

FORM NO. @
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 27/06
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s) L. Appal Sawauni

Respondent(S) U. O. I Poms

Advocate for the Applicants M. Chanda, G.N. Chakraborty
S. Naib

Advocate for the Respondent(S) _____
CGSC
Bly. St. Counsel

Notes of the Registry Date _____ Order of the Tribunal

This application is in form
is filed/C F _____
d. pos. rel _____
No. 260.319020
Dated 25.1.08

W. S. S. S.
30.1.08
10 Dy. Registrar
AS

Steps not taken

AS

30.01.2006 Present: The Hon'ble Shri K.V.
Sachidanandan, Vice-Chairman

The applicant is now working as Divisional Accountant on deputation basis under the second respondent in the Office of the Executive Engineer, P.H.E. & Water Supply Division, Khonsa, Dist: Tirap, Arunachal Pradesh. The case of the applicant is that earlier he was a Central Government employee. He joined the Arunachal Pradesh State Service after formulation of the State and the State has adopted the service conditions of CCS Pension Rule 1972 for the state Govt. service and according to FR 56, if this proposition is accepted the applicant needs to retire at the age of 60 years.

The matter was taken before the Hon'ble Gauhati High Court in W.P. (C) 23(AP)2006 wherein the Court has given liberty to the applicant to approach

Contd/-

Contd.....

Contd/-

30.1.2006

appropriate Court as the High Court has no jurisdiction to entertain such matters. Hence this O.A. has been filed.

When the matter came up for admission Mr. G. Baishya, learned Sr. C.G.S.C. took notice on behalf of respondent nos. 1 & 2. Learned counsel for the applicant Mr. M. Chanda submits that he will serve notice to the respondent nos. 4 to 7. Since the matter is urgent he also sought the permission to serve the notice for respondent no. 3 to the C.G.S.C. of the High Court appearing for the State of Arunachal Pradesh.

As per the impugned order the applicant is to retire on 31.01.2006 i.e. tomorrow. The applicant has insisted for an interim order for staying of the impugned order. But considering the question of retirement and since materials are not available on record as to prove that the applicant is entitled to serve upto 60 years of age, I am of the view that no interim order of stay of the impugned order is contemplated at this stage. The matter can be ascertained only after filing of statement by the respondents. However, one thing is clear that if the Arunachal Pradesh has adopted the CCS Pension Rule 1972 in toto, probably the applicant may have a good case. It is made clear that the superannuation of the applicant on 31.01.2006 will be subject to the outcome of the O.A. Respondents counsel is specifically directed to file a statement at the earliest not later than two weeks. Post the case on 15.2.2006. The

Contd/-

O.A. 27/2083

: 3 :

Contd/-

30.1.2006

respective Central Govt. Standing Counsel of High Court appearing for the Arunachal Pradesh is directed to take instruction from the State Government in the matter.

Vice-Chairman

bb

15.02.2006

Ms. U. Das, learned Addl. C.G.S.C representing the counsel for the State of Arunachal Pradesh sought for time to file reply statement.

Post on 10.3.2006.

Vice-Chairman

mb

10.3.2006

Govt. of Arunachal Pradesh is given further six weeks time to file reply statement. Post on 26.4.2006.

Vice-Chairman(J)

Vice-Chairman(A)

bb

26.4.2006

When the matter came up for hearing learned counsel for the respondents submitted that he would like to have some more time to file reply statement. Considering the sensitive issue involved in this case, the respondents are directed to file reply statement as expeditiously as possible.

Post on 30.05.2006.

Vice-Chairman

mb

6.6.06

W/s filed by the Respondent Nos. 3 to 7.

Please carry out and dated 30.1.06.

WS
31.1.06

R
Sat
31.1.

Received on behalf of

G. Baishya.

Sr. C.G.S.C.

Rubi Gogoi
Advocate

31.1.06

14.2.06

W/s not filed by the Respondents.

2-3-06

No W/s has been filed.

25-4-06

No W/s has been filed.

29-5-06

No W/s has been filed.

O.A.27/2006 B=

30.5.2006

Learned Govt. Advocate for the State of Arunachal Pradesh requests for 15 days more time to file reply statement. Let it be done.
post on 15.6.2006.

Vice-Chairman

bb

15.6.2006

It is seen from the record that respondents 3 to 7 had already filed reply statement. Copy is furnished to the learned counsel for the applicant Mr.M.Chanda. He wanted to file rejoinder. Let it be done.
post on 19.6.2006.

Vice-Chairman

bb

19.06.2006

Post on 27.06.2006. In the meantime, the respondents are at liberty to file reply statement, if any.

Vice-Chairman

mb

27.06.2006

Post on 29.06.2006.

Vice-Chairman

mb

29.6.2006

Mr.G.Baishya, learned Sr.C.G.S. for the respondents 1 & 2 submits that they may also be permitted to file reply statement.

Considering the larger issue last and final chance is granted to them to file reply statement. post on 24.7.20-

Vice-Chairman

bb

① ~~No steps taken~~
~~for issue notice,~~

② ~~Wks reply has been~~
~~filed.~~

~~14.6.06~~

14-6-06
Wks filed on
behalf of R.No-3 to 7.

~~14.6.06~~

16-6-06

No rejoinder has
been filed.

~~16.6.06~~

21.6.06

Rejoinder Submitted
by the Applicant.

~~21.6.06~~

① Wks filed on behalf
of R.No-3 to 7.

② Wks awaited from
R.No-1 & 2.

③ Rejoinder has been
filed.

~~26.6.06~~

5
O.A 27/2006

Notes of the Registry	Date	Order of the Tribunal
21.7.06 W/s filed by the Respondent Nos. 1 & 2. 21.7.06 Ready for hearing. bn	24.7.2006	The issue is regarding age of superannuation of 60 years. Mr.S.Nath, learned counsel for the applicant submits that analogous matter is placed before the Division Bench. Let the case also be posted before the next Division Bench on 14.8.2006. bb Vice-Chairman
She case is ready for hearing. 10.8.06	11.08.2006	Issue involved is for retirement age of the employees of the Arunachal Pradesh Government. Post on alongwith other connected matters. nb Member by order bn CP Vice-Chairman
She case is ready for hearing. 29.8.06	25.8.06	Let the case be listed before the Division Bench. lm Vice-Chairman

27.2.2007 Present: Hon'ble Shri K.V. Sachidanandan,
Vice-Chairman

Hon'ble Smt Chitra Chopra,
Administrative Member.

Heard Mr M. Chanda, learned counsel for the applicant, Mr A. Buzarbaruah, learned Government Advocate, Arunachal Pradesh and Ms U. Das, learned Addl. C.G.S.C.

Hearing concluded. Judgment reserved.

cl
Member(A)

Vice-Chairman

nkm

O.A. 27 of 06

2.3.07.

Judgment delivered in open Court.
Kept in separate sheets. Application is
dismissed.

20.3.07

Member

Vice-Chairman

lm

Copy of the
Hdgt has been
sent to the D/Sec
for early the line
to the applicant
as well as to the
2/Adv. for Recd.
and a copy
has been sent
etc

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.27 of 2006

And

Original Application No.103 of 2006

DATE OF DECISION: 02.03.2007

1. Shri L. Appal Swami (in O.A.No.27/2006)

.....APPLICANT(S)

2. Shri Kamini Kumar Das (in O.A.No.103/2006)

Mr M. Chanda, Mr G.N. Chakroborty and
Mr S. Nath

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

.....RESPONDENT(S)

Mr G. Baishya, Sr. C.G.S.C.,
Ms U. Das, Addl. C.G.S.C. and
Mr A. Buzarbaruah, Government Advocate,
Arunachal Pradesh

ADVOCATE(S) FOR THE
RESPONDENT(S)

CORAM:

THE HON'BLE SHRI K.V. SACHIDANANDAN, VICE CHAIRMAN
THE HON'BLE SMT CHITRA CHOPRA, ADMINISTRATIVE MEMBER

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|----|---|--------|
| 1. | Whether reporters of local newspapers
may be allowed to see the Judgment ? | Yes/No |
| 2. | Whether to be referred to the Reporter or not? | Yes/No |
| 3. | Whether to be forwarded for including in the Digest
Being compiled at Jodhpur Bench and other Benches? | Yes/No |
| 4. | Whether their Lordships wish to see the fair copy
of the Judgment ? | Yes/No |

Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.27 of 2006

And

Original Application No.103 of 2006

Date of Order: This the 2nd day of March 2007

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman


The Hon'ble Smt Chitra Chopra, Administrative Member

I. O.A.No.27/2006

Shri L. Appal Swami
S/o Late L.A. Naidu,
Presently working as Divisional Accountant,
O/o The Executive Engineer,
PHE & Water Supply Division, Khonsa,
Distt.- Tirap, Arunachal Pradesh.Applicant

By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr S. Nath.

- versus -

1. Union of India, through the
Comptroller & Auditor General of India,
10 Bahadur Shah Zafar Marg, New Delhi.
 2. The Accountant General (A&E)
Arunachal Pradesh, Meghalaya, Mizoram etc.,
Shillong-793003.
 3. The State of Arunachal Pradesh, represented by
The Secretary to the Government of Arunachal Pradesh,
Department of PHE & WS, Itanagar.
 4. The Commissioner, Finance Department,
Government of Arunachal Pradesh, Itanagar.
 5. The Director of Accounts & Treasuries,
Government of Arunachal Pradesh, Naharlagun-791110.
 6. The Chief Engineer,
Public Health Engineering & W.S. Department,
Government of Arunachal Pradesh, Itanagar.
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6. The Executive Engineer
PHE and Water Supply Division,
Khonsa, Distt.- Tirap,
Arunachal Pradesh.

..... Respondents

By Advocate Mr G. Baishya, Sr. C.G.S.C. and
Mr A. Buzarbaruah, Government Advocate,
Arunachal Pradesh.

II. O.A.No.103/2006

Shri Keshab Chandra Das,
S/o Shri Kamini Kumar Das,
Presently working as Divisional Accountant,
O/o The Executive Engineer,
R.W.D. Division Bomdila, Distt.- West Kameng,
Arunachal Pradesh-750116.

