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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM No. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App./Misc Petn/Cont. Petn/Rev. Appl. 140/04

Name of the Applicant(s) In O.A.
Dr. S. Bhattacharjee

Name of the Respondent(s)
UOI & IRS

Advocate for the Applicant
Mr. M. Chanda, G.N. Choudhury,
S. Nath and S. Choudhury,
Mr. A.K. Choudhury,
Addl. C.S.C.

Counsel for the Railway/CGSC

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

7.6.2004 Present: The Hon'ble Shri K.V. Prahladan,
Administrative Member.

Heard Mr. M. Chanda, learned counsel
for the applicant and also Mr. A.K. Chau-
dhuri, learned Addl. C.G.S.C. for the res-
pondents.

This application has been filed
against the repatriation of the applicant
from the Office of the Accountant General
(A&E), Assam, Guwahati to the Office of
Sr. Dy. A.G. (A&E), Nagaland, Kohima.
The applicant has claimed that vide
letter dated 17.2.2004 (Annexure-6) the
period of deputation of the applicant
has already been extended for one year
from 4.2.2004 to 3.2.2005 and hence
the repatriation order dated 19.2.2004
(Annexure-7) is against the procedures
and rules regarding repatriation from
deputation. The applicant has also
pointed out the order dated 19.3.2004
whereby the transfer order of another
official Mr. J. Mukherjee, Sr. Acctt. has
been cancelled.

The Tribunal cannot interfere
in the matter of transfer unless the
same is passed illegally and with
malafide intention. Considering the
facts and circumstances of the case,
I am of the opinion that it is a fit
case in which direction is to be given

contd./2

The application in form
is filed. Petitioner's 10.
deposition is P. 3D
No. 336 389739
Dated 3/6/04

By Registrar

4/6/04

Contd.

7.6.2004 to the applicant to file a fresh representation before the respondents. Accordingly, applicant shall file a fresh representation before the respondents ventilating all his grievances within a period of fifteen days from the receipt of this order. If ~~such~~ representation is made, respondents are directed to pass a reasoned ^{and speaking} order ^{KVP} as per rules. Till the completion of the exercise, the order of repatriation in ~~xxxx~~ respect of the applicant shall be kept in abeyance.

The O.A. is disposed of accordingly at the admission stage itself.

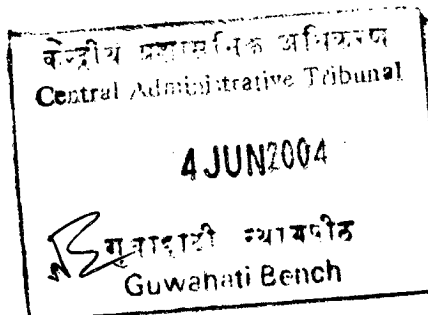
Received copy
11/6/04

11.6.04

Copy of the order has been sent to the office for issuing the same to the applicant by post.

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Member (A)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 140 /2004

Shri Sanjoy Bhattacharjee

-VS-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

1989-	Applicant was initially appointed as Clerk cum Typist.
1992-	Applicant was promoted to the post of Accountant.
01.01.1996-	Applicant was further promoted to the post of Sr. Accountant.
04.09.2001-	Applicant submitted representation to the A.G (A&E) Meghalaya through A.G (A&E) Nagaland, Kohima praying his posting either at Guwahati or Shillong on deputation basis. (Annexure-1)
20.01.2000-	Applicant in his representation quoted a reference of the HQ, Letter dated 20.01.00. As per clause 9 of the letter dated 20.01.00 there was a provision to allow the staff concerned who are constant threats of unlawful elements either at Guwahati or Shillong office on temporary basis. (Annexure-2)
31.12.2001-	Applicant was accommodated under AG (A&E), Assam. (Annexure-3)

- 03.02.2003- Applicant completed his 1st year deputation period.
- 20.02.2003- Applicant was granted second year deputation. Whereby the deputation period was extended from 04.02.02 to 03.02.04. (Annexure-5)
- 17.02.2004- Deputation period of the applicant was extended for a further period of 1 year w.e.f. 04.02.02 to 03.02.05. (Annexure-6)
- 19.02.2004- Applicant received the impugned office order dated 19.02.04 whereby the applicant is sought to be repatriated to his parent office at Kohima. (Annexure-7)
- 23.02.2004- Applicant submitted his detail representation praying for his retention at Guwahati. (Annexure-9)
- 19.03.2004- A.G. Meghalaya directed to release the applicant alongwith others. (Annexure-10)
- 03.06.2004- Office of the A.G (A&E), Assam communicated the order of release of the applicant w.e.f 09.06.2004. (Annexure-11)
- 01.03.2004- This Hon'ble Tribunal stayed the impugned order of repatriation of a similarly circumstanced applicant in O.A No. 51/04. (Annexure-12)
- 09.11.2000- This Hon'ble Tribunal in the similar facts and circumstances set aside the premature repatriation of the applicant in O.A. No. 174/2000. (Annexure-13)

Hence this application.

P R A Y E R S

Relief(s) sought for:

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Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the impugned order of repatriation dated 19.2.2004 and 19.3.2004 (Annexure-5 and 7 respectively), and order dated 03.06.2004 (Annexure-11) containing instructions for release of the applicant be set aside and quashed.
2. That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue on deputation basis till the extended of deputation period is expired i.e. up to 3.2.2005 vide order dated 17.2.2004.
3. Costs of the application.
4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

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

- 1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned transfer and posting orders dated 19.2.2004, 19.3.2004 (Annexure-5 and 7) and release order dated 03.06.2004 in respect of the applicant till disposal of the Original Application.
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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

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

Filed by Viceapplicant
through Subrata Nath.
Advocate
Sanku.
04.06.04

Title of the case : O. A. No 140/2004

Sri Sanjoy Bhattacharjee : Applicant

- Versus -

Union of India & Others : Respondents.

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Date: 04.06.2004.

Filed by
Subrata Nath
Advocate

Sanjoy Bhattacharjee

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

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

O. A. No. 140 /2004

BETWEEN

Sri Sanjoy Bhattacharjee.
Senior Accountant,
S/o- Late Satish Chandra Bhattacharjee.
O/o- The Accountant General (A&E).
Beltola, Guwahati-29.

... Applicant.

-AND-

1. The Union of India,
Through The Comptroller and Auditor General of India,
New Delhi- 110 002.
2. Accountant General (A & E)
Assam, Guwahati.
Maidamgaon
Beltola, Guwahati-29.
3. Accountant General (A&E),
Meghalaya, Shillong- 797001.
4. Shri E.R. Solomon
A.G (A&E) Meghalaya
Shillong- 797 001.
5. Shri K. Bethow.
Sr. Dy. Accountant General (Admn)
O/o- The Accountant General (A&E).
Shillong- 797001.
6. A.G (A&E)
Nagaland, Kohima.
P.O- Khoima.

... Respondents.

Sanjoy Bhattacharjee

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DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned order dated 19.02.2004 as well as the impugned order dated 19.03.2004 and also against the impugned order dated 03.06.2004, whereby the applicant is prematurely sought to be repatriated from the deputation post of Sr. Accountant from the Office of the Accountant General (A&E), Assam, Guwahati to the Office of the Sr. Dy. A.G (A&E) Nagaland, Kohima in total violation of the Rules of F.R/ terms and condition and also without issuing any prior intimation as required under the rule and also praying for a direction upon the respondents to allow the applicant to continue till the current deputation year which is going to be completed on 03.02.2005 as per sanction accorded by the AG (A&E), Assam himself vide order bearing letter No. Admn-1 Order No. 313 dated 17.02.2004, whereby the period of deputation was extended w.e.f. 04.02.2004 to 03.02.2005 (3rd year).

2. Jurisdiction of the Tribunal.

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

Sanjay Bhattacharya

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the 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, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your humble applicant was initially appointed as Clerk cum Typist in the year 1989 under the administrative control of A.G (A&E), Nagaland, Kohima. The applicant was thereafter promoted to the post of Accountant in the year 1992, he was further promoted to the post of Sr. Accountant on 01.01.1996
- 4.3 That your applicant while working as Sr. Accountant in the office of the A.G (A&E), Nagaland, Kohima received certain threat from the unlawful elements in the month of September, 2001. The matter was immediately reported to the A.G (A&E), Meghalaya, Shillong through A.G (A&E) Nagaland, Kohima through representation-dated 04.09.2001, which was duly forwarded by the controlling officer with suitable recommendation. In the said representation the applicant also prayed for his posting either at Guwahati or Shillong on deputation basis. The applicant also quoted a reference of HQ.

