General
of India,
New Delhi)
2. The Accountant General (A & E)
Meghalaya, etc, Shillong
3. The Executive Engineer
Southern Division No.3
P.W.D. Udaipur,
Tripura
4. The Chief Engineer, PWD,
Arunachal Pradesh
Itanagar. Respondents

By Advocate Shri S. Ali, Sr. C.G.S.C. and
Shri G. Sarma, Addl. C.G.S.C. for respondents
No. 1 and 2.

Respondents No. 3 and 4 served in the respective
applications.

....

ORDER

CHAUDHARI.J. V.C.

All these applications raise common questions and
facts are also similar, hence these are being disposed of
by this common order.

2. All the applicants were holding the post of Upper
Division Clerk (UDC) prior to 1989 under the Chief Engineer,
PWD, Arunachal Pradesh. They volunteered for being posted
as Divisional Accountant in the office of the Accountant

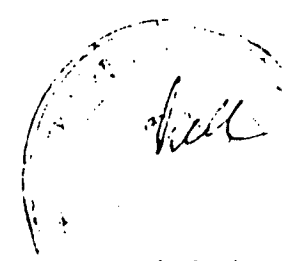
General (A&E), Meghalaya, Shillong, and being selected were transferred on deputation to that office. They were serving on deputation under the Accountant General (A&E) until 22.2.1993 when orders for their repatriation to the parent department, i.e., ^{office of} Chief Engineer, PWD, Arunachal Pradesh were passed by the Accountant General (A&E), Shillong.

These orders are the subject matters of challenge in these applications. The applicants' grievance is that they have been arbitrarily repatriated illegally denying them the opportunity to appear at the selection test examination and to be absorbed in the borrowing department of Accountant General (A&E) on regular basis as Divisional Accountants. They therefore pray that the impugned order of repatriation dated 22.2.1993 may be set aside and the respondents be directed to allow them to appear in the Divisional test examination for regular absorption in the existing posts of Divisional Accountants (under the AG).

3. The respondents (No.1 & 2) contend that the applicants being on deputation have no right to claim absorption in the regular posts in the borrowing department and they are bound to accept their repatriation to the parent department where they belong and hold lien on their original posts and therefore there does not arise any question of allowing them to appear at the test examination which will serve no purpose. They also rely on the relevant provisions of the Indian Audit and Accounts Department (Divisional Accountant) Recruitment Rules, 1988. They submit that the applications are liable to be dismissed.

4. Mr J.L. Sarkar, the learned counsel for the applicants has urged various contentions in support of the applications which can be divided in two parts, that is legal submissions

and....

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and equitable grounds. First we shall deal with the legal submissions. These are as follows:

- 1) The applicants are governed by the standing orders issued by the Comptroller and Auditor General of India (contained in the Manual) in Chapter VII relating to Divisional Accountants and not by the Recruitment Rules 1988.
- 2) The President of India had no authority to make the Recruitment Rules 1988 and these cannot override the standing orders made by the Comptroller and Auditor General.
- 3.) Deputation is one of the sources of recruitment to the post of Divisional Accountant not only under the standing orders but also under the Recruitment Rules 1988.
- 4) The deputation of the applicants cannot be termed as deputation simpliciter as it was coupled with probation.
- 5) The order for repatriation is arbitrary particularly as the Parent department has not refused consent.
- 6) The applicants have to be treated on par with Emergency Divisional Accountants (EOA) under the standing orders.
- 7) The applicants have gained sufficient experience in Accounts and are fit to hold the posts of Divisional Accountants and it is not therefore fair to deny them the opportunity of being absorbed in that post and for that purpose allow them to appear at the test examination.

We now proceed to examine each of these submissions.

Submissions at serial Nos. 1 and 2, 15 & 6

By separate order passed in O.A.No.7/94 filed by the present applicants for setting aside the Recruitment Rules 1988 we have held that the rules are perfectly valid and are applicable and have dismissed that application. That aspect need not be considered again here. Suffice it

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to say that the grievance of the applicants has to be examined ^{by reference to} under the Recruitment Rules 1988 which we have held to prevail over the earlier standing orders which must be deemed to have been replaced by the 1988 Rules.