..... Applicant

By Advocates Mr M. Chanda, Mr G.N. Chakraborty
and Mr S. Nath.

- versus -

1. Union of India, through the
Comptroller & Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi.
2. The Accountant General (A&E)
Arunachal Pradesh, Meghalaya, Mizoram etc.,
Shillong-793003.
3. The State of Arunachal Pradesh, represented by the
Secretary to the Government of Arunachal Pradesh,
Department of PHE & WS, Itanagar.
4. The Commissioner, Finance Department
Government of Arunachal Pradesh, Itanagar.
5. The Director of Accounts & Treasuries
Government of Arunachal Pradesh,
Naharlagun-791110.
6. The Chief Engineer
R.W.D. Department,
Government of Arunachal Pradesh, Itanagar.
7. The Executive Engineer
R.W.D. Division,
Bomdila, Arunachal Pradesh.

..... Respondents

By Advocate Ms U. Das, Addl. C.G.S.C. and
Mr A. Buzarbaruah, Government Advocate,
Arunachal Pradesh.

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ORDER

K.V. SACHIDANANDAN (V.C.)

The applications are filed by the applicants who have been selected and appointed as Divisional Accountants on deputation basis under respondent No.2 and presently working in the Office of the Executive Engineer, Arunachal Pradesh. The issues involved in these cases are same and the prayers in both the applications are also identical as to permit them to continue in service till attaining the age of 60 years. Therefore, the O.A.s are being disposed of by a common order by consent of the parties.

2. The case of the applicants is that, they were selected and appointed as Divisional Accountants on deputation basis and the Government of Arunachal Pradesh is under active consideration to take over the cadre of Divisional Accountants. For that purpose, the Commissioner of Finance made a request to the Government of Arunachal Pradesh stating that the Divisional Accountants who were appointed on deputation basis may be allowed to continue as emergency Divisional Accountants. Aggrieved by the said action of the respondents, the applicants approached this Tribunal through different applications (O.A.No.115/2005) for consideration of their case for permanent absorption, which is pending disposal. While so, the Sr Accounts Officer, Office of the Accountant General (A&E), Meghalaya vide impugned letter dated 10.01.2006 intimated the Director of Accounts and Treasuries that the applicants were due to retire on 31.01.2006 (applicant in O.A.27/2006) and 30.04.2006 (applicant in O.A.103/2006) respectively on attaining the age of 58




years and requested the State authorities to take necessary steps to enable the applicants to take retirement as per their retirement age. Aggrieved by the said action of the respondents the applicants have filed the present O.A.s seeking the following reliefs:

O.A.No.27/2006

- "8.1 That the Hon'ble Tribunal set aside and quashed the impugned notice issued under letter No.KPHED/ESTT/PF-172/2000-01/1427 dated 30.12.2005 (Annexure-9)
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to retire on superannuation only on attaining the age of 60 years in terms of the provision laid down in FR 56 (a) as well as in terms of rule 35 of CCS (Pension) Rules, 1972
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in service till attaining the age of 60 years in terms of the prayer no.2."

O.A.No.103/2006

- "8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter issued under letter No.DA Cell/2-46/2000-01/Vol.III/1667-69 dated 10.01.2006 (Annexure-6) so far the applicant is concerned.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to retire on superannuation only on attaining the age of 60 years in terms of the provision laid down in FR 56 (a) as well as in terms of rule 35 of CCS (Pension) Rules 1972.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in service
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till attaining the age of 60 years in terms of the prayer No.2"

3. The respondent Nos.1 and 2 and 3 to 7 have filed detailed written statements separately contending that the applicants are regular employees of the Government of Arunachal Pradesh. Since there were vacancies in the cadre of Divisional Accountants and since it takes time to fill up the vacancies through the Staff Selection Commission, the respondent No.2 called for applications from amongst the experienced staff in Public Works Department, PHE, etc. who were willing to serve as Divisional Accountants on deputation basis under the State Governments of Tripura, Arunachal Pradesh and Manipur. Accordingly the applicants have been selected and appointed as Divisional Accountants on deputation basis under the administrative control of respondent No.2 for an initial period of one year and making it clear that the applicants were liable to work on deputation basis in any of the above three States.

4. The Government of Arunachal Pradesh submitted a proposal to transfer the cadre of Divisional Accountants under the direct control of Director of Accounts and Treasuries, Government of Arunachal Pradesh and a formal notification would be communicated by the State Government in due course. The State Government cannot unilaterally take over the cadre of the Divisional Accountants, which is under the control of any of the State Accountant Generals without the prior consent and approval of the Comptroller and Auditor General of India. After completion of the applicants' deputation period the repatriation orders to the parent departments of the applicants were issued to the applicants. However, instead of reporting back to the parent departments, the applicants filed an application before the

Tribunal against the repatriation order and the issue is pending before this court as different proceedings.

5. Four years have elapsed, the State Government of Arunachal Pradesh have not initiated any move to take over the cadre of Divisional Accountants in the State from the administrative control of the Accountant General (A&E). The handing over of the Divisional Accountants cadre from the administrative control of Accountant General cannot take place without the consent of the Comptroller and Auditor General of India. Since some of the Original Applications (O.A.Nos. 114/2005, 115/2005 and 238/2005) are pending before the Tribunal and which have not attained finality, the question of absorption of the Divisional Accountants on deputation was under consideration by the Office of the Comptroller and Auditor General of India. The applicants are regular employees of the Government of Arunachal Pradesh and appointed as Divisional Accountants on deputation basis. As State Government employees the applicants were to retire on superannuation on attaining the age of 58 years, which is the superannuating age of all the employees of the Government of Arunachal Pradesh. Though the Government of Arunachal Pradesh adopted Central Government rules and regulations including Fundamental Rules and Supplementary rules as well as CCS (Pension) Rules, CCS (leave) Rules etc. which govern the service conditions of the employees of Government of Arunachal Pradesh, the retirement age of the employees of the Government of Arunachal Pradesh continues to be 58 years. Therefore, the applicants are not entitled to any relief as prayed for.

6. We have heard Mr M. Chanda, learned counsel for the applicants, Mr A. Buzarbaruah, learned Government Advocate,



Arunachal Pradesh, Mr G. Baishya, learned Sr. C.G.S.C. in O.A.No.103/2006 and Ms U. Das, learned Addl. C.G.S.C. in O.A.No.27/2006. The learned counsel for the parties have taken us to various pleadings, evidence and materials placed on record.

7. The learned counsel for the applicants argued that the applicants were erstwhile employed in the Union Territory and after formation of the State of Arunachal Pradesh the applicants have been shifted to the State Government service and on deputation basis. At the time of formation of the State Government, the CCS (CCA) Rules, Fundamental Rules, etc. of the Central Government were adopted by the State Government. Therefore, the CCS (Pension) Rules of the Central Government and FR 56 are also being adopted. Therefore, after recommendation of the Fifth Central Pay Commission the age of superannuation which was enhanced to 60 years by the Central Government would automatically be applicable to the State Government employees. Therefore, the applicants are entitled to retire at the age of 60 years instead of 58 years.

8. The learned counsel for the respondents, on the other hand, persuasively argued that though the fundamental rules and supplementary rules of the Central Government are applicable to the State Government employees vide Notification dated 16.02.1989, the retirement age of the employees adopted by the State Government as 58 years has never been enhanced by the State Government and any enhancement or change made by the Central Government would not automatically be applicable to the State Government employees. The mere fact of adoption of the Central Government rules at the time of formation of the State will always continue, but any change in the

Central Government service conditions would not automatically be applicable to the State Government employees.

9. We have given due consideration to the arguments, evidence and materials placed on record. The issue involved in this case is whether the age of the applicants to be determined as 60 years instead of 58 years. Our attention is brought to letter dated 12.01.2000 where a proposal is made to transfer the cadre of Divisional Accountants to the State of Arunachal Pradesh. Admittedly, the applicants are State Government employees working on deputation basis as Divisional Accountants. The issue as to the permanent absorption etc. has not reached finality and proceedings are pending before different courts. The crux point to be decided by this court is whether the applicants are entitled to retire at the age of 60 years. Our attention is taken to Chapter IX F.R. 56, which is quoted below:


"F.R. 56. (a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

Provided further that a Government servant who has attained the age of fifty eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service.

Or on the expiry of any further extension in service granted by the Central Government in public interest, provided that no such extension in service shall be granted beyond the age of 60 years.

(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years."



10. It is made clear that an employee has to retire from service in the afternoon of the last date of the month on which he attains the age of superannuation. Here, the retirement age has been fixed as 60 years as far as Central Government employees are concerned. This is also corroborated by Clause (1) of the Government of India's Decision, Chapter V of the Pension Rules. Admittedly, when the rules have been adopted by the State Government it was 58 years. Our attention has been taken to Notification dated 6.01.1999, which is reproduced as under:

"It is hereby notified for general information that the provisions of FRs - 56, 'Chapter-X' relating to 'Retirement' as adopted by this Government, vide No.Fin/E/47/87 (pt). dated 16th February, 1989 will continue to be applicable to all the government employees of the Government of Arunachal Pradesh.

By order and in the name of the Governor of Arunachal Pradesh.

Sd/-
(P. K. Nandi)
Under Secretary (Finance)
Government of Arunachal Pradesh
Itanagar"

11. The Government of Arunachal Pradesh also has clarified the position of retirement vide Annexure-IX dated 06.06.2006, which is also reproduced hereunder:

"Am in receipt of your D.O.No.DA Cell/1-1/2000-2001/95 dated 5.6.2006 regarding retiring age of Divisional Accountant originally an employee of Govt. of Arunachal Pradesh holding ex-cadre post of Divisional Accountant and at present under your control.

In fact, after adaptation of State laws vide Govt. Notification No.FIN/E/47/87 (PT) dated 16th February 1989 on attainment of statehood by this State, the Govt. of Arunachal Pradesh had adopted the F.R. & S.R. But, afterwards vide another Notification No.FIN/E-47/94 dated 5th January 1999, the Govt. stated its stand to continue with 58 years of age for retirement which was

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prevalent at the time of adoption of law. In this context, both the copies of orders referred to in this para are enclosed for ready reference please.