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Letter No. 38 Audit (AUD. PLG)/9-2000 dated 20th February, 2000 in his representation. Be it stated that as per clause 9 of the letter dated 20.01.2000 there was a provision to allow the concerned staff concern who are under constant threat of unlawful elements either in the Guwahati Office or Shillong Office on temporary basis. It is further clarified that any decision on individual case should be taken by the cadre controlling authority within three days of receipt of the recommendation of AG, Nagaland. In this connection it is stated that after receipt of the representation from the applicant and also following the recommendation of AG, Nagaland the cadre controlling authority in the instant case AG (A&E) Meghalaya, Shillong approved the proposal for deputation and accordingly the applicant was accommodated under AG (A&E), Assam vide office order bearing letter No. ESTT-I/8-II/87-88/3857 dated 31.12.2001. The applicant accordingly reported for duty under AG (A&E), Assam w.e.f. 04.02.2002 on usual terms of deputation. The applicant completed his 1st year deputation period on 03.02.2003, thereafter the respondents again obtained formal consent from the parent department for his further retention on deputation and in the process second year deputation was granted vide office order No. Admn-1 Order No. 211 dated 20.02.2003 whereby deputation period was extended w.e.f. 04.02.2003 to 03.02.2004.

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Copy of the representation dated 04.09.01, a copy of the circular, office order dated 31.12.2001; 06.02.02 and 20.02.2003 are enclosed hereto for the perusal of the Hon'ble Tribunal as Annexure-1, 2, 3, 4 and 5 respectively.

- 4.4 That it is stated that on completion of the 2nd year extended deputation period, which came to end w.e.f. 03.02.2004, the respondents particularly AG (A&E), Assam, Guwahati vide its order bearing letter No. Admn. 1 Order No. 313 dated 17.02.2004 extended the period of deputation for a further period of 1-year w.e.f. 04.02.2004 to 03.02.2005 in pursuance of the office order issued by Sr. D.A.G, Nagaland letter dated 28.01.2004.

In view of the above sanction order dated 17.02.2004 the applicant is at least entitled to continue in the deputation post upto 3rd February 2005.

A copy of office order dated 17.02.2004 is enclosed hereto for perusal of the Hon'ble Tribunal as Annexure-6.

- 4.5 That it is stated that the applicant while working as such on deputation basis, but all of a sudden he had received the impugned office order bearing letter No. Estt. I Order No. 386 dated 19.02.2004, whereby the applicant is sought to be repatriated to his parent office at Kohima from the office of the Accountant General (A&E), Assam, Guwahati. The aforesaid impugned

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order of repatriation has been issued without any prior notice or show cause either to the applicant or to the lending department, which is contrary to the provision laid down in Appendix-5 of F.R. 9 (25) Sub Rule 11. The relevant portion of the F.R. 9 (25) Sub Rule 11 is quoted below:

" 11. Premature reversion of deputationist to parent cadre

Normally, when an employee is appointed on deputation, his services are replaced at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his service could be so returned after giving reasonable notice to the lending Ministry/Department and the employee."

In view of the aforesaid provision laid down in F.R. the applicant is at least entitled to a notice for reasonable period before issuing such repatriation order in respect of the applicant, more particularly when the 3rd year deputation period has already been extended by the Accountant General (A&E), Assam vide its order dated 17.02.2004 upto a period of one year w.e.f. 04.02.2004 to 03.02.2005.

A mere perusal of the impugned order it would be evident that no reason is assigned for passing of the impugned order. However, the said order appears to have been passed under the authority of Accountant General's

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order dated 09.02.2004 at Pg/25N of the file. The applicant is kept in dark under what circumstances the impugned order was passed. It is a legitimate expectation of the applicant that he will be allowed to continue till the sanction of the 3rd year deputation period is expired. Be it stated that sanction awarded by the Accountant General (A&E), Assam vide order dated 17.02.2004 has not yet been revoked or cancelled by the said authority and the said order dated 17.02.2004 is still in force. Therefore impugned order dated 19.02.2004 is liable to be set aside and squashed on that score alone. Be it stated that in the said impugned order there was a instruction to release the applicant and other similarly situated employees w.e.f. 29.02.2004. However, it is categorically submitted that the applicant has not yet been released by the A.G (A&E), Assam, Guwahati till filing of this application.

A copy of the impugned order dated 19.02.2004 and a copy of the extract of F.R.9 (25) are enclosed herewith for the perusal of the Hon'ble Tribunal as Annexure-7 & 8 respectively.

- 4.6 That it is stated that the applicant immediately after receipt of the order dated 19.02.2004 submitted his detail representation on 23.02.2004 addressed to the Accountant General (A&E), Assam, Guwahati. In the said representation the applicant interalia prayed for his retention at Guwahati. The applicant also pointed out that he has got a school going son who is reading in an

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English medium School at Guwahati under SEBA Course. In this connection it may be stated that the half yearly examination is going to be commenced on 14.06.2004 and this is a mid-academic session hence the repatriation is likely to cause irreparable loss and injury to the applicant. The applicant also stated that vide order dated 17.02.2004 the period of deputation has already been extended upto 03.02.2005 following the order dated 17.02.2004. The said representation dated 23.02.2004 was duly forwarded by the AG (A&E) Assam, Guwahati to AG (A&E) Meghalaya, Shillong for favourable consideration of the case of the applicant. But surprisingly the Accountant General, Meghalaya, Shillong vide impugned order issued under letter bearing No. Estt-I Order No. 419 dated 19.03.2004 further directed to release the applicant along with others for reporting back to the office of the Sr. D.A.G (A&E), Nagaland, Kohima. It is further stated in the said impugned order that the representation have not been agreed to and directed for immediate release of the applicant. Be it stated that the aforesaid impugned letter dated 19.03.2004 is a non-speaking, cryptic order without any reasons. It is not the case of the respondents that the post of Sr. Accountant against which the applicant is working on deputation basis has been abolished or sanction of the post has been expired. The impugned order has not been issued in public interest and as such smacks malafide and the same has been deliberately passed by the Respondent

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No.3 and on that score alone the impugned orders dated 19.02.2004 and dated 19.03.2004 are liable to be set aside and quashed.

A copy of representation dated 23.02.04; and a copy of the impugned order dated 19.03.04 are annexed hereto for the perusal of the Hon'ble Tribunal as Annexures-9 & 10 respectively.

- 4.7 That it is stated that the Accountant General (A&E), Meghalaya, Shillong vide his letter bearing No. Estt-1/8-11/DS/2003-04 dated 27.05.04 communicated vide order dated 03.06.2004 by the office of the Accountant General (A&E) Assam, Guwahati with the instruction to release the applicant w.e.f. 09.06.2004 and in such compelling circumstances the applicant finding no other alternative approaching this Hon'ble Tribunal for protection of his valuable legal right by passing an appropriate direction/order upon the respondents to allow the applicant to continue till the extended period of deputation service i.e. upto 03.02.2005 is expired, which was already sanctioned by the A.G (A&E) Assam, Guwahati vide order dated 17.02.2004 otherwise the premature repatriation to the parent organization will cause irreparable loss and injury for smooth continuation of study of the children of the applicant. However, the applicant has already planned his life style after receipt of the 3rd year extension of deputation period accordingly. Moreover, the impugned order of repatriation dated 19.02.2004 and 19.03.2004

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has not yet been passed in public interest rather the same has been passed at the whims of the Respondent No.3 in total violation of the Rule laid down in F.R. 9 (25) and on that score alone the impugned order dated 19.02.2004 and dated 19.03.2004 and impugned order dated 03.06.2004 are liable to be set aside and quashed.

It is stated that Sr. Accounts Officer, A.G (A&E) Assam vide his letter bearing No. Adm-1 Order No.50 dated 03.06.04 instructed to release the applicant with effect from 09.06.2004. In the circumstances stated above the Hon'ble Court be pleased to stay the operation of the impugned order dated 03.06.2004.