Submissions at serial Nos. 3, 4 and 5:

There can be no denying of the fact that the applicants were sent on deputation to the Accountant General (A&E), Shillong's office and are not holders of substantive posts in that department. Their parent department ^{is office of} is Chief Engineer, PWD, Arunachal Pradesh where they hold the post of Accounts Clerk substantively. While on deputation they continued to hold lien over their substantive post in the parent department. They seek to appear at the test examination while retaining their lien on the parent position ^{post} so that in case they are allowed to appear at the test and happen to fail they can go back to their parent department. They thus want to play safe. This approach of the applicants is contradictory for while holding a substantive post in one department they cannot seek recruitment to a post in another department. They could do so after surrendering their lien over the substantive post in the parent department. Obviously they are not willing to do so as the consequence thereof may prove disastrous since in the event of failing in the test examination their service would stand terminated. Moreover they have not been permitted specifically by the Parent department to seek absorption in the borrowing department. Such a consent cannot be a matter of implication simply because the Chief Engineer, PWD though made a respondent has not chosen to file a written statement and to contend that he does not consent. The consent has to be in positive terms, which is lacking. Similarly, the borrowing department has not shown its willingness to allow them to

compete....



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compete for recruitment as is evident from the fact that ~~SS~~ ✓
repatriation order has been passed.

The position of a deputationist is fairly well regulated under the Fundamental Rules. Appendix 5 to the said rules ~~clearly~~ shows that the term 'deputation' covers only appointments made by transfer on a temporary basis to other posts in the same or other departments/offices of the Central Government provided the transfer is outside the normal field of deployment and is in the public interest and the period of deputation is to be subject to a maximum of three years. Similarly, service of an officer on deputation to another department is treated as equivalent to service rendered in the parent department and would entitle him to promotions which are open on seniority-cum-merit basis. An officer sent on deputation in the public interest does not lose his seniority. In this context it will be apt to refer to the concept of lien. F.R. 9.13 defines 'Lien' to mean the title of government servant to hold substantively, either immediately or on termination of period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively. In Purushottam Lal Dhingra's case (AIR 1958 SC 36) the Supreme Court has defined 'Lien' as a title to hold a permanent post unless his lien is transferred in accordance with the rules. The question of transfer of lien does not arise in the instant case. Thus lien and deputation go hand in hand. It would have been different matter if the applicants were to relinquish their lien on their posts in the parent department and seek recruitment independently in the department of Accountant General (A&E), Shillong, under the rules for such recruitment. That not being the case, the applicants can neither refuse to go back to their original posts nor can claim as a matter of right absorption as

Divisional.....

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Divisional Accountants in the office of the Accountant General (A&E), Shillong, while retaining their lien on substantive posts in the parent department. It may be mentioned that the repatriation order has not been challenged on the ground of malafides.

5. We now proceed to examine the Recruitment Rules 1988 to find out whether the applicants have thereunder any right to absorption as Divisional Accountants in the borrowing department.

✓ Rule 3 provides the method of recruitment which shall be as specified in columns 5 to 4 of the schedule.

Heading of Column 11 in the schedule is as follows:

"Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods."

Column 12 is as follows:

"In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made."

Note below Column 11 is "as stated in column 11". The method shown in column 11 is 'Direct Recruitment'.

✓ That is followed by Notes. Note 1 related to selection of direct recruits.

Note 2 reads thus:

"Vacancies caused by the incumbent being away on transfer on deputation or long illness or study leave or under other circumstances for a duration of one year or more may be filled on transfer on deputation from -

- 1) Accountants (Rs.1200-2040) and senior Accountants (Rs.1400-2600) (belonging to the Accounts and Entitlement Office in whose jurisdiction the vacancies have arisen) who have passed the Departmental Examination for Accountants and have 5 years ^{as regular service} as Accountant/senior Accountant including 2 years experience in Works Section, or
 - ii) State Public Works Clerks holding posts equivalent to or comparable with that of Accountant/senior
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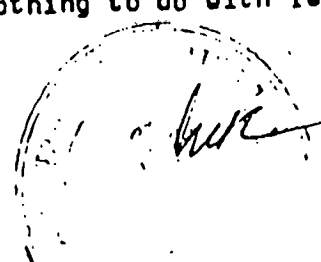
Accountant on a regular basis for
5 years including 2 years experience
in Public Works Accounts."