.....

Yours faithfully,

Sd/-
(C.M. Mongmaw)

12. The learned counsel for the applicant argued that vide the Notification dated 5.1.1999 what is adopted is F.R. 56 whereas the retirement age of the Central Government employees by virtue of the Fifth Central Pay Commission has been enhanced to 60 years by that time. Therefore, it is presumed that without mentioning the age as 58 years there was a total adoption of F.R. 56. It will only mean that the age of State Government employees also would be reckoned as 60 years for State Government employees. A further clarification dated 6.6.2006 would not help the respondents to reduce the same to 58 years since any administrative decision cannot overrule the notification regarding fundamental rules of the State Government. However, our attention is also taken to the Notification dated 16.02.1989, the operative portion of which is reproduced as under:

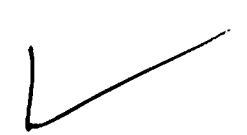
"No.FIN/E/47/87(Pt):- Whereas by Sub-section (2) of section 46 of the State of Arunachal Pradesh Act, 1986 (Act No.69 of 1986) for the purpose of facilitating the application of any law in relation to the state of Arunachal Pradesh the Government of the State of Arunachal Pradesh as the appropriate Government is empowered by order, to make such adaptation and modification of the law, whether by way of repeal or amendment, as may be necessary or expedient.

Now, therefore, in exercise of the power aforesaid the Government of the State of Arunachal Pradesh hereby makes the following order, namely:-

....."

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13. Now, the crucial question is whether the retirement age is to be considered as 60 years or 58 years. It is an admitted fact that this is a policy decision of the Government. Even though the Government of Arunachal Pradesh vide Notification dated 16.02.2989 adopted Central Government rules and regulations including Fundamental Rules and Supplementary Rules as well as CCS (Pension) Rules, CCS (Leave) Rules etc. which govern the service conditions of the employees of the Government of Arunachal Pradesh it is made clear in the Notification dated 06.01.1999 that the retirement age of employees of the Government of Arunachal Pradesh will continue to be 58 years. This was also confirmed by the Director of Accounts and Treasuries vide letter dated 06.06.2006. Since this being a policy decision and is the prerogative of the Government concerned to fix the retirement age, the mere fact that Fundamental Rules/CCS Rules have been adopted by the State Government does not mean that the retirement age all through the years should be applicable to the State Government employees. The learned counsel for the applicant have also taken our attention to the decision of the Apex Court reported in 1998 (7) SCC 221, Municipal Corporation of Delhi vs. Dharam Prakash Sharma and another and canvassed for a position that in view of the Central Government ruling the State Government cannot take a different view. The facts of the case discussed in the said ruling are different and not applicable in this case. The counsel also cited a decision of the Full Bench of the Central Administrative Tribunal, New Delhi reported in (2005) 2 ATL 617, Shri Prakash Chand and seven others vs. Union of India and others, which pertains to the Assured Career Progression Scheme and canvassed for a position that once a benefit has been granted it



cannot be withdrawn by issuance of a clarification unless the Government amend the Scheme in accordance with law. The proposition is not directly applicable in this case since in the case before the Full Bench the ACP was granted to the applicant therein by virtue of a notification and therefore the clarification cannot be sufficient. In the given case it is a policy decision of the Government and the adaptation of the Central Government Rules at a particular point of time cannot ipso facto be extended to the State Government employees especially with reference to retirement age since this is absolutely a policy matter. Therefore, this decision is also not applicable in the present case.

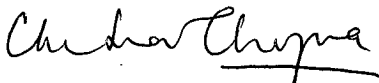
14. On perusing the records we find that the Central Government has taken a decision to enhance the retirement age from 58 years to 60 years as per the recommendations of the Fifth Central Pay Commission. There is no material placed on record that such a recommendation has been accepted by the State Government nor any separate notification has been issued by the State Government enhancing the age of superannuation from 58 to 60 years. In the absence of such notification and it being a policy decision of the State Government, we are of the considered view that this court cannot interfere in such matters. The Hon'ble Supreme Court in (1997) 1 SCC 253, Consumer Corporation Madras vs. Madras Corporation has cautioned that Courts/Tribunals cannot interfere with the policy matters of the Government.

15. In the conspectus of facts and circumstances mentioned above we are of the view that since it being a policy decision of the Government to enhance the age of retirement and since the State



Government has taken a decision that the retirement age of the State Government employees would continue to be 58 years this court cannot give a declaration otherwise. Therefore, the O.A.s are without merit and liable to be dismissed.

Accordingly the Original Applications are dismissed. In the circumstances there will be no order as to costs.



(CHITRA CHOPRA)
ADMINISTRATIVE MEMBER



(K. V. SACHIDANANDAN)
VICE-CHAIRMAN

IX O.A. NO. 27/2006

L. Appal Swami Vs. U.O.I & ors.
and.

In O.A. NO. 108/2006

K. C. Das. Vs. U.O.I & ors.

Applicants rely on the following judgment

1. Central Administrative Tribunal (Full Bench) P.B. New Delhi
Sri Prakash Chand & ors. Vs. U.O.I & ors.
Reported in (2005) 2 ATT 617.

Filed by,

Subrata Nath
Advocate
28/2

arbitrary, mala fide unjust, and issued on extraneous considerations. This contention has not been specifically rebutted by the official respondents. Shri K. Subba Rao, learned Senior Counsel appearing for the applicant vehemently contended that when such a contention is raised, it must be disputed by the respondents and it should be so supported by the respondents by producing the record, which was not the fact in the present case. Reliance was placed on 1993 (4) SLR 349, Ramadhar Pandey vs. State of U.P. & Others, which reads thus: -

"16..... The order dated July 8, 1992 does not recite any public interest. We are also not in a position to discover from the other records available before us whether the transfer of the appellant was in public interest. In the absence of a counter affidavit or even the relevant records, we are left with no option than to conclude that no public interest is involved it cannot be gainsaid that transfer is a necessary concomitants of every service; but if such a transfer could be effected only on certain conditions, it is necessary to adhere to those conditions. In this case, "the public interest" being absent the impugned order of transfer cannot be supported.

Further reliance was placed on 2004 SCC (L&S) 523 Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam and Others, which reads as: -

3. In our view, transfer of officers is required to be affected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone, who has nothing to do with the business of administration."

It is also contended that when action taken by the respondents is challenged by the State Government on the ground that action was malafide, it is not necessary to name in Petition/O.A particular officer/officers responsible for that official act, and reliance was placed on AIR 1971 SC 1228, State of Punjab vs. Ramji Lal, particularly, para-9. Under Section 114 (g) of Evidence Act, when the records are not produced, the Court can presume & draw adverse inference against the party concerned. The applicants specific contention that respondent No. 4 somehow managed to get reposted to Belgaum particularly when he had been transferred to Haveri vide order dated 12th February, 2004 and had given an undertaking before this Tribunal in O.A. No. 238/2004, remain disputed by the respondents. It would be relevant at this stage to notice the operative portion of the Order in O.A. No. 238/2004 wherein respondent no.4 has challenged his transfer from Belgaum to Haveri:

"4. We heard arguments and perused pleadings and records. During hearing the learned counsel for the applicant filed a Memo of withdrawal of the OA with the prayer that the applicant may be allowed to continue in the present post in Balgaum till the end of June 2004.

5. On consideration of the facts and circumstances of the case, the O.A. is disposed of with direction to the respondents not to relieve the applicant till 30th June, 2004. It is however open to the respondents to take appropriate decision

on the transfer/posting of the applicant after 30.6.2004. The O.A. is accordingly disposed of. No. costs." (emphasis supplied)

It is well settled that the public functionaries should be duty conscious rather than power charged. What is not fair and just is unreasonable and which is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion. An action is mala fide if it is contrary to the purpose for which it was authorized to be exercised. The Government action must be based on utmost good faith, belief and supported with reasons on the basis of the State of law. Any decision, be it a simple administrative or a policy decision, if taken without considering the relevant facts can only be termed as an arbitrary decision.

The official respondents have not denied that respondent no. 4 was transferred from Belgaum to Haveri vide order dated 12th February, 2004 based on recommendations made by the Principal Chief Conservator of Forests dated 12.12.2003. What compelled the respondents to repost respondent no. 4 at the same place, is not discernible from the records produced. We are groping in dark as what could be the reason for his reposting at the same place & from where he was transferred on 12.2.2004, and also for the reason that the effect of misdemeanor pointed out by the Principal Chief Conservator of Forests, against respondent no. 4 remain in operation & not nullified. The impugned notification dated 28th February, 2005 is not capable of severability and therefore, has to be quashed as a whole particularly when the applicant as well as respondent no. 4 have exchanged the place of posting.

In view of the above, I conclude that the impugned transfer order dated 28.2.2005 is outcome of colourable exercise of power and based on extraneous consideration besides being arbitrary and not being in public interest.

**CENTRAL ADMINISTRATIVE TRIBUNAL
(FULL BENCH P.B. NEW DELHI)**

O.A. No. 557/2004
Decided on 16-2-2005

Shri Parkash Chand and seven ors.

Union of India & ors

Versus

Applicants

For the Applicants

Mr. P.K. Sharma, Advocate.

Respondents

For the Respondents:

Mr. N.K. Aggarwal, Advocate.

PRESENT

The Hon'ble Mr. Justice V.S. Aggarwal, Chairman
The Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
The Hon'ble Mr. S. A. Singh, Member (A)

(A) Assured Career Progression Scheme--Held clarification No. 56 issued by the Department of Personnel & Training on 18.7.2001 will have the effect of rendering condition No. 7 of the ACP Scheme as redundant--It cannot take away the right that has accrued to the Government servant

in his existing hierarchy with respect to the grant of the scale to be granted by way of financial upgradation.

(B) Administrative Instructions--Administrative instructions or clarifications can supplement the statutory rules where there are ambiguities--They can fill up the gaps but administrative instructions or clarifications cannot override the provisions of the rules or statute.