A copy of the order dated 03.06.2004 is enclosed hereto for the perusal of the Hon'ble Tribunal as Annexure-11.

- 4.8 That it is stated that in the impugned order dated 19.03.2004 one Shri Jyotirmoy Mukherjee, Sr. Accountant is allowed to continue on deputation in the office of the Accountant General (A&E) Assam, Guwahati and the order of repatriation so far Shri Mukherjee is concerned has been cancelled by the Sr. DAG (A) Meghalaya, therefore it appears that the post of Sr. Accountant is still available and A.G (A&E) Meghalaya, Shillong has favourably considered the case of Shri J. Mukherjee for further retention on deputation basis but unfortunately although the applicant is being similarly circumstanced even then his case was rejected by the

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A.G (A&E) without assigning any reasoned order, hence the action of the Respondent No.3 so far the applicant is concerned is highly arbitrary, unfair and illegal and as such his action is further in violation of the Article 14 of the Constitution. A mere perusal of the impugned order of repatriation it appears that there is absence of administrative fairness in the matter of repatriation so far the applicant is concerned, and the same has been decided at the sole discretion of the Respondent No.3. It is a settled position of law even a power of the discretion must be exercised in a fair manner in a Govt. department, therefore the impugned order dated 19.02.2004 as well as the impugned order dated 19.03.2004 and the order dated 03.06.2004 containing the instruction of release of the petitioner w.e.f. 09.06.2004 set aside and quashed and further be pleased to direct the respondents to allow the applicant to continue the already sanctioned for the period of 3rd year deputation i.e. up to 03.02.2005.

- 4.9 That it is stated that in the similar facts and circumstances one applicant Sri Biswarup Purkayastha, deputationist approached this Hon'ble Tribunal under Sec 19 of the Administrative Tribunal's Act, 1985 through O.A. No. 51/04 and this Hon'ble Tribunal on perusal of the materials on record was pleased to admit the Original Application on 01.03.2004 and the Tribunal further pleased to stay the operation of the impugned order dated 19.02.2004 and the said case is still

Sanjay Bhattacharya

pending before the Hon'ble Tribunal. The applicant being similarly circumstanced therefore the Hon'ble Tribunal be pleased to stay the operation of the impugned order dated 19.02.2004, 19.03.2004 and order dated 03.06.2004 containing the instruction of release of the applicant w.e.f. 09.06.2004.

A copy of the interim order dated 01.03.04 is enclosed hereto for the perusal of the Hon'ble Tribunal as Annexure-12.

4.10 That it is stated that in the similar facts and circumstances this Hon'ble Tribunal in O.A. No.174/2000 (Shri D. Pathak Vs. Union of India & ors.), set aside the order of premature repatriation. The case of the applicant is squarely covered in view of the judgment and order passed in O.A. No. 174/2000.

A copy of the judgment and order dated 09.11.00 is enclosed hereto for the perusal of the Hon'ble Tribunal as Annexure-13.

4.11 That it is stated that the Hon'ble Supreme Court in the case of R. Prasad Vs. Managing Director, U.P. Rajkiya Nirman Nigam Ltd. & Ors. Reported in 1999 (8) SCC 381, wherein the Hon'ble Supreme Court held that the power of discretion is coupled with the duty not to act arbitrarily or at the whim or caprice of any individual, in the instant case the respondent No.3 in most arbitrary and unfair manner without assigning any justifiable reason passed the impugned order of

Sanjay Bhattacharya

repatriation and on that score alone the impugned orders are liable to be set aside and quashed.

In the facts and circumstances stated above the applicant has no other alternative but to approach this Hon'ble Tribunal for protection of his valuable rights by passing an appropriate order allowing the applicant to continue in the deputation post till the period of extended period is expired.

4.12 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that, the impugned order dated 19.2.2004 and 19.3.2004 have been passed in total violation of F.R.9 (25) of sub Rule 11, on that score alone the impugned orders are liable to be set aside and quashed.

5.2 For that, extended period of deputation for 3rd year, has already been sanctioned vide order dated 17.02.2004 by Accountant General (A & E), Assam Guwahati after obtaining formal consent/ no objection from the A.G. (A & E), Nagaland, Kohima.

5.3 For that the post against which the applicant was accommodated on deputation basis under AG (A& E), Assam, Guwahati neither abolished nor the sanction of the post is expired and the said post of Senior Accountant is still exists.

Sanjoy Bhattacharya

- 5.4 For that the impugned order of repatriation has been issued in the middle of the academic session of the children of the applicant which will cause irreparable loss and injury to the education of the children of the applicant.
- 5.5 For that the impugned order of repatriation which is issued all of a sudden without prior notice and that too after accorded sanction for 3rd year extension of deputation period in favour of the applicant vide order dated 17.02.2004.
- 5.6 For that the applicant was accommodated on deputation basis on the recommendation of the Accountant General (A & E) on receipt of threat from anti social elements under the provision of clause 9 of headquarter office letter no. 38 Audit (AUD.PLG)/9-2000 dated 20th January, 2000 as such repatriation without notice is contrary to the provision of the rule.
- 5.7 For that action of the respondent no.3 is highly arbitrary, unfair and the same is in violation of Article 14 of the Constitution in as much as one Sri Jyotirmoy Mukherjee has been allowed to continue on deputation post, who is similarly circumstanced like the present applicant and on that score alone the impugned order 19.2.04, 19.3.04 and order dated 03.06.2004 containing instructions of release of the

Sanjay Bhattacharya

present applicant with effect from 9.6.2004 are liable to be set aside and quashed.

5.8 For that the only son of the applicant is studying in English Medium School under SEBA course and the half yearly extension will be commenced with effect from 14.6.2004 and the final examination normally held in the month of November/December of the current academic session. As such it is the interest of the Government employee, the applicant be allowed to continue till the current deputation period is expired.

5.9 For that there is no urgency, administrative exigency on public interest involves while passing the impugned order of repatriation in respect of the applicant that too after sanction for 3rd year deputation period with effect from 04.02.2004 to 03.02.2005.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other

Sajay Bhattacharya

Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the impugned order of repatriation dated 19.2.2004 and 19.3.2004 (Annexure-5 and 7 respectively), and order dated 03.06.2004 (Annexure-11) containing instructions for release of the applicant be set aside and quashed.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue on deputation basis till the extended of deputation period is expired i.e. up to 3.2.2005 vide order dated 17.2.2004.
- 8.3 Costs of the application.
- 8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Sanjoy Bhattacharya

9. Interim order prayed for.

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

- 9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned transfer and posting orders dated 19.2.2004, 19.3.2004 (Annexure-5 and 7) and release order dated 03.06.2004 in respect of the applicant till disposal of the Original Application.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- | | | |
|-------------------|---|----------------|
| i) I. P. O. No. | : | JJG 389759. |
| ii) Date of Issue | : | 3.6.04. |
| iii) Issued from | : | GPO, Guwahati. |
| iv) Payable at | : | GPO, Guwahati. |

12. List of enclosures.

As given in the index.

Sanjay Bhattacharya

VERIFICATION

I, Sri Sanjoy Bhattacharjee, S/o Late Satish Chandra Bhattacharjee, aged about 41 years, working as Sr. Accountant in the office of the Accountant General (A&E) Guwahati, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 4th day of June, 2004.

Sanjoy Bhattacharjee

The Accountant General (A&E)
Maldamgaon, Beltola
Assam. Guwahati-29/Meghalaya Shillong.

(Through Proper Channel)

Subject: Prayer for transfer on deputation basis in the O/o the Accountant General at Guwahati/Shillong

Respected Sir,

With due respect and humble submission I beg to lay before your benign authority the following few lines for favour of your kind and sympathetic consideration and necessary action please.

That Sir, I have joined in the O/o the A.G. Nagaland, Kohima (A&E) on 20-4-1989 as C/T. since then I have been discharging the duties with sincere and full satisfaction to my authority. Recently I have received a letter from unlawful elements threatening me by way of putting me in to alarming trouble in near future. Such threatening has rendered me unable to attend closely to official duty all times. It has also kept me all times in mental agony and also made the life unsafe.