Note 3 reads thus:

"The period of deputation including the
period of deputation in another
Ex-cadre post held immediately preced-
ing this appointment in the same or
some other organisation/Department of
the Central Government shall ordinarily
not exceed 3 years."

6. Mr Sarkar submitted that since the heading of
column 11 refers to method of recruitment and since it
also refers to deputation it means that deputation is also
one of the sources of appointment to the post of Divisional
Accountant and that assuming that these Rules would apply
and not the standing order, even then the applicants would
be eligible for appointment and therefore they can be
allowed to appear at the test examination held for that
purpose. We find it difficult to agree with this submission
for variety of reasons.

Firstly, the method of recruitment is mentioned
as 'Direct Recruitment'. These words occur before the Notes
that follow. Note one relates to direct recruits. ~~Rule 2 Note 2~~
although relates to filling in the posts temporarily by
deputation it is clear that such vacancy has to arise by
reason of the incumbent being away either on transfer or
deputation. That is totally different from saying that the
applicants who have come in ~~temporarily~~ on deputation have
become eligible for direct recruitment. Note 3 makes it
further clear that it relates to the incumbents in the
department who are sent away on transfer or deputation.
That only means that temporary vacancies may be filled in
as stop gap arrangement till the rightful incumbent comes
back. It has nothing to do with regular recruitments.



A Government servant on deputation holding a ^{in that capacity} ~~temporary post~~ and having a lien on his substantive post in his parent department may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. (Decision in K.H. ^{Phadnis} ~~Phadnis~~ -vs- State of Maharashtra, AIR 1971 SC 998 may be usefully referred to in this context).

Thus we hold that the applicants have no right of absorption in the posts of Divisional Accountants and therefore question of allowing them to appear at the test examination for that end to be achieved does not arise. To allow them to do so will be a futile exercise. The mere circumstance of the applicants having completed the probationary period does not clothe them with a right to claim absorption to the posts of Divisional Accountants. That cannot be a source of recruitment. Applicants therefore have to abide by the order of repatriation.

7. Submission at serial No.6

Another argument relying upon the standing orders urged by Mr Sarkar is that prior to the Rules 1988 EDAs were allowed to appear at the test examination and since the applicants are no different than EDAs, they should be allowed to appear for the test.

Para 316 of Chapter VII of the Manual provided as follows:

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

Despite our being asked neither counsel have been able to point out any provision defining an

'Emergency

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'Emergency Divisional Accountant'. Hence we must follow the ordinary meaning. It is not shown that the applicants were appointed owing to any emergent situation arising in the office of the Accountant General (A&E). They appear to have been transferred on deputation in routine way initially for one year. Hence they cannot base their claim on para 316 assuming it were to apply. However under the 1988 Rules there is no such provision made and as we have held that the Rules would prevail this contention must be rejected.

8. The second part of the learned counsel's equity submissions ^{in equity} may now be dealt with.

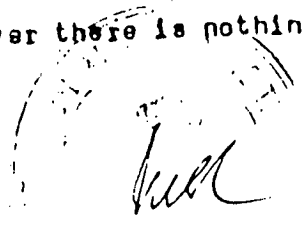
Submission No. 7: As earlier submitted as follows:

- i) By absorbing the applicants the Government stands to gain as it gets experienced hands.
- ii) It is not fair to send back trained people and bring in untrained people. In this connection it is submitted that in place of the applicants new batch of untrained persons from the office of the Chief Engineer, PWD is proposed to be sent on deputation and there is no rationale behind this policy. That way the interest of society is not better served. Such a policy is opposed to presentday service jurisprudence and must be discouraged. This policy is also arbitrary in nature and violates articles 14 and 16 of the Constitution. Indeed the repatriation of the applicants is uncalled for as the Chief Engineer's office has no problem owing to applicants being retained in the office of the Accountant General (A&E). In the circumstances when the applicants at their own volition want to take the chance of appearing at the test examination there is no justification to refuse them that opportunity. That again introduces an element of arbitrariness and unfairness.