(C) Assured Career Progression Scheme--ACP Scheme is not statutory in nature but it is a beneficial scheme--Certain rights have been created on its implementation and granting of the benefit thereto--Once a benefit has been granted, that cannot be withdrawn by issuing clarifications unless the Govt. amend the Scheme in accordance with law.

Cases referred:

1. Guman Singh v. State of Rajasthan & Ors. 1971(2) SCC 452.
2. V.T. Khanzode and Ors. v. Reserve Bank of India & Anr., 1982(2) SCC 7.
3. Union of India v. K.P. Joseph & Ors., AIR 1973(SC)303.
4. Sant Ram Sharma v. State of Rajasthan (1968) 1 SCR 111; AIR 1967 SC 1910.
5. Shri Ananta Ram Baishya & Ors. v. Union of India & Ors., OA No. 26/2004 decided on 14.5.2004. (Gawahati Bench)
6. Smt. Sukla v. Union of India & Ors., OA No. 87/2004 decided on 29.7.2004. (Calcutta Bench)
7. Smt. Shanti Roy & ors. v. Government of India & Ors., OA No. 669/04 decided on 13.10.2004. (Jabalpur Bench)
8. Kesho Ram & Ors. v. Union of India & Ors., OA No. 544/04 decided on 15.10.2004. (Principal Bench)
9. Kewal Krishnan & Ors. v. Union of India & Ors., OA No. 327/PB/2004 decided on 7.1.2005. (Chandigarh Bench)
10. Director General of Posts & Others v. B. Ravindran & Anr., (1997)1 SCC 641.
11. Bhagwati Prasad & Ors. v. Union of India & Ors., OA 2380/03 decided on 20.4.2004. (Principal Bench)

ORDER(ORAL)

Justice V.S. Aggarwal, Chairman: - 'A Bench of this Tribunal, on 25.11.2004, referred the following question for consideration:

"Whether Clarification No. 56 issued by the DoP&T on 18.7.2001 would have an effect of rendering condition no. 7 of the ACP Scheme redundant and to take away the right accrued to a Government servant in his hierarchy to be granted financial upgradation under the ACP Scheme?"

2. The relevant facts, giving rise to the above reference, can conveniently be delineated.
3. The applicants were appointed as Lower Division Clerks with the respondents. They were promoted as Upper Division Clerks in the pay scale of Rs. 4000-6000 in the Ministry of Small Scale Industries. As per the existing hierarchy, under the recruitment rules, the applicants are entitled to be promoted to the post of Superintendent in the pay scale of Rs. 5500-9000. When the 1st Central Pay Commission's recommendations were returned, the Assured Career Progression (for short, 'ACP') Scheme had been intro-

duced. In accordance with the same, by an order dated 27.09.2002, the applicants were granted the benefit of ACP Scheme. They were placed in the pay scale of Rs. 5500-9000. There were certain doubts in the mind of the State and clarifications were sought. Clarification No. 56 had been received in which it was pointed that as the hierarchy in the Small Scale Industries Department is small, it is not at par with All India hierarchy of the cadre. This would amount to discrimination. In pursuance of the said Clarification, a show cause notice was issued to modify the ACP Scheme benefit. The scales were to be reduced. The consequential recovery was to be effected. The reply to the same had been filed.

4. Vide the impugned order of 19.01.2004 the upgradation under ACP Scheme granted to the applicants in the scale of Rs. 5500-9000 has been modified to the scale of Rs. 5000-8000.

5. Some further facts, in this regard, would also be necessary. Vide the Office Memorandum of 9.8.1999, the ACP Scheme had been introduced. Under paragraph 11 of the Scheme, any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP Scheme will have to be given by the Department of Personnel & Training. Vide the condition for grant of the benefit under the said Scheme it was provided that financial upgradation under the Scheme would be in the next higher grade in accordance with the existing hierarchy in the cadre/category of posts. Paragraph 7, in this regard, reads:

"Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbent of isolated posts in the pay scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only."

6. At this stage, it would be appropriate even to notice the clarification no. 56 that had been given by the Department of Personnel & Training, which reads:

23

Sl. No. Point of doubt

Clarification

56.

The Fifth Central Pay Commission has identified a number of common category posts spread across various Ministries/ Departments as well as in offices outside the Secretariat as discussed in Chapter 55 of its report and also in other Chapters and has made recommendations for adoption of uniform grade/ cadre structure subject to functional needs of an individual organization. In a large organization, all the hierarchical levels as per uniform cadre/grade structure may be created while in a smaller office, a few levels of the uniform hierarchical structure may not be introduced keeping in view the functional needs of the organization. Consequently, while in a larger organization, Cadre, promotions are allowed in consecutive hierarchical grades, in a smaller cadre, promotions involved substantial jumps though in such cases, the requirement of period of regular service in the feeder grade as specified in the Recruitment Rules may be longer. Since under ACPS, the requirement of longer regular service in the feeder grade for promotion to such higher levels is not reckoned while considering financial upgradation, it results in a situation where person belonging to common category and recruited at same time in same entry grades are entitled to financial upgradations in vastly different grades under ACPS. Is it not anomalous?

Financial upgradations under ACPS are to be allowed in the existing hierarchy. However, in reply to point of doubt no. 2 it has already been clarified that existing hierarchy in relation to a cadre would mean the restructured grades recommended by the Fifth Central Pay Commission. Further, as an example, in reply to point of doubt no. 19, it has been stated that in order to secure upward mobility of library staff under the ACPS, it has been decided to adopt the pay structure as notified by the Ministry of Finance Vide O.M. dated July 24, 1990 subject to the terms and conditions specified by them. Therefore, the ACPS already envisages that in respect of common category posts, if the Government has accepted a uniform standard hierarchical structure, then existing hierarchical structure, then existing hierarchy in relation to such common categories shall be the standard hierarchy as approved by the Government and not the hierarchy in a particular office, which, for functional considerations may not have all the grades. If such financial upgradations are allowed keeping purely such local hierarchy in view, it will result in vast disparities in entitlements under ACPS for identical category of posts which cannot be justified. It has the potential of generating huge disquiet and unrest, which will not be in public interest. If, however, the Fifth Central Pay Commission has recommended a specific pay structure/ ACP grades for a particular category in an organization which may seemingly belong to a common category, then the mobility under ACPS in respect of such specific posts in that organization shall be through the grade structure/ ACPS grades recommended for that organization, if the same has been approved

by the Government, and not the standard grade/hierarchical structure recommended for such common category.

7. It is in pursuance of this Clarification, the show cause notice had been issued. The scales of the applicants had been reduced vide the impugned order of 19.01.2004. The said order is also being reproduced below for the sake of facility:

"Administration Section.

With reference to his representation dated 28.11.2003 in response to this office show cause notice of even number dated 25th November 2003, Shri Prakash Chand, UDC is hereby informed that the same has been examined by the competent authority in light of the instructions in respect of common category posts like UDCs, Asstts. & Supdts as clarified by the DOPT vide their O.M. dated 18th July 2001 (Clarification No. 56).

In view of the above, the competent authority has rejected the representation and the minutes of earlier Screening Committee(s) granting ACP benefits originally in the scale of Rs. 5500-9000 shall be deemed to have been accepted in the modified form to provide grant of ACP in the scale of Rs. 5000-8000.

Accordingly, the pay of Shri Prakash Chand is being re-fixed in the pay scale of Rs. 5000-8000 w.e.f. 10.05.2002.

Orders of pay fixation along with consequential recoveries, if any, are being issued separately.

This issues with the approval of the Director.

Sd/-

(T.D. Krishnan)

Deputy Director (Admn.)"

8. Learned counsel for the applicant had contended that the ACP Scheme had been drawn after taking due care and caution. The State as well as the applicants are bound by the same. The instructions/ clarifications cannot modify the Scheme and in that process cannot take away the vested right that was available to the applicants. On the contrary, as per the respondents, by virtue of the clarifications, it is only the ambiguity, which has been clarified. There was anomaly that was arisen which had to be explained and thus the respondents' learned counsel urged that the administrative instructions, particularly clarification no. 56 is in order.

9. Learned counsel for the respondents in support of his claim relied upon the decision of the Supreme Court in the case of Guman Singh vs. State of Rajasthan & Ors. 1971(2) SCC 452. The Supreme Court precisely and succinctly has described the position as to whether administrative instructions can modify the rules or not. In paragraph 39, it was held:

"39. Then the question is whether Government is competent to issue the said Circular and whether the Circular in any manner affects the discretion and powers of the Committee functioning under the statutory rules." The position is clear, as laid down by this Court in Sant Ram Sharma vs. State of Rajasthan and Another (supra):

"It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

10. Almost identical was the finding in the subsequent decision of the Supreme Court in the case of V.T. Khanzode and Ors. Vs. Reserve Bank of India & Anr., 1982(2) SCC 7. The Supreme Court held that the power to frame rules or regulations does not necessarily imply that no action can be taken administratively in regard to a subject matter on which a rule or regulation can be framed, until it is so framed. It was further explained that the only precaution to be observed in the cases of statutory corporations is that they must act within the framework of their charter. The findings of the Supreme Court, in this regard, are:

"21..... But the decision is useful for illustrating that the power to frame rules or regulations does not necessarily imply that no action can be taken administratively in regard to a subject matter on which a rule or regulation can be framed, until it is so framed. The only precaution to observe in the cases of statutory corporations is that they must act within the framework of their charter. Its express provisions and necessary implications must at all events be observed scrupulously."

The principle has again been recommended in the decision of the Supreme Court in the case of Union of India vs. K.P. Joseph & Ors., AIR 1973(SC)303. The Supreme Court held:

"9. Generally speaking, an administrative Order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in Sant Ram Sharma vs. State of Rajasthan (1968) 1 SCR 111= (AIR 1967 SC 1910) that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Art. 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

Thereafter, the Supreme Court further elucidated:

"11. We should not be understood as laying down any general proposition on this question. But we think that the order in question conferred upon the first respondent the right to have his pay fixed in the manner specified in the Order and that was part of the conditions of his service. We see no reason why the court should not enforce that right."