I would like to mention here that on hearing about this threatening letter my wife has also benumbed with fear which may have adverse effect on her health in near future. I cannot also send my son to school. At present there is a chance of bad consequences at every step of my life.

That Sir, considering the fact as stated above and in order to avoid the bad consequences I shall be obliged if you could kindly allow me to work in the O/o the A.G. at Guwahati/Shillong on deputation basis in terms of Para -9 of Hqr's Office letter No. 38 Audit (AUD.PLG)/9-2000 at dated 20th January 2000. (Copy enclosed)

Dated, Kohima. 4/11 Sept '01

Yours faithfully

(SANJOY BHATTACHERJEE)
SR. ACCOUNTANT

Advocate
4.6.04

327

(60)

Action:- ADAI (GCS), AG Manipur, Dlr (Comm State)

F AG Nagaland

1. It was brought to CAG's attention that there were considerable vacancies in the audit office. CAG was of the view that some flexibility could be given to the Accountant General for utilisation of 17 vacancies. AG would formulate a proposal to this effect for consideration at Headquarters.

Action:- PD (Staff), AG Nagaland

2. The issue of separate cadres for Nagaland offices was raised. CAG was of the view that while adequate staff was not available for manning the separate cadres for Nagaland office. AG should work out a proposal for separate cadres.

Action:- PD (Staff) AG Nagaland

3. The issue of vacant post of Group Officer was raised. CAG assured that a Group Officer would be posted shortly.

Action:- DAI, AC(P)

4. CAG stated that funds would be provided on a priority basis for various works like borewell in the office, phased repair of the official quarters of the staff, water-proofing of the roof of the office, boundary wall etc. He desired that the necessary proposals be sent by the AG.

Action:- PD (Staff), AG Nagaland

5. It was brought to CAG's attention that to solve the Y2K problem the computers needed to be upgraded for which Rs. 4.75 lakhs was required. CAG desired that this should be examined in Headquarters.

Action:- DAI (RC), AG Nagaland, Dir (BDP)

6. While reviewing the schedule of preparation of Audit Report, CAG desired that the bond copy should be sent to Headquarters by 16 January 2000.

Action:- ADAI (GCS), AG Nagaland, Dir(RSNE)

7. It was brought to CAG's attention that demands for deputation were taking considerable time in reaching Kohima and hence the willingness of staff was rarely sent on time. Accordingly, a concern was expressed that the last date for receiving the willingness of staff for deputation should be extended by 15 days in case of Nagaland. It was further stated that the cadre controlling authority was reluctant to send the staff in Nagaland office on deputation. CAG was of the view that the staff in Nagaland office could go on deputation. Furthermore, wherever possible the last date for receipt of willingness for deputation could be extended by 15 days.

Action:- PD (Staff), AG Nagaland

Attested
Date
Advocate
4.8.04

8. It was pointed out that staff who had cleared the SOG examination did not get an opportunity to work outside Nagaland. CAG was of the view that a roster could be maintained for rotation of the staff to offices outside Nagaland.

Action:- DAI, PD(Staff), AG Nagaland

9. It was brought to CAG's attention that the staff was under constant threat of unlawful elements. CAG was of the view that in serious cases the AG could recommend to the cadre controlling authority to allow the staff to work in Guwahati/ Shillong on temporary basis. Any decision on the individual case should be taken by the cadre controlling authority within 2-3 days of receipt of the recommendation from AG Nagaland.

Action:- DAI, PD (Staff), AG Nagaland

10. It was brought to CAG's attention that although Nagaland had been declared as a disturbed area, yet "Disturbed Area Allowance" was not being paid. CAG desired that this issue be taken up with the Government.

Action:- PD (Staff)

11. It was brought to CAG's attention that while staff of other Central Government establishments like Department of Posts, Department of Telecom etc. were drawing HRA at "B" class city rates, this was not the case with staff of IAAD. CAG desired that this issue should be examined at Headquarters.

Action:- PD (Staff), AG Nagaland

12. On the issue of recognition of staff associations CAG stated that staff associations should apply in separate categories as there was no provision for composite association.

Action:- PD (Staff), AG Nagaland

g Meeting with members of PAC and COPU

1. CAG was of the view that the PAC could discuss in detail the financial health of the state government appearing in the audit report. This was relevant in the context of precarious financial position of the state.

Action:- ADAI (GCS), AG Nagaland

2. CAG was of the view that wherever there were arrears in discussion of audit reports, PAC and COPU should take up the latest report for discussion. Furthermore these Committees could meet during the period when the legislature was in session. This could ensure the presence of members of the committees and officials of the state government.

Action:- ADAI (GCS), AG Nagaland

3. It was stated that although the State Government was required to take action on the recommendations of the Committees, it rarely did so. CAG was of the view that while auditing various departments, AG would specifically obtain information from the Government on the action taken on the recommendations and this would be reported in the subsequent Audit Report.

Action:- ADAI (GCS), AG Nagaland

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

NO. ESTT-I/8-11/87-88/3857

Dated 31-12-2001

To,

The Accountant General (Audit)
Nagaland, Kohima.

Subj:- Deputation of Shri Sanjay Bhattacharjee, Sr. Acctt.

Sir,

In inviting a reference to this Office letter NO. Estt-I/8-11/87-88/2920, dt. 30-10-2001 on the subject indicated above, I am to request you to release Shri Sanjay Bhattacharjee, Sr. Acctt. and direct him to report for duty in the Office of the A.G (A&E) Assam, Maidamgaon, Beltola, Guwahati on usual terms of deputation.

Yours faithfully,

Sd/ —

Sr. Deputy Accountant General (A)

Memo NO. Estt-I/8-11/87-88/3858

Dated 31-12-2001

copy forwarded for information and necessary action to the Accountant General (A&E), Assam, Maidamgaon, Beltola Guwahati. He is requested to release Smti Dipali Sharma, Sr. Acctt of Guwahati Office with the direction to report to the O/o the A.G (A&E) Megh., etc, Shillong on reporting of Shri Sanjay Bhattacharjee, Sr. Acctt. from Nagaland Office. Her transfer is in public Interest.

Sanjay
21/1/02
Establishment Officer.

*Attested
Int. Advocate
4.6.04*

80
Annexure-4

**OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM,
MAIDANGAON, BELTOLA, GUWAHATI - 781 029.**

Admn-1 Order No. 213

Dated: 06.02.2002

In pursuance of AG (A&E) Meghalaya's letter No. Estt.1/8-11/87-88/3858 dt. 31.12.2001 Sri Sanjay Bhattacharjee, Sr. Accountant of O/O the Sr. DAG (A&E) Nagaland, Kohima has reported for duty in this office on 04.02.2002 (FN) as Sr. Accountant on deputation basis.

The initial period of his deputation will be for one year subject to his continued suitability and administrative convenience.

Sd/-
Deputy Accountant General (Admn & VLC)

Memo No. Admn-1/Depth./6-4/2001-2002/3422-3434

Dated: 06.02.2002

Copy forwarded to:

1. The Principal Director of Audit, NF Rly, Maligaon, Guwahati - 11.
2. The AG (A&E) Meghalaya etc. Shillong for information with reference to his Memo No. Estt.1/8-11/87-88/3858 dt. 31.12.2001.
3. The A.O. (A), O/O the Sr. DAG (A&E) Nagaland, Kohima for information with reference his letter No. Admn/ A&E/Order No. 158 dt. 23.01.2002.
4. The Establishment Officer (M), O/O the AG (A&E) Meghalaya etc. Shillong.
5. The Private Secretary to the AG (A&E) Assam, Guwahati.
6. The SO i/c Admn - II.
7. The A AO i/c Confidential Cell.
8. The AAO i/c PAO Local.
9. The SO i/c Record Section.
10. P.C of Sri Sanjay Bhattacharjee, Sr. Accountant.
11. Sri Sanjay Bhattacharjee, Sr. Accountant.
12. The Hindi Officer i/c Hindi Cell. He is requested to issue Hindi Version of this order from his end.
13. Admn-1 Order Book.


Sr. Accounts Officer (Admn)


Advocate
24.06.04

-24-

Annexure-3

OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM.