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9. We are not impressed by any of these submissions. We do not find the 1988 Rules in any manner operating unfairly or arbitrarily against any class of officers. The rules have been validly made and what should be the mode of recruitment to the posts concerned is entirely a matter which lies within the administrative powers of the Government of India and Comptroller and Auditor General of India with whose consultation the rules have been made. The standing instructions were also issued by him. If these are now replaced that cannot be said to be illegal or unfair since the rules have been validly made. We find no infirmity in the rules so as to prefer the earlier standing orders to them. We fail to understand as to how the service jurisprudence is relevant or as to how the repatriation of deputationists is against the public interest. After all, the Chief Engineer's office also needs well trained Accounts personnel and the applicants can as well serve the interest of the public while serving in that department. It is fallacious for them to suggest that their presence in the Accountant General's department would enable them to serve the interest of public and thereby suggest that they will not do so in the Chief Engineer's office. This is clearly ~~a self~~ interest an argument motivated by self interest and officers like the applicants are not expected to take up such a stand which is derogatory to the position of an employee. Equally it is fallacious to say that by sending them back the Accountant General's department will loose services of trained people. It is not for the applicants to advise the Government and the Comptroller and Auditor General is quite competent to decide as to what is in the interest of a department under his control. Moreover there is nothing wrong if the Chief

Engineer.....

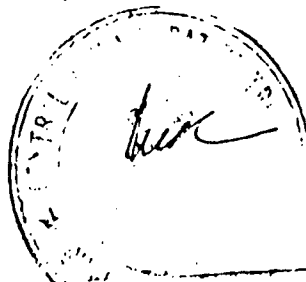


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Engineer, PWD, wants more and more people to be trained in the Accountant General's office. There is no harm in saying that the trained applicants are being replaced by untrained officers. The applicants forget that when they were sent on deputation they were also untrained in that sense. How can they therefore make a grievance if another batch of officers is given the benefit of training who are not being absorbed as Divisional Accountants in the Accountant General's department and will be required to go back when repatriated? Indeed if the contentions of the applicants are to be accepted that will create a hiatus in the administration of both the departments namely, Chief Engineer, PWD, and Accountant General(A&E) and that clearly is not permissible to do. We do not find any substance or logic in this line of argument adopted by the applicants and find that there is nothing arbitrary in the impugned action of the respondents. We also cannot accept the contention that the repatriation has been ordered in a fishy manner or with unclean hands as there is nothing that appears to us to ^{lead to much on inference} draw such a conclusion. Nor it is possible to accept the contention that the deputation since it was coupled with probation conferred a right on the applicants to be regularised as Divisional Accountants.

10. General Submissions of the learned Counsel Mr J.L. Sarker may now be considered.

We are told that hands of judiciary have to be stretched in the interest of justice, that we must act in consonance with the principle that end of law is to have stable and peaceful society, that we must enumerate the law to bring stability to settle law of such deputationists and that since now a days it is everyday talk of backlog

why.....



why respondents should act arbitrarily in their executive action requiring the officers to involve the judiciary to step in and therefore ^{we} must step in in favour of the applicants.

11. We do not think that the above propositions can be disputed academically. We cannot however be touchy about our jurisdiction so as to exercise it for mere asking by a litigant. We will not hesitate to do so in an appropriate case but we are not satisfied that on merits the applicants have succeeded in making out such a case. We have already held that the action of respondents cannot be held to be arbitrary hence question of our stepping in does not arise. As far as enunciation of law is concerned, we hold that a deputationist cannot claim as a matter of right regularisation/absorption in a post in the borrowing department while retaining his lien on the substantive post he holds in the parent department, and he cannot refuse to go back to the substantive post when his deputation is terminated.

12. In the light of the above discussion we find no substance in these applications and they deserve to be dismissed.

13. In the result all the above mentioned original applications namely, O.A.Nos. 33/93, 34/93, 35/93, 36/93, 37/93, 38/93, 44/93 and 65/93 are hereby dismissed. However, there will be no order as to costs.

14. Interim orders vacated.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMIN)

Sd/- Officer (A)

Admn. Secy. (A)

Admn. Secy. (A)

Admn. Secy. (A)

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Admn. Secy. (A)

Admn. Secy. (A)

copy of judgment to be kept in each on application on record separately

16-1-95