11. From the aforesaid, the principle, which can conveniently be drawn, is that the administrative instructions or clarifications can supplement the statutory rules where there are ambiguities. They can fill up the gaps but administrative instructions or clarifications cannot override the provisions of the rules or statute.

12. The ACP Scheme is not statutory in nature but it is a beneficial Scheme. Certain rights have been created on its implementation and granting of the benefit thereto. Necessarily, once such a benefit has been accorded, by clarifications it cannot be withdrawn. We hasten to add that by no stretch of imagination we are putting an end to the right of the State to amend the Scheme, if deemed appropriate in accordance with law. In the present case before us,

there is no amendment of the Scheme, but, as already referred to above, by an administrative order, an attempt is made to do so.

13. On behalf of the respondents, in that event, reliance was being placed on the decision of the Guwahati Bench of this Tribunal in the case of Shri Ananta Ram Baishya & Ors. Vs. Union of India & Ors. (OA No. 26/2004 decided on 14.5.2004). In that case, there were Upper Division Clerks working in the office of Small Industries Services Institute. Based on the recommendations of the V. Central pay Commission, they had been granted the scale of Rs. 5500-9000, which was reduced, as in the present case, to Rs. 5000-8000 after the clarification of Department of Personnel & Training. The Guwahati bench of this Tribunal held:

"4..... We find full justification in treating the officials working and deployed in different Departments at par on all India basis, particularly, when the post existing in different Departments varies. The justification offered and as noticed hereinabove as contained in the impugned communication dated 31.10.2003 is just, valid and satisfies test of reasonableness. The contention of the learned counsel for the applicants that the clarification dated 18.7.2001 cannot be given retrospective effect is devoid of merit as the OM dated 9.8.1999 was also administrative in nature. A perusal of the O.M. dated 9.8.1999, particularly, para-11 would show that the Department of Personnel & Training (Establishment-D) was recognized as competent and having jurisdiction to clarify and interpret about the scope and meaning of the said ACT Scheme....."

14. Our attention was further drawn towards another order passed by the Calcutta Bench of this Tribunal in the case of Smt. Sukla vs. Union of India & Ors. (OA No. 87/2004 decided on 29.7.2004). The Calcutta Bench took the same view as the Guwahati Bench and held:

"10. Admittedly, the applicant was originally appointed as LDC and she was thereafter promoted as UDC. It is not disputed by the applicant that in all subordinate offices as also in the different offices under the respondents the hierarchy of posts is LDC, UDC, Assistant and then Superintendent. However, her case is that since in the office in which she is working there is no post of Assistant and since the next promotional post for her is the post of Superintendent, therefore, she cannot be placed in the intermediate post of Assistant and that she is entitled to the pay scale applicable to her next promotional post of Superintendent. We are, however, not inclined to accept this contention. As clarified by the DOPT quoted above in some offices there may not be some particular post in the hierarchy of common category posts. But that does not mean that for ACP benefit one should get one scale higher post in order to place him/her in the next promotional post while in other Governmental Offices, similarly placed UDC's will be placed only in the scale of Rs. 5000-8000/- i.e. Assistant. This will create anomaly and disquiet which may generate huge unrest which is not warranted. In such circumstances one should not get the advantage of leapfrog scale without touching the middle.... Accordingly, we do not find any infirmity or illegality in providing the scale of Rs. 5000-8000/- to the applicant by way of second financial upgradation. However, since the pay scale of Rs. 5500-9000/- was wrongly given to the applicant by the respondents on their own administrative error or

wrong interpretation of the Rules for which the applicant was not responsible....."

15. Support was further sought from the decision of the Jabalpur Bench of this Tribunal in the case of Smt. Shanti Roy & ors. Vs. Government of India & Ors. (OA No. 669/04 decided on 13.10.2004). the Jabalpur Bench adopted the view of the Guwahati Bench and the Calcutta Bench of this Tribunal.

16. On the contrary, the decision of the Principal Bench of this Tribunal in the case of Kesho Ram & Ors. Vs. Union of India & Ors. (OA No. 544/04 decided on 15.10.2004) was brought to our notice by the applicants. The Principal Bench recorded:

"9. Clarification 56 has not been issued superseding clarification 32. Clarification 32 specifically deals with the cadres/hierarchy limited to two grades. Clarification 56 does not specifically deal with cadres having two grades only. Thus condition 7 of the ACP Scheme supplemented by clarification 32 shall hold the field in the instant case comprising a cadre of two grades for purposes of according financial upgradations. The ratio in the case of Roopa Singh (supra) is squarely applicable to the present case, wherein applying the provisions of condition 7 of the ACP Scheme, the applicants were held entitled to financial upgradation to the scale of next higher rank in their hierarchy even without a post being available. Annexure A-3 dated 17.6.2002 indicates that in the Department of Economic Affairs, second financial upgradation in the cadre of DEOs has been allowed in the pay scale of Rs. 6500-10500. Without rendering any proof regarding cancellation of orders according pay scale of Rs. 6500-10500 by way of second financial upgradation under ACP Scheme in the Ministry of Finance (Department of Economic Affairs), respondents have attempt to state that Department of Economic Affairs had erroneously granted the second financial upgradation in the scale of Rs. 6500-10500 to DEO-B. This explanation and contention on behalf of respondents is unacceptable. Thus, the case of Ram Kumar Mann (Supra) would not be applicable to the facts of the present case. Under the provisions of ACP Scheme, applicants do have an enforceable right and discriminatory treatment cannot be meted out to them in implementation of the provisions of the Scheme. Clarification 32 is squarely applicable to the facts of the present case where two grades of hierarchy exist in the cadre of DEOs.

10. Taking into consideration the totality of facts and circumstances, we are of the view that in terms of condition 7 under ACP Scheme, read with clarification 32 dated 10.02.2000, applicants are entitled to first financial upgradation in the scale of Rs. 5500-9000 which is available in the hierarchical structure of the cadre of DEOs, and the second financial upgradation to the scale of Rs. 6500-10500 which is the next higher standard/common pay scale, i.e. grades-12."

17. The last decision, to which our attention was drawn, was from the Chandigarh Bench of this Tribunal in the case of Kewal Krishnan & Ors. vs. Union of India & Ors. (OA No. 327/PB/2004 decided on 7.1.2005). The Chandigarh Bench took note of the administrative difficulty and relied upon the decisions rendered by the Guwahati Bench and Calcutta Bench and agreed with the said view.

18. While giving the resume of facts, we have already reproduced paragraph 7 of the condition for grant of benefit under the ACP Scheme. In an unambiguous term, it provides that financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in the cadre/category of posts. When the language is plain and clear that the financial upgradation is in the next higher grade in accordance with the existing hierarchy, necessarily, it has to go with each Service. When the next higher grade in accordance with the existing hierarchy is Rs. 5500-9000, we find no reason as to why it should be read down to Rs. 5000-8000. This interpretation would run counter to the ACP Scheme.

18. In the clarification, that has been issued, it has been provided that in such an eventuality, if the Vth Central Pay Commission had recommended a specific pay structure for a particular category in an Organization, which may seemingly belong to a common category, then mobility under the ACP Scheme shall be through the grade structure/ ACP Scheme grades recommended for that Organization. The clarification, in reference to the fact, will otherwise create dissimilarity.

19. In the first instance, it must be stated that the clarification, in this process, supplants the ACP Scheme. We have already referred to above that the State is at liberty to amend the same in accordance with law, but by clarification, the amendment cannot be effected. The clarification, by no stretch of imagination, is clarifying any ambiguity because we have already referred to above that the language is plain and clear of the Scheme and the clarification are modifying the Scheme and supplanting something new, that is not permissible in law.

20. In this regard, we refer with advantage to the decision of the Apex Court in the case of Director General of Posts & Others vs. B. Ravindran & Anr., (1997) 1 SCC 641. In somewhat a similar situation, the Supreme Court held:

"14. It is not in dispute that the original order for fixation of pay of re-employed pensioners was contained in OM dated 25.11.1958. In the matter of fixation of pay of such re-employed pensioners the first step required to be taken was to fix his initial pay at the minimum stage of scale of pay prescribed for the post on which he was re-employed. The next step to be taken was to find out whether his pay thus fixed plus pension (including other pensionary benefits) exceeded the pay which he drew before his retirement or Rs. 3000. If it exceeded either of those limits then necessary adjustment was to be made in the pay by reducing it below the minimum stage so as to ensure that the total pay including pension was within the prescribed limits. If the initial pay plus the pension was found to be less, then it was to be regarded as a case of undue hardship and his pay was required to be fixed at higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than in which he was re-employed. However, when it was noticed that this formula was not fair and just in case of pensioners who retired at an early age that is before 55 years, the Government in relaxation of the policy contained in the 1958 order decided to grant some benefits to such re-employed pensioners and issued an order directing that civil pension up to Rs. 10 per month and military pension up to Rs. 15 per month should be ignored in fixing pay on re-employment. Thus while totaling up the initial pay and the pension for the

purpose of finding out whether the pensioner on re-employment was likely to get more or less than what he was getting earlier, Rs. 10 in case of civil pensioners and Rs. 15 in case of military pensioners, were to be ignored. In other words the amount of pension to be added to the initial pay was to be reduced to that extent. Thereafter his pay was to be adjusted depending upon whether the pensioner would thus get more or less on his re-employment. This relaxation was obviously in the nature of a modification of the earlier policy. As narrated above the said limits to be ignored were increased from time to time and by the OM dated 8.2.1983 in case of ex-servicemen, the limit was raised to Rs. 250 in case of service officers and in case of personnel belonging to (sic below) Commissioned Officer ranks the entire pensionary benefits were to be ignored. Though in the beginning, according to the original policy contained in the 1958 order, the entire pension was to be added to the initial pay to find out whether it gave unintended advantage or caused undue hardship to the re-employed pensioner, the position did not remain the same after the passing of the orders in 1963 and 1964 and thereafter. The modifications thus made by the 1963 and 1964 orders were given legal status by amending Articles 521 and 526 of the Civil Services Regulations accordingly."