MAIDAMGAON, BELTOLA, GUWAHATI - 781 029.

Admin-1 Order No. 211

Dated: 20.2.2004

In pursuance of O/O the Sr. DAG (A&E) Nagaland's letter No. Admin/A&E/2-8/98-99/1815 dt. 3.2.03 the term of deputation of Sri Sanjoy Bhattacharjee, Sr. Acctt in the O/O the AG (A&E) Assam, Guwahati is hereby extended for a further period of one year w.e. from 04.02.03 to 03.02.04.

[Authority: AG's order dt. 13.2.03 at P/115N of File No. Admin-1/Deptn./6-1/2001-2002/]


No. Admin-1/Deptn./6-1/2001-2002/3979-3990

Sd/-
Deputy Accountant General (Admin & V.L.O.)

Dated: 20.2.2004

Copy forwarded to:

1. The Principal Director of Audit, NF Rty, Maligaon, Guwahati - 11.
2. The AG (A&E) Megh. etc. Shillong.
3. The Establishment Officer (M), O/O the AG (A&E) Megh. Shillong.
4. Sr. A.O. (A) O/O the Sr. DAG (A&E) Nagaland, Kohima for information with reference to his letter No. Admin/A&E/2-8/98-99/1815 dt. 3.2.03.
5. The Private Secretary to the AG (A&E) Assam, Guwahati.
6. The AAO i/c Confidential Cell.
7. AAO i/c Admin-II Section.
8. AAO i/c. PAO Local.
9. The Sr. Hindi Translator i/c Hindi Cell. He is requested to issue Hindi Version of this order from his end.
10. Sri Sanjoy Bhattacharjee, Sr. Accountant.
11. Gradation List Group/Service Book Group.
12. Admin-1 order Book.


Sr. Accounts Officer (Admin)

*Affected
And
Advocate.*

**OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM,
MAIDAMGAON, BELTOLA, GUWAHATI - 781 029.**

Admn-1 Order No. 313

Dated: 17.02.2004

In pursuance of O/O the Sr. DAG (A&E) Nagaland's letter No. Admn-1/A&E/2-8/2004/Vol.-II/1134 dt. 28.01.04, the term of deputation of Sri Sanjoy Bhattacharjee, Sr. Acott in the O/O the AG (A&E) Assam, Guwahati is hereby extended for a further period of one year w.e.from 04.02.04 to 03.02.05 (3rd year).

Sd/-

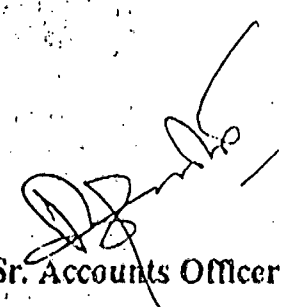
Deputy Accountant General (Admn & VLC)

No. Admn-1/Deptn./6-1/2003-2004/8352-8363

Dated: 17.02.2004

Copy forwarded to:

1. The Principal Director of Audit, NF Rty, Maligaon, Guwahati - 11.
2. The AG (A&E) Megh. etc. Shillong.
3. The Establishment Officer (M), O/O the AG (A&E) Megh, Shillong.
4. Sr. A.O. (A) O/O the Sr. DAG (A&E) Nagaland, Kohima for information with reference to his letter No. Admn/A&E/2-8/2004/1134 dt. 28.01.04.
5. The Private Secretary to the AG (A&E) Assam, Guwahati.
6. The AAO i/c Confidential Cell.
7. AAO i/c Admn-II Section.
8. AAO i/c. PAO Local.
9. The Hindi Officer i/c Hindi Cell. He is requested to issue Hindi Version of this order from his end.
10. Sri Sanjoy Bhattacharjee, Sr. Accountant.
11. Gradation List Group/Service Book Group.
12. Admn-1 order Book.


Sr. Accounts Officer (Admn)

Handwritten notes:
J. B. 04
4.6.04

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

Estt.I Order No. 386

Dated: 19-2-2004

The following Sr. Acc'ts of the O/o the Sr. DAG (A&E) Nagaland presently on deputation in the O/o the AG (A&E) Meghalaya, Shillong & AG (A&E) Assam, Guwahati are repatriated to their parent Office with immediate effect:-

- | | |
|-----------------------------|---|
| 1) Sri Biswarup Pukayastha | Sr. Acc'ts. O/o the AG (A&E) Assam, Guwahati. |
| 2) Smti L. Bhowmik | |
| 3) Sri Jyotirmoj Mukherjee | |
| 4) Sri Sanjoy Bhattacharjee | |
| 5) Sri Sanjoy Sinha | O/o the AG (A&E) Meghalaya etc, Shillong. |

The above officials are relieved of their duties in the respective Offices w.e.f. 29-2-2004 A.N for reporting back for duty in the O/o the Sr. DAG (A&E) Kohima, Nagaland.

[Authority:- AG's orders dt.9-2-04 at pg/25N of the file]

Sd/-

Establishment Officer

Dated 19-2-2004

Memo No. Estt-I/8-11/IS/2003-04/6336-6349

Copy for information & necessary action to:-

- | | |
|--|---|
| 1. The DAG (Admin) | O/o the AG (A&E) Assam, Maidamgaon, Beltola, Guwahati-79- with a request to release the officials concerned w.e.f. 29-2-04 under intimation to this Office. |
| 2. The Sr. AO i/c Admin | |
| 3. The Sr. DAG (A&E) O/o the Sr. DAG (A&E) Kohima, Nagaland. | |
| 4. S.B. Group. | |
| 5. Gradation List | |
| 6. SO Estt-2. | |
| 7. Pay bill Group. | |
| 8. PAO (Local) | |
| 9. AAO Confidential Cell. | |
| 10. PS to AG. | |
| 11. Steno to Sr. DAG (A). | |
| 12. Steno to DAG (AE/VLC) | |
| 13. E.O. Book. | |
| 14. Persons concerned. | |

[Signature]
13/2/04
Establishment Officer

[Signature]
Advocate
4.6.04

Serial No. (1)	S. R. Number (2)	Nature of power (3)	Authority to which the power is delegated (4)	Extent of power delegated (5)
87	325 (2) (b) and 334 (2) (b)	Power to fix charges for the electric energy and water where no meters are provided.	1. Department of Government of India. 2. Administrator of a Union Territory. 3. Head of Department. 4. Any other authority to whom the power may be delegated by 1 or 2 above.	Full power.
88	325 (2) (c) and 334 (2) (c)	Power to estimate the capital cost mentioned in clause (a) (i) of Supplementary Rules 325 (2) and 334 (2).	Superintending Engineer when the residence is in charge of the Public Works Department. Heads of Departments in other cases.	Full power-subject to the conditions of delegation.
89	Proviso to 325 (2) and 334 (2)	Power to group a number of residences for purposes of assessment of charges for electric energy, water and meters.	1. Department of Government of India. 2. Administrator of a Union Territory. 3. Head of Department. 4. Any other authority to whom the power may be delegated by 1 or 2 above.	Full power.

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APPENDIX 5
[See F.R. 9 (25)]

DEPUTATION (DUTY) ALLOWANCE

SECTION I

Transfer of Central Government employees on deputation to ex-cadre posts under Central Government

[Effective from 1-4-1988]

[G.I., Dept. of Per. & Trg., O.M. No. 2/12/87-Est. (Pay-II), dated the 29th April, 1988.]

1. A need has been felt for some time past to consolidate at one place the various instructions/orders that have been issued from time to time and are still in force on the subject. The opportunity has also been taken to review the entire matter and bring about rationalisation in the instructions/orders. Accordingly, it has been decided to bring out the salient features of the instructions on the subject in this Office Memorandum. The Ministry of Finance may kindly bring to the notice of all administrative authorities concerned the contents of this O.M. for information, guidance and compliance.

2. Application

2.1 These orders will apply to all Central Government employees who are regularly appointed on deputation in accordance with the provisions of the relevant recruitment rules to hold posts in the Central Government except in the following cases, viz. :—

- Members of the All India Services and those deputed to posts whose terms are regulated under specific statutory rules or orders;
- Officers appointed on deputation to posts in the Central Secretariat such as Under Secretary, Deputy Secretary, Director, Joint Secretary, Additional Secretary, Secretary, etc., for whom separate orders as issued from time to time will continue to apply;
- Deputation to posts outside India; and
- Appointments of a specific category of employees to a specified class of posts where special orders are already in existence such as appointments made in the personal staff of Ministers, etc., to the extent the provisions contained therein are at variance with those contained in these orders.

A. H. Chatterjee
Advocate
4.6.84.

the directive issued for rigid application of the tenure rules should be taken into consideration and only in rare and exceptional circumstances, such extensions should be granted.

- (ii) The extension should be strictly in public interest and with the specific prior approval of the concerned Minister in the borrowing Ministry/Department.
- (iii) Where such extension is granted, it would be on the specific understanding that the officer *would not* be entitled to draw deputation (duty) allowance.
- (iv) The extension would be subject to the prior approval of the lending organisation of the officer on deputation, and wherever necessary, the UPSC.

8.4 In cases where the extension is beyond the fifth year or beyond the second year in excess of the period prescribed in the Recruitment Rules, the same would be allowed only after obtaining the *prior* approval of the Department of Personnel and Training. Proposals in this regard should reach this Department at least three months before the expiry of the extended tenure.

(See O.M., dated 30-10-1990, below Para. 15 for procedure to be followed.)

8.5 When extension of the period of deputation is considered, the period of extension may be so decided upon as to enable the officer concerned to continue on deputation till the completion of the academic year in cases where the officer has school/college going children.

8.6 For computing the total period of deputation, the period of deputation, including the period of deputation in another ex-cadre post held *immediately* preceding the current appointment in the same or some other organisation/department of the Central Government shall also be taken into account.

8.7 If during the period of deputation the basic pay of an employee exceeds the maximum of the scale of pay of the post or the fixed pay of the post, on account of pro forma promotion in his cadre under the next below rule or otherwise, the deputation of the employee should be restricted to a maximum period of six months from the date on which his pay thus exceeds such maximum and he should be reverted to his parent department within the said period.

8.8 If during the period of deputation, on account of pro forma promotion in the parent cadre under the next below rule the employee becomes entitled to a scale of pay higher than the scale of pay attached to the ex-cadre post, he may be allowed to complete the normal tenure of deputation subject to 8.7 above but no extension of the period of deputation should be allowed in such cases.

9. Promotions during period of deputation

9.1 When an employee already on deputation is to be promoted/appointed to another post by the borrowing authority, the borrowing authority should obtain the concurrence of the lending authority prior to the promotion/appointment.

9.2 The employees on deputation may be given the benefit of the next below rule subject to the application of the other provisions contained in this Office Memorandum.

10. Grant of leave on expiry of tenure of deputation

On reversion from the deputation post to the parent cadre, the employee concerned might be allowed leave not exceeding two months by the borrowing Ministry/Department/Organisation. The employee concerned should apply for further leave to his cadre controlling authority.

11. Premature reversion of deputationist to parent cadre

Normally, when an employee is appointed on deputation, his services are replaced at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving reasonable notice to the lending Ministry/Department and the employee.

12. Sanctioning of deputation (duty) allowance.

The Administrative Ministries/Departments will be competent to sanction the deputation (duty) allowance of their employees and those in offices under them in accordance with these terms and conditions. Such sanctions may be issued either by the Ministry/Department transferring the employees or by the Ministry/Department borrowing the services of the employees, as may be appropriate in the circumstances of each case.

13. Relaxation of conditions

Any relaxation of these terms and conditions will require the prior concurrence of the Department of Personnel and Training.

14. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are being issued after consultation with the Comptroller and Auditor-General of India.

15. These orders take effect from the 1st April, 1988, in so far as the modifications incorporated now are concerned.

[See Section II in this Appendix for the orders in force prior to 1-4-1988, in respect of transfer of Central Government servants on deputation to ex-cadre posts under Central Government.]

To, The Accountant General (A&E)
Assam, Beltola, Guwahati - 29.

Sub: Prayer for retention in the Office of the AG(A&E),
Assam, Guwahati.

Sir, With due respect and humble submission, I beg to lay before you the following few lines for favour of your kind sympathetic consideration:-

1. That Sir, I have been transferred on deputation from Office of the AG(A&E), Nagaland, Kohima to the Office AG(A&E), Assam, Guwahati w.e.f 4.2.2002(FN) and extended upto 3.2.04 and also extended for further another year w.e.f 4.2.04 to 3.2.05 (in 3rd year) vide Admin Order No. 313 Dt. 17.2.2004.
2. That Sir, my family and school son is staying with me and I have already took school admission of my son for the session 2004-05 recently and my presence is urgently required for my family.
3. That Sir, in this position, the Office of the AG(A&E), Meghalaya, Shillong being the Cadre Controlling authority has released me from this Office w.e.f 29.2.2004(FN) for reporting back to AG(A&E), Nagaland, Kohima vide Esstt-1 order No. 386 Dt. 19.2.2004 (Copy enclosed) which has come to me as a bolt from the blue as well as my family.
4. That Sir, I like to mention here that during my posting at Guwahati on deputation I did not draw any deputation allowance. In the present situation if it is not feasible to accommodate me on deputation basis against Sr. Acct post in lower post. In the circumstances, I am to request your kindly consider my case on humanitarian ground sympathetically and for the act of your kindness, I shall remain obliged and ever grateful.

Encl:- As stated above.

Dt. 23.2.2004.

Yours faithfully -

[Signature]

(Sanjay Bhattacharya)
Sr. Acct.

[Signature]
Advocate
4.6.04

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

Estt-I order No. 419

Dated 19-03-2004

In partial modification to Estt-I order No. 386 dated 19-2-2004, Shri Jyotirmoy Mukherjee, Sr.Acctt is allowed to continue on deputation in the O/o the AG (A&E) Assam, Guwahati. Thus, the order of his repatriation to his parent Office is treated as cancelled.

Repatriation of the following Sr.Acctts to their parent Office under the earlier order stands and they are relieved of their duties in the O/o the AG (A&E) Assam, Guwahati/Meghalaya, Shillong for reporting back to the O/o the Sr.DAG (A&E) Nagaland Kohima.

- | | | |
|----|--|---------------------------------|
| 1. | Sri Biswarup Purkayastha | O/o the AG(A&E) Assam, Guwahati |
| 2. | Smti L. Bhowmick | |
| 3. | Sri Sanjoy Bhattacharjee | |
| 4. | Sri Sanjoy Sinha - O/o the AG (A&E) Meghalaya etc, Shillong. | |

[Authority:- AG's orders dated 16-3-04 at Pg/32N of the file]

Sd/-
Sr.Deputy Accountant General (A)

Memo No.Estt-I/8-11/DS/2003-04/6881-6886

Dated 19-03-2004

Copy to:-

- | | | |
|----|---------------------------|---|
| 1. | The D.A.G (Admn) Assam | O/o the AG (A&E) Assam, Maidamgaon, Beltola
Guwahati-29- With a request to release the
concerned officials with immediate effect under
intimation to this Office as their representations for
retention in your Office forwarded under your
Office letter No.Admn-I/4-14/INT-TRJ/2001-02/
8500 dated 26-2-04 have not been agreed to. |
| 2. | The Sr.AO (Admn) Assam | |
| 3. | The Sr.DAG (A&E) Nagaland | O/o the Sr. DAG (A&E) Kohima, Nagaland. |
| 4. | Persons concerned | |
| 5. | E.O. Book. | |
| 6. | AAO confidential Cell. | |

[Signature]
Establishment Officer

*Affected
Rishu
Advocate
4.6.04*

**OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM,
MAIDAMGAON, BELTOLA, GUWAHATI - 781 029.**

Admn-1 Order No. 50

Dated: 03.06.2004

In pursuance of O/O the AG (A&E) Megh's letter No. Estt.-1/8-11/DS/2003-04/ dt. 27.05.04, Sri Sanjoy Bhattacharjee, Sr. Acctt stands relieved of his duties from this office in the afternoon of 09.06.2004. He is directed to report of his parent deptt. i.e., O/O the Sr. DAG (A&E) Nagaland, Kohima,

[Authority:- DAG (A)'s order dt. 31.05.04 at P/74N of File No. Admn-1/Deptn./6-1/2003-04]