Thereupon it was finally held:

"16. The subsequent orders issued in 1978 and 1983 were supplementary in nature and did have a binding force. Under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be compared with the initial pay plus pension whether ignorable or not. The 1985 clarificatory instructions were not only inconsistent with the relevant provisions of the Civil Service Regulations and the 1978 and 1983 orders but its effect was to supersede the said provision and the orders. The Tribunal was, therefore, right in holding the said instructions insofar as they directed to take into consideration the ignorable part of the pension also while considering hardship invalid and without any authority of law..."

21. Identical is the position herein.

22. In fact, in the matter of Bhagwati Prasad & Ors. Vs. Union of India & Ors. (OA 2380/03 decided on 20.4.2004), a similar view had been taken by the Principal Bench holding that the said instructions are supplanting the ACP Scheme rather than supplementing the same by so-called clarifications. The union of India had filed a Writ Petition (Civil) No. 297/2005 in the Delhi High Court. The Delhi High Court rejected the same holding:

"We have perused the order passed by the Central Administrative Tribunal. Learned counsel for the petitioner has contended that in view of the subsequent office order, the Assured Career Scheme could not have been implemented. We are in agreement with the findings of the C.A.T that when the Assured Career Scheme is clear and unambiguous, any clarification or office order cannot supplant the same. If the petitioner does not want to implement the Assured Career Scheme in letter and spirit, then remedy with them lies in amending the Scheme and not whit-

ting down the Scheme on the ground of exigency of administrative difficulties. We find no merit in the petition. Dismissed."

23. Resultantly, the position is clear and beyond any pale of controversy that the clarification, that has been issued, must be held to be one which is modifying the Scheme and by virtue of a clarification, it could not have been so done.

24. Resultantly, for these reasons, we answer the reference as under:-

"Clarification No. 56 issued by the Department of Personnel & Training on 18.07.2001 will have the effect of rendering condition no. 7 of the ACP Scheme as redundant. It cannot take away the right that has accrued to the Government servant in his existing hierarchy with respect to the grant of the scale to be granted by way of financial upgradation."

HIMACHAL PRADESH ADMINISTRATIVE TRIBUNAL

(SHIMLA)

O.A - 3625/99

Decided on 17-5-2005

Sh. Som Dass

Petitioner

Versus

State of HP & Ors.

Respondents

For the Petitioner :

Sh. S.S. Sood, Advocate.

For the Respondents :

Mr. Chirag B. Singh Dy. Advocate General

PRESENT

The Hon'ble Mrs. Justice Bakshish Kaur, Chairman

The Hon'ble Mr. D.S. Amist, Member (A)

Casual Labour--Regularization--Seniority--Govt. notification dated 31-12-1997 providing regularization of casual labour on completion of 10 years of service which was later reduced to 9 years and then 8 years with a minimum of 240 days of continuous service in a calendar year as on 31-3-1998--Applicant has completed 10 years of service as on 31-12-1993--Not regularized w.e.f. 31-12-1993 as there was no directives from the Govt. in this regard at that time--Relief--Applicant held entitled to regularization w.e.f. 31-12-1993 and if post is not available the same may be created.

JUDGMENT

Justice Mrs. Bakshish Kaur, Chairman :- The applicant initially appointed as Belder in the year 1979 is aggrieved by the act of the respondents in not regularizing his services after completion of 10 years of service. He ought to have been regularized as Belder in the year, 1989 in Bhajji Forest Range under Shimla Division but his name has not been considered for the post of Forest Guard from 20% quota reserved for Belders. Had he been regularized on completion of 10 years, he would have been eligible for the post of Forest Guard in 20% quota. Thus, he has filed this Original Application seeking following reliefs:-

"i) Directing the respondents to grant seniority to the applicant w.e.f. 1979 i.e. the date when he was initially appointed;

ii) Directing the respondents to regularize the applicant after completion of 10 years service and grant him all consequential benefits;

182
11-3-95 de [unclear]

(27)

(2) notified / adopted

59 years

11 (40.10) Prati

2 20 years ago no when it is mentioned.

30

27/06

N.F. Henry PWD

U75 LDC Central Govt engles

87th Land Search & Amuloh Pwanch

1982 OP Pwanch (43) A1 de/Mar

R2 Cmelum

Return on 31-1-2008

CCS Rem Rule 72

1989 adopted all the central gov Rules

1988 5th Daylamin aged 46 years

(2nd) 23.11.85. 16/2/85

Shali (25)

Rule adapted
31 engles Amuloh

FR 56

2 CCS Rem Rule

FR 9

notification

Q 1X Do letter Chud Chud 29
Baby Rur

Answer 9 letter

2 September from Father's Grl
to Carol Grl.

2 587 or 60

~~in separate mail~~

2 1991 (L) SLO 106
-99

1988 Grl see 221

103/06

2 ~~not family type to Carol Grl~~

58 year 31-1-18 CES Perm Rur

IN THE CENTRAL
ADMINISTRATIVE TRIBUNAL
GUWAHATI.

31

It is prayed that the
following matter may be
permitted to move as an
unlisted matter for admission
today on 30th January, 2006

C.A. NO. 27/2006

L. Appal Saini

- V -

U. O. I 2003.

Alam

by
30/1

Sukanta Nath
Advocate
30/1/06

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

G. A. R. 6

[See Rule 22 (1)]

RECEIPT

32✓

No. 1783

Date. 30/1/2006

Received from Sh. L. Appalawani with

Letter No. OK 27/06 dated 20

the sum of Rupees Ten only

In cash/by IPO on account of service charge for excess repdt.
by bank draft

in payment of

Signature

A. by
Cashier

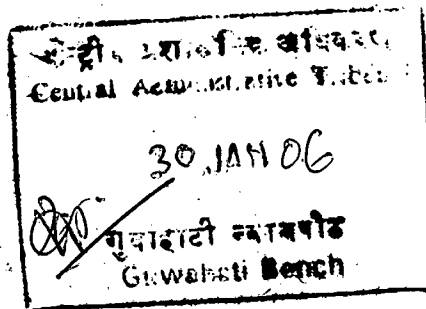
Rs. 10/-

Original Application No. 27/06

1. a) Name of the Applicant:- A. Appal Suman
b) Respondants:- Union of India & Ors.
c) No. of Applicant(S):-
2. Is the application is the proper form:- Yes / No.
3. Whether name & description and address of the all the papers been furnished in cause title :- Yes / No.
4. Has the application been duly signed and verified :- Yes / No.
5. Have the copies duly signed :- Yes / No.
6. Have sufficient number of copies of the application been filed :Yes/No.
7. Whether all the annexure ~~parties~~ are impleaded :- Yes/No.
8. Whether ~~English~~ translation of documents in the Language:- Yes/No.
9. Has the application is in time :- Yes/ No.
10. Has the Vokatlatnama/Memo of appearance /Authorisation is filed:Yes/No.
11. Is the application by IPO/BD/for Rs.50/- 266 319020
12. Has the application is maintainable : Yes /No.
13. Has the Impugned order original duly attested been filed:- Yes/ No.
14. Has the legible copies of the annexurea duly attested filed:Yes/No.
15. Has the Index of the documents been filed all available :-Yes/No.
16. Has the required number of enveloped bearing full address of the respondants been filed:- Yes/ No.
17. Has the declaration as required by item 17 of the form:Yes /No.
18. Whether the relief sought for arises out of the Single: Yes/ No.
19. Whether interim relief is prayed for :- Yes/ No.
20. Is case of Condonation of delay is filed is it Supported :-Yes/No.
21. Whether this Case can be heard by Single Bench/Division Bench:
22. Any other pointd :-
23. Result of the Scrutiny with initial of the Scrutiny Clerk:

SECTION OFFICER(J)

DEPUTY REGISTRAR



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 27 /2006

Shri L. Appal Swami.

-Vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 11.03.1999- Applicant was selected and appointed as Divisional Accountant on deputation basis under the Respondent No. 2, and presently working in the office of the Executive Engineer, P.H.E & Water Supply Division, Khonsa, Dist- Tirap, Arunachal Pradesh. (Annexure-1)
- 20.12.1990- Applicant passed final Accounts Examination which was conducted by the AG (A&F), Meghalaya, etc. Shillong. (Annexure-2)
- 12.01.2000- The Director of Accounts & Treasuries, Govt. of Arunachal Pradesh had informed the Respondent No. 2 that the Govt. of Arunachal Pradesh is under active consideration to take over the cadre of Divisional Accounts/Divisional Accounts Officer. (Annexure-3)
- 11.03.2002- Commissioner Finance, Govt. of Arunachal Pradesh made a request to the Govt. of Arunachal Pradesh stating that the Divisional Accountants who were appointed on deputation basis may be allowed to continue as emergency Divisional Accountants. (Annexure-4)
- 28.03.2005- Respondent No. 2 has issued a letter to the Respondent No. 4, in response to his letter dated 24.03.05, wherein it has been intimated the confirmation of the Headquarters i.e. Respondent No. 1 on the matter of extension of deputation period of 31 Divisional Accountants (including the present applicants). It has also been communicated therein that for the present and in view of the developments, the judgment of the High Court in respect of the 12 Divisional Accountants (including the present applicant) is not being implemented. (Annexure-4A)