Sd/-

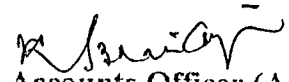
Sr. Accounts Officer (Admn)

Dated: 03.06.2004

No. Admn-1/Deptn./6-1/2003-2004/860-71

Copy forwarded to:

1. The Principal Director of Audit, NF Rly, Maligaon, Guwahati - 11.
2. The Sr. DAG (A) O/O the AG (A&E) Megh. etc. Shillong, for information with reference to his letter No. Estt.-1/8-11/DS/2003-04/ dt. 27.05.04.
3. Sr. DAG (A&E), O/O the Sr. DAG (A&E) Nagaland, Kohima.
4. The AAO i/c Confidential Cell.
5. AAO i/c Admn-II Section.
6. AAO i/c. PAO Local.
7. AAO i/c. Record (C).
8. The Private Secretary to the AG (A&E) Assam, Guwahati.
9. The Hindi Officer i/c Hindi Cell. He is requested to issue Hindi Version of this order from his end.
- ✓ 10. Sri Sanjoy Bhattacharjee, Sr. Accountant.
11. Service Book Group/Budget Group/P.C. of Sri S. Bhattacharjee, Sr. Acctt.
12. Admn-1 order Book.


Sr. Accounts Officer (Admn)

*Submitted
from
Advocate
4.6.04*

O..A.No.51/2004

1.4.2004 Present: Hon'ble Shri Kuldip Singh,
Judicial member

Hon'ble Shri K. V. Prasad,
Administrative member

FORM NO. 4 Learned Counsel for

(SEE RULE 42) respondents seeks four weeks time to

CENTRAL ADMINISTRATIVE written application. Time allowed.

GUWAHATI The applicant may file rejoinder within
two weeks thereafter. List the matter

ORDER SHEET on 27.4.04 for orders. Meanwhile

Org. App/ Misc. Petn/Cont. Petn/ Interim order 51/2004 to continue.

In O.A.

Name of the Applicant(s) Kiswarup Pankajestha

Name of the Respondent(s) Govt. of Assam

Advocate for the Applicant: Mr. H. K. Das & B. Prasad

Counsel for the Railway/ C.G.S.C. CGSC

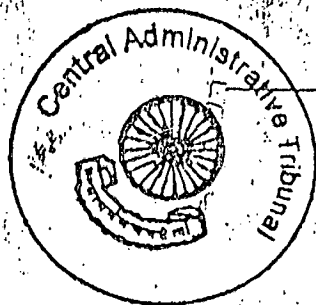
OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

1.3.2004

Heard Mr H.K. Das, learned
counsel for the applicant. The
application is admitted. Issue
notice returnable by 1.4.04.
Meanwhile, the reversion order
dated 19.2.2004 is stayed till the
returnable date. List for orders on
1.4.04.



Sd/MEMBER(ADM)

TRUE COPY

प्रतिलिपि

Section Officer (J)

C.A.T. GUWAHATI BRANCH

Guwahati-781005

*Master
Advocate
4.6.04*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.174 of 2000.

Date of decision : This the 9th day of November, 2000.

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

Sri Dmabaru Dhar Pathak
Son of late Baidyanath Pathak
Working as Principal,
Jawahar Navodaya Vidyalaya,
Kaliagaon,
District, Darrang, Assam

Applicant

By Advocate Mr. M Chanda.

-versus-

1. Union of India
Through the Secretary to the
Government of India, Ministry of
Human Resoreces, New Delhi-110011.

2. The Director
Navodaya Vidyalaya Samity
A-39 Kailash Colony,
New Delhi-110048

3. The Deputy Director,
Navodaya Vidyalaya Samity
Shillong Region,
Shillong.

4. Sri V.Rama Rao,
Joint Director(Admn.),
Navodaya Vidyalaya Samity,
A-39 Kailash Colony,
New Delhi-110048.

The State of Assam
Through the Director, Secondary Education,
Kahilipara, Guwahati-19.

Respondents

By Advocate Mr. K.N.Choudhury, Sr. counsel.

ORDER

CHOWDHURY, J.(V.C.).

The legitimacy of the order dated 2.5.2000
repatriating the applicant to his parent department is the
subject matter of adjudication in this proceeding which has
arisen in the following circumstances;

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Handwritten signature and date:
4.6.04

The applicant at the relevant time was holding the post of subject teacher in a Higher Secondary School under the administrative control of the Director of Secondary Education in the State of Assam (Respondent No.5). The Novodoya Vidyalaya Samity an autonomous organisation functioning under the Human Resources Development Department of Education. The Respondent No.1 invited applications for the post of Principal of Novodoya Vidyalaya Samity (for short NVS). The applicant also put up his candidature for the post of Principal and applied accordingly. In due course of time the respondents along with others called the applicant for interview, and the applicant was found suitable for the post and accordingly offered him appointment to the post of Principal in NVS on deputation basis. The offer of appointment was accordingly sent to the Director, Secondary Education, Assam in a communication No. 1-3/98-NVS PR(Annexure-1) dated 2.8.1999. The communication inter alia indicated that the appointment would be on transfer on deputation basis for a period of two years and was likely to be extended basing of his/her performance. The applicant respondent to the offer and reported for duty on being relieved by the parent department to take over charge. The respondents by office order No. Admn./16-29/75/DP/99/NVS(SHR)/2843 dated 29.9.99 directed the applicant to take over the charge of Principal, JNV (Kaliagoan), Mangaldai, Assam and advised him to report to the Deputy Commissioner and Chairman VMC, Mangaldai for further orders. Consequently the applicant assumed the charge of the office of the Principal of JNV (Kaliagoan) Mangaldai and commended functioning as such. While the applicant was discharging his duties as such he was served with the impugned Office Order No. PD-22/99-NVS (Pers) dated 2.5.2000 under the signature of the respondent No. 4

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repatriating the applicant to his parent department. Hence the application challenging the aforementioned action of the respondents which is arbitrary, discriminatory and unfair.

2. The respondents denied and disputed the assertion and contentions made by the applicant apart from questioning the maintainability of the application and to this effect the written statement was filed on behalf of the respondent no. 2, 3 and 4.

3. Heard Mr. M. Chanda learned counsel appearing on behalf of the applicant and Mr. K.N. Choudhury, appearing on behalf of the NVS.

4. Mr. Chanda referring to the materials on records records more particularly, to the terms of the appointment order and the impromptu order of repatriation, submitted that the action of the respondents are per se, arbitrary, discriminatory and suffers from vices, mala fide and improper exercise of power. He further submitted that the order did not indicate any reason or ground for the sudden repatriation thrown the terms of appointment itself provided that the appointment of the applicant was on transfer on deputation basis initially for a period of two years, extendable on yearly basis at a time in consultation with this parent department. Neither any grounds were mentioned in the order for this sudden change of attitude nor he was ever made aware as to reasons for the change of the terms and conditions. Mr. Chanda, learned Advocate

further submitted that as per terms and conditions the deputation period of the applicant was fixed for two years which was extendable. The learned counsel further submitted that the deputation period could have been curtailed on good reasons after disclosing those reasons and providing an opportunity to the applicant to state his case. Mr. Chanda referred to the statement of respondents in their written statement wherein it cited about some allegations relating to

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the conduct of the applicant without providing any opportunity to the applicant to rebut or explain. Mr. Chanda, learned counsel further submitted that allegations made contained vague suggestions and irresponsible hints bereft any specific details, that too behind the back of the applicant. He further submitted that the respondents acted in a most unfair and unjust manner to tarnish the reputation of the application. He further submitted that the impugned order is not a genuine order but a mere pretence and the same was passed arbitrarily in a most illegal fashion, requiring interference from the Tribunal. In support of his contentions he referred to the decision rendered by the Supreme Court in the case of K.H. Phadnis vs. State of Maharashtra reported in AIR 1971 (SC) 998 and in the case of K.I. Sephard & Ors. Vs. Union of India reported in 1998 1 (SLJ) 105. On the other hand Mr. K.N.Choudhury, the learned Sr. counsel appearing for the NVS submitted that the order of reversion was passed in consonance with the terms of the appointment and the same was passed bona fide and in the public interest. He further submitted that the applicant was brought on deputation to serve the need of the respondents. When the respondents on evaluation on the materials on record found that the applicant was not in a position to serve the purpose respondents decided to repatriate the applicant to his parent department. Citing to the terms of offer of appointment Mr. Choudhury submitted that the authority is/was within its competence to curtail the deputation period without assigning any reason or notice as per its offer of appointment. The respondent authority reserved the right to repatriate the applicant to his parent department at any time without assigning any reason. The learned Senior Counsel further submitted that the discretion was vested on the

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respondents and the respondents lawfully exercised discretion in the facts and circumstances. In support of his contention he referred to the decision of the Supreme Court in the case of State of Madhya Pradesh Vs. Ashok Deshmukh reported in AIR 1988 SC 1240 and Rotilal B Soni and Ors. Vs. State of Gujarat and others reported in 1990 Supp (SCC) 243. Relying on the aforementioned decision Mr. Choudhury, learned counsel submitted that the applicant being on deputation he can/could be reverted to this parent cadre at any time.