L. Appal Swami

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- 26.09.2005- Applicant alongwith others have approached this Hon'ble Tribunal through O.A. No. 115/2005 praying for a direction to consider the case of the applicant for absorption/continuation as Divisional Accountant in the light of the decision contained in letter dated 28.03.2005. In the said O.A., the respondent State of Arunachal Pradesh has submitted a written statement wherein Respondent No. 5 has stated that Govt. of Arunachal Pradesh has submitted a scheme to the A.G (A&E) Meghalaya, A.P etc., Shillong for taking over the administrative control of the cadres of the Sr. DAO/DAO Gr. 1 & II and DAOs. It is also stated that the state of A.P has consented for permanent absorption of the deputationists under the administrative control of the A.G (A&E), Meghalaya, A.P etc., Shillong. (Annexure- 5)
- 25.11.2005- Office of the A.G (A&E) Meghalaya, A.P etc. Shillong, vide his letter dated 25.11.05 stated that the Office of the C & AG has framed a draft scheme regarding proposed transfer of Divisional Accountant cadre and the same is forwarded for acceptance of the terms and conditions embodied in the scheme by the Arunachal Pradesh Government. (Annexure- 6)
- 10.01.2006- Office of the A.G (A&E) Meghalaya, A.P etc., Shillong vide letter dated 10.01.06 intimated to the Director of Accounts and Treasuries, Govt. of Arunachal Pradesh and Executive Engineer, PHF & WS Division, Khonsa and the Executive Engineer, Bomdila, Arunachal Pradesh that the applicant is due to retire on 31.01.2006 on attaining age of 58 years and also requested the State authorities to take necessary steps accordingly to enable the applicant to retire on due day as per the retirement age. (Annexure- 7)
- The Govt. of Arunachal Pradesh has adopted all Central Govt. Rules and regulations to govern the service conditions of the employees of the State of Arunachal Pradesh, therefore as per provision of Rule 35 of the CCS (Pension) Rule 1972 and the provision of the F.R 56 the age of retirement on superannuation of the applicant is 60 years. (Annexure- 8 Series)
- 30.12.2005- Respondent No. 7 issued impugned notice for retirement on superannuation to the applicant. (Annexure- 9)
- 04.01.2006- Applicant submitted a representation to Respondent No. 7.
- 18.01.2006- Applicant approached before the Hon'ble Gauhati High Court (Itanagar Bench). However, the Hon'ble High Court vide it's order dated 18.01.06 disposed of the writ petition with the liberty to the applicant to move the appropriate Court i.e. CAT, if so advised. (Annexure- 10)

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Hence the present Original Application before this Hon'ble Tribunal.

PRAYERS

1. That the Hon'ble Tribunal set aside and quashed the impugned notice issued under letter no. KPHED/ESTT/PF-172/2000-01/1427 dated 30.12.2005 (Annexure- 9).
2. That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to retire on superannuation only on attaining the age of 60 years in terms of the provision laid down in FR 56 (a) as well as in terms of rules 35 of CCS (Pension) Rules 1972.
3. That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in service till attaining the age of 60 years in terms of the prayer no.2.
4. Cost of the application.
5. Any other relief(s) to which the applicant is entitled as deemed fit and proper by the Hon'ble Tribunal.

Interim order prayed for.

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

1. That the Hon'ble Tribunal be pleased to stay the operation of the impugned notice issued under letter no. KPHED/ESTT/PF-172/2000-01/1427 dated 30.12.2005 (Annexure- 9) till disposal of the original application.

L. Appal Swami

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

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

Title of the case : O. A. No. 27 /2006

Shri L. Appal Swami. : Applicant.

- Versus -

Union of India & Others: Respondents.

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Date 30.01.2006.

Filed by

Surgjit Choudhary

Advocate.

L. Appal Swami

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1
Filed by the Applicant
Through Surjit Choudhary
Advocate
on 30.01.06.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

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

O.A No. 27 /2006

BETWEEN:

Shri L. Appal Swami,
S/o Late L.A. Naidu,
Presently working as Divisional Accountant,
O/o The Executive Engineer,
PHE & Water Supply Division, Khonsa,
Dist- Tirap, Arunachal Pradesh.

... Applicants.

-AND-

1. Union of India,
Through the Comptroller & Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi.
2. The Accountant General (A&E)
Arunachal Pradesh, Meghalaya, Mizoram etc.
Shillong- 793003.
3. The State of Arunachal Pradesh,
Represented by the Secretary to the
Government of Arunachal Pradesh,
Department of PHE & WS, Itanagar.
4. The Commissioner, Finance Department
Government of Arunachal Pradesh,
Itanagar.
5. The Director of Accounts & Treasuries,
Government of Arunachal Pradesh,
Naharlagun-791110.

S. C. G.

L. Appal Swami

6. The Chief Engineer,
Public Health Engineering & W S Department
Govt. of Arunachal Pradesh.
Itanagar.
7. The Executive Engineer
PHE and Water Supply Division,
Khonsa,
Dist- Tirap, Arunachal Pradesh.

... Respondents

DETAILS OF THE APPLICATION

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

This application is made praying for a direction upon the respondents to allow the applicant to continue in service till attaining the age of 60 years in the light of the provision contained in FR 56 (a) of the fundamental rule and also in terms of the direction contained in the Govt. of India, Department of Personal and Training, notification no. 25012/2/97 Estt (A), dated 13th may, 1998 published as GSR 248 (E) in the Gazette of India, Extraordinary, part II-Sec 3 (i) dated the 13th May, 1998 and also in the light of the Govt. of India's decision contained in Swamy's CCs (Pension) Rule 1972, more particularly provided under Rule 35 of the chapter V of the CCs (Pension) Rule 1972 (7th Edition 2005) and against the impugned notice dated 30.12.2005.

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.

3. Limitation.

L. Appal Swami

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 The applicant is a citizen of India and as such he is entitled to all the rights and privileges granted by the constitution of India. The applicant is working as Divisional Accountant under the administrative control of the respondent no. 2 on deputation basis in the Offices of the Executive Engineer, PHE & WS Division, Khonsa in the State of Arunachal Pradesh as indicated in the cause title. Be it stated that while working as U.D.C in the office of the Executive Engineer, Roing P.W.D Division, Roing, Arunachal Pradesh the applicant was selected and appointed on 07.04.1999 as Divisional Accountant on deputation basis under the respondent No. 2. The aforesaid selection was made pursuant to a circular No. DA. Cell/2-49/97-98/ Vol. II/ 245 dated 20.01.1998 issued by the respondent no. 2 inviting applications for recruitment of Divisional Accountant on deputation basis. After selection of the applicant, he was posted in the office of the Executive Engineer, P.W.D, Kalaktang, but now working in the office of the Executive Engineer, PHE & WS Division, Khonsa, Dist- Tirap, Arunachal Pradesh.
- 4.2 That your applicant is presently working as Divisional Accountant (for short D.A) on deputation basis in the office of the Executive Engineer, PHE and water supply Division, Khonsa, under the Govt. of Arunachal Pradesh. Be it stated that the applicant is now working under the administrative control of Accountant General (A & E) Meghalaya, A.P etc, Shillong since the applicant is now working under deputation. It is specifically submitted that the applicant is a permanent and regular employee of the office of the Executive Engineer, PWD, Roing under the Govt. of Arunachal Pradesh and pursuant to an advertisement of the AG

L. Appal Swami

u/ 4

(A & E), Meghalaya, A.P etc, Shillong, the applicant applied for the post of D.A and was selected for appointment on deputation basis for the post of D.A in the month of March 1999 and accordingly he was appointed for the post of D.A on deputation basis vide order bearing no. E.O No. DA cell/232 dated 11.03.1999 and joined on 7th April 1999 as D.A on deputation in the office of the Executive Engineer, Kalaktang PWD Division in the district of West Kameng, thereafter he was transferred and posted in the office of the PHE, Khonsa. The applicant has also passed final accounts examination, which was held on January, 1990 and the said exam was conducted by the A.G (A & E) Meghalaya, etc and the result was notified vide letter No. Cord/5-3/89-90-3885 dated 20.2.199. The period of deputation of the applicant was extended thereafter from time to time.

(Copy of the order dated 11.03.1999 and letter dated 20.02.1990 are enclosed as Annexure- 1 and 2 respectively)

- 4.3 That, initially, there was a move on the part of the Respondent no. 3 to take over the entire accounts set up from the administrative control of the respondent No. 2 in the manner as the Government of Assam had taken it over, which is evident from letter bearing No. DA/TRY/15/99 dated 12th January 2000. In the said letter, the respondent no. 5, while addressing the aforesaid letter to the respondent No. 2 had contended that as it was under active consideration of the Government of Arunachal Pradesh to take over the cadre of Divisional Accountants/ Divisional Accounts Officers totaling 91 (Ninety One) posts from the existing combined cadre being controlled by the respondent No. 2 and now the respondent no. 3 had decided to take over the said cadre and place thus under the direct control of the respondent no. 5 with immediate effect.

It was further contended in the said letter that henceforth no fresh Divisional Accountants on deputation would be entertained however,

L. Appal Swami

cases of those who were presently on deputation and serving in the State would be examined for their future continuation even after completion of the term of deputation. Accordingly, the respondent No. 2 was requested to take necessary action so that the process of transfer of cadre alongwith the willing personnel could be completed immediately.

The respondent no. 5 also contended that that the formal notification in that regard was under issue and would be communicated in due course. But unfortunately, after the aforesaid letter dated 12th January 2000, the State respondent did not take any further action for taking over the accounts cadre from the administrative control of respondent no. 2 rather, the respondent no. 3 was silent in all these years regarding proposal of taking over the accounts cadre from the respondent No.2.

A copy of the letter-dated 12.01.2000 is enclosed as Annexure -3.

- 4.4 That your applicant further beg to say that in the meanwhile on completion of 3 years deputation service, the respondent no.2 passed an order repatriating the applicant to his parent department, and the said order was challenged by the applicant initially before the learned Tribunal, however, the learned Tribunal upheld the order of repatriation. Thereafter the applicant preferred a writ petition before the Hon'ble Gauhati High Court challenging the impugned judgment of the learned Tribunal but the Hon'ble Gauhati High Court further confirmed the judgment of the learned Tribunal.

In the meanwhile commissioner (Finance), Govt. of A.P vide his letter bearing no: DA/TNY/15/99 dated 11.03.2002 made a request to the Govt. of A.P stating that the D.A who were appointed on deputation basis may be allowed to continue as emergency D.A for the time being as working arrangement but further absorption on regular basis they would be given chance to qualify themselves in the Divisional Accountants

L. Appal Swami

Exam. Which would be conducted by the State Govt. after taking over the administrative control of the cadre.

(A Copy of the letter dated 11.03.2002 is enclosed as Annexure- 4).