5. Before entering into the respective contention it would be appropriate to take note of terms of appointment communicated vide Memo dated 2.8.1999. The relevant clause contained in the offer of appointment is cited below :

"With reference to his/her application and subsequent interview for the post of Principal in NVS on transfer on deputation basis, I am to inform that Shri/Smt. Dambarudhar Pathak presently working as Commerce Teacher in your organisation has been selected for appointment to the post of Principal on temporary basis in Navodaya Vidyalaya Samiti on transfer on deputation basis in the scale of pay of Rs. 10,000-325-15200 initially for a period of two years.

The appointment will be on transfer on deputation basis for a period of two years in the first instance and is likely to be extended basing on his/her performance. The Officer would be entitled to draw dearness allowance and such other allowances at the rate admissible subject to the conditions laid down in the rules and orders governing the grant of such allowances in force as amended from time to time. The general terms and conditions of deputation on foreign service are enclosed.

The other terms and conditions of the appointment will be as follows :

iii. The appointment will be on transfer on deputation basis initially for a period

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of two years extendable on yearly basis at a time in consultation with his/her parent organisation. However, the deputation period may be curtailed or extended at the discretion of the competent authority without assigning any reason or notice. There is no scope for permanent absorption to the incumbent who joins on transfer on deputation basis.

ii. Samiti reserves the right to repatriate him/her back to their parent department at any time without assigning any reason."

According to the respondents terms of appointment itself indicated that the respondents reserved the right to curtail or extend the period of deputation without assigning any reason or notice. It was also indicated that there is/was no scope for permanent absorption to the incumbent those who joins on transfer on deputation basis. The said letter also contained the clause reserving the right of the Samity right contained the right to repatriate the concerned person back to his parent department at any time without assigning any reason. In otherwords the respondent submitted that it was within the domain of the authority to curtail the period of deputation and the discretion reposed is/was unfettered and absolute. In the case in hand the respondents also referred to certain allegation against the applicant wherein it was mentioned that the applicant failed to maintain the sanctity of the school, stop or check the alleged affairs between two teachers. It was asserted that despite complaint from the students, the applicant failed to respond, the students directly reported the matter to the Regional Officer of the Samity. It was further stated in the affidavit that on an investigation the respondents found that the applicant neither informed the Regional Office nor did he took any action against the teachers. Similar allegations were made in paragraph 7 of the written statement suggesting about negligence in discharge of duties by the applicant. The respondents in their written statement also stated that the

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applicant was intimidated verbally to take steps to improve the state of affairs of the Vidyalaya but to no avail. Under these circumstances the committee was constrained to repatriate the applicant to prevent any further damage to the Institution. The applicant denied those allegation in his rejoinder and stated that some of the guardians made general complaint regarding irregularities of the Management of the school and the said complaint was enquired into by Circle Officer on the direction of the Deputy Commissioner, Darrang, who happened to be Chairman of the Managing Committee. The report of the Circle Officer dated 28.4.2000 was annexed to the rejoinder - The said report did not even remotely evoke any farm reprehensible conduct of the applicant - the officer on the other hand acclaimed the demenour of the applicant in its account.

From the materials as mentioned above, it is clear that none of these allegations were ever disclosed to the applicant prior to issuance of the impugned order. Discretion import a duty to be "Fair, candid, unprejudiced, not arbitrary, capricious and biassed" where relevant material were not disclosed to the applicant at all which is prejudiced to subject, such act and/or order prima facie appears to be unfair. Exercise of public power in the Indian Polity is governed by the Constitutional norms - rule of law is one of the basic feature of the Constitution. Article 14 acts a brake upon exercise of all powers, one of the attribute of the principles of fairness is that no person should be condemned unheard and public power should not be exercise arbitrarily. Procedural propriety envisions that the decision maker in exercising discretion is to act in just fair and reasonable manner. The terms of the appointment itself

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indicated that the tenure at the first instance was for two years, in deviation of the term the authority sought to abort the same which is totally inconsistent with the professed norm laid down in the letter of appointment without taking into confidence the applicant as well as the parent department. The respondents unfairly disregarded the terms and conditions overlooking its duty to act with fairness and consistency in its dealing. When the public authority makes an inconsistent decision unfairly and unjustly it amounts to misuse of power. All powers entrusted to a public authority emanate from trust that it has to be exercised reasonably and in good faith and on proper and fair assessment of all the relevant considerations. All power has a legal limits. Arbitrary and unfair exercise of discretion are what the law refused to countenance. Mr. Choudhury further submitted that even if the authority failed to give reasons the material on record itself speaks for the reasons. As mentioned earlier save and except the bald statement by the respondents, there is no material so far produced in support of the stand of Respondents. No such records were produced by the respondents, reasons assigned in the written statement is merely an attempt to rationalise the decision ex post facto. There is no discernible reason for precipitous reversion of the applicant.

Arbitrary power and unfettered discretion is what the law refuse to endure. As alluded discretionary exercise/power is also subject to legal limitation which is to be exercised reasonably and good faith for proper purposes only in conformity with the spirit as well as the letter of professed norms and/or the empowering statute. Constitution imperatives demand that powers must be exercised reasonably and in good faith. "In good faith" in the context signifies

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use of power "for legitimate reasons" informed by reason and law. The expression used in the offer of appointment likethe deputation period may be curtailed without assigning any reason or notice" ... "Samity reserves the right to repatriate him/her back to their parent department at any time without assigning any reason" are not absolute but subject to the implied qualification and/or requirement of "good faith" as the Sangathan may bonafide consider" it to be right. Such exercise naturally conceive of due application of mind to the relevant considerations overlooking irrelevant considerations in a just and fair manner. Save and except the ip se dixit and eman d otio adumbrated in the written statement, there is no discernible reason for accelerating to put an end of the deputation period much ahead of the time stipulated. The appointment was on transfer on deputation basis for a period of two years in the first instance was likely to be extended basing on performance. The performance of the incumbent was to be assessed, before elongating or extending the period of deputation. The right of Repatriation threfore is not absolute and unfettered. The stipulations embodied in the contracts by the public authority for attaining public purpose. The receipt of power must use the same for a lawful purpose and not unreasonably. The offer of appointment in the case in hand aroused a reasonable expectation on the applicant that he will receive and retain the benefit and continue to hold the post as per the arrangement. As stated the reasons for the decision is absent, the facts and circumstances, evident from the materials on record appear to point overwhelmingly in favour of a different decision. The only inference that can in the circumstances be drawn that the Respondent No.4 had no rational reasons for reaching at the impugned decision. The Respondent No.4 is/was not authorised to summarily revert the applicant.

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6. In the circumstances and for all the reasons stated the impugned order is liable to set aside and accordingly the impugned order No. PD-22/99-NVS(Pers) dated 2.5.2000 passed by the Respondent No. 4 repatriating the applicant to his parent department is thus set aside and quashed.

7. The application is allowed, there shall however, be no order as to costs.

Sd/VICE CHAIRMAN

TRUE COPY

14/12/2000

Section Officer (J)
आनुमान आधिकारी (अनुमान शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench, Guwahati-8
गुवाहाटी बेंच, गुवाहाटी-8

14/12/2000

Advocate
4.6.02