- 4.5 That it is relevant to mention here that even after decision rendered by the Hon'ble Gauhati High Court (Itanagar bench) on 10.02.2005 upholding the repatriation order passed by the A.G (A & E) Shillong etc. in respect of the applicant and other similarly situated employees in the office of the A.G (A& E), Meghalaya, Shillong vide his D.O letter no. DA Cell/1-8/court case/2000-2001/1909 dated 24.03.2005/28-03-2005, it is informed to the Financial Commissioner to the Govt. of A.P. Itanagar that Headquarter has confirmed that the case for extension of the 31 deputationist working as D.A under the establishment of A.G (A & E), Shillong may be considered as well as on the question of absorption of 31 deputationist modalities would be worked out and also requested to ensure that the pending court cases of another 19 Divisional Accountant are withdrawn to facilitate their continued deputation/absorption.

Copy of the D.O letter dated 24.03.05/28.03.05 is enclosed herewith as Annexure- 4 A.

- 4.6 That your applicant along with others also preferred an original application before this Hon'ble Tribunal after receipt of the D.O letter dated 28.03.2005 (Annexure-4A) praying for direction to consider the cases of the applicant for absorption/continuation as D.A in the light of the decision contained in the letter dated 28.03.2005, the said O.A is registered as O.A No. 115/2005 and the same is pending before this Hon'ble Court. The respondent no. 5 (respondent No. 11 of the O.A. No. 115/2005), for and behalf of the state of Arunachal Pradesh submitted a written statement before this Hon'ble Tribunal in O.A. no 115/2005 on 26.09.2005, wherein the Respondent no. 5 i.e. Director of Treasuries stated in the said affidavit that the Govt. of A.P submitted a scheme to the A.G (A & E)

Meghalaya etc, Shillong for taking over the administrative control of the cadres of Sr. DAO/DAO Gr. I/DAO Gr. II and DAO of working division belonging to PHE/RWD/IFCD/PWD/Power Department of A.P from the control of the A.G (A & E) Meghalaya, A.P etc. Shillong through letter no. DA/TRY/-27/2000/06-63 dated 30.07.2005 and requested to convey approval facilitating of smooth taking over cadre of DAs/ DAOs/ DAOs Grade- I & II from the administrative control of Respondent No. 2. It is specifically stated in paragraph 9 of the written statement that the State of A.P has consented the permanent absorption of the deputation under the administrative control of the A.G (A & E) Meghalaya etc. Shillong and therefore, it is stated that the Divisional Accountants on deputation be allowed to continue till such time the cadre is taken by the State Govt.

Copy of the written statement filed in O. A No. 115/2005 submitted by the state of A.P alongwith the letter dated 30.07.2005 and the scheme is enclosed as Annexure-5.

- 4.7 That your applicant further beg to say that the office of the A.G (A & E), Meghalaya etc. Shillong vide letter bearing No. DA Cell/ I-1/2000-2001/1509 dated 25.11.2005, wherein it is stated that the office of the C & AG has framed a draft scheme regarding proposed transfer of D.As cadre and the same is forwarded for acceptance of the terms and conditions embodied in the scheme by the Arunachal Pradesh Government. It is further stated in the said letter dated 25.11.2005, that comments suggestion if any of the Govt. may be communicated to the office of the C & AG, therefore, it appears that C & AG has agreed to hand over the D.A cadre to the state of A.P with certain modification in the scheme initially proposed by the Govt. of A.P and it is expected that the process of handing over the cadre of D.As to the state of A.P is likely to be completed shortly. It is categorically submitted that the applicant is still working in the office of the Executive Engineer, Khonsa, A.P on deputation basis.

Copy of the letter dated 25.11.2005 is enclosed as Annexure- 6.

L. Appal Swami

4.6 That your applicant while working as such on deputation basis under the administrative control of AG (A & E), Meghalaya etc. Shillong, the office of the A. (A & E) Meghalaya etc., Shillong intimated to the Director of Accounts and treasures Govt. of A.P as well as to the Executive Engineer PHE, Khonsa, A.P and the Executive Engineer, Bomdila, A.P that as per records available with the office of the AG (A & E) Meghalaya etc. Shillong, the applicant is due to retire from service on attaining the age of 58 years since date of birth of the applicant is 25.01.1948 as such he is due to retire on 31.01.2006 and also requested the state authorities to take necessary steps accordingly to enable the applicant to retire on due date as per the retirement age of the officials of the Govt. of A.P it appears that A.G (A & E) Meghalaya etc. Shillong came to the conclusion that the applicant is due to retire on superannuation on attaining the age of 58 years. But when the Govt. of A.P adopted all Central Govt. rules and regulations to govern the service conditions of the employees of the State of A.P, therefore, applicant is entitled to retire on attaining 60 years of age. It is categorically submitted that the state of A.P have adopted the central rules and regulations for its employees the Govt. of A.P has adopted the CCS (Pension) Rules 1972 as well as it has adopted fundamental rules and supplementary rules of the central govt. to govern the service condition of the employees of the state of A.P. The state of A.P has also adopted CCS (Leave) rules 1972 as well as CCS (CCA) Rule 1965, therefore the age of retirement of the employees of the state of A.P are liable to be governed by the fundamental rule 56 of the Govt. of India and also in terms of Rule 35 of the CCS (Pension) Rule 1972 hence the age of superannuation of the applicant is 60 years as per provision laid down in F.R 56 as well as in view of the provision laid down in CCS (Pension) Rule 1972.

A copy of the letter dated 10.01.2006 is enclosed as Annexure-7.

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4.9 That it is stated that the Executive Engineer, PHE and Water Supply Division, Khonsa issued the impugned notice for retirement on superannuation of the applicant vide impugned letter bearing no. KPHEd/ESTT/PF-172/2000-01/1427 dated 30.12.2005, by the said impugned letter the applicant have been directed to hand over the full charge of the Divisional Accountant to Sri S. Roy, UDC to enable the department to process his pension papers to the parent department, it is further stated that this office will not be responsible if any complicity arise in future by any lapse from the side of the applicant.

In this connection it may be stated that, it is quite clear that the Govt. of A.P have adopted the central Government rules for the purpose of retirement, pension and other pensionery benefits namely the Central civil services (pension) rules 1972 as specifically admitted in the impugned notice for retirement on superannuation, as per CCS (Pension) Rule 1972 particularly rule 35, it is provided that a superannuation pension shall be granted to a govt. servant who is retired on his attaining the age of compulsory retirement.

In the aforesaid rule there is a specific reference of FR 56, which provided the retirement age of the central govt. employee, it has been specifically stated the Govt. of India's decision regarding age of retirement, mentioned therein, as follows,

"A Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years."

It is quite clear that central govt. employees are liable to be retired on superannuation on attaining the age of 60 years in terms of FR 56 (a). The relevant portion of the fundamental rule 56 (a) is quoted below:-

L. Appal Swami

"FR 56 (a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years."

Therefore, it is quite clear that Govt. of A.P have adopted the central civil services pension rules 1972 for the purpose of retirement on superannuation, pension and for pensionary benefit, as such even the employees of the Govt. of A.P are liable to be retired on superannuation on attaining the age of 60 (sixty) years only in view of the specific provision laid down in CCS (Pension) Rule 1972 as well as in terms of the provision laid down in Fundamental Rule 56 wherein it has been specifically provided that Govt. servant are liable to be retired on superannuation on attaining the age of 60 (sixty) years only and not at the age of 58 years as communicated to the applicant vide impugned notice dated 30.12.2005 since the Govt. of A.P have adopted the CCS pension rules, 1972. Moreover, service conditions of the employees of the State of A.P also governed by the fundamental rules and supplementary rules of Central Govt. As such Govt. of A.P is required to follow all the provision of fundamental and supplementary rules of the Govt. of India. It is relevant to mention here that Govt. of India have decided to enhance the age of retirement of the employees of the Central Govt. from 58 years to 60 years vide G.I Dept. of Per. & Trg., Notification No. 25012/2/97- Estt. (A), dated the 13th may, 1998, published as GSR 248 (F) in the Gazette of India Extraordinary, part-II- Sec. 3 (i), dated the 13th may, 1998 and takes effect from that date and accordingly necessary provision is also made by way

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of amendment in FR 56, declaring the retirement age of central Govt. employees from 58 years to 60 years.

As such the impugned notice dated 31.12.2005 is contrary to the provisions laid down in FR 56 as well as contrary to the relevant provisions laid down in CCC (Pension) Rules 1972. Therefore impugned notification dated 31.12.2005 is liable to be set aside and quashed.

A Copy of the extract of FR-56 as well as extract of rule- 35 is enclosed as Annexure-8 Series.

- 4.10 That it is stated that the impugned notice dated 30.12.2005, there is a mention of Directive letter No. PEN/AP/2489/94/2102 dated 12/07/1995 issued by the Director of Accounts and treasuries, Naharlogun, Govt. of A.P in connection with retirement of the applicant at the age of 58 years, but it appears that the said directives was issued way back on 12.07.1995, whereas the age of retirement has been enhanced from 58 years to 60 years by the Govt. of India only on 13.05.1998 and thereafter necessary correction is made in FR-56 as well as relevant provision of CCS (Pension) Rules 1972 has been amended/changed by the Govt. of India. As such, if any, direction contained in the letter dated 12.07.1995 has no relevancy with the amended provisions of FR 56 as well as amended provision of CCS (Pension) Rules 1972. Therefore the impugned notice dated 31.12.2005, whereby the applicant is sought to be retired on superannuation at the age of 58 years is contrary to the provision of FR-56 as well as contrary to the relevant provision of CCS pension rules 1972 and on that score alone the impugned notice dated 30.12.2005 is liable to be set aside and quashed.

(A copy of the impugned notice dated 30.12.2005 is enclosed as Annexure- 9).

- 4.11 That it is stated that as per impugned notice dated 30.12.2005, the applicant is going to be retired w.e.f 31.01.2006 since he has attained the

L. Appal Swami

age of 58 yrs. on 25.01.2006 as such finding no alternative the applicant is approaching this Hon'ble Court for protection of his valuable and legal right and praying for a direction upon the respondents to allow the applicant in service till attaining the age of 60 years in terms of the provision laid down in FR 56 (a) as well as in terms of the provision laid down in rule 35 of CCS (pension) rules 1972 and the Hon'ble Court further be pleased to pass an interim order staying the operation of the impugned notice dated 30.12.2005 till disposal of the original application.

- 4.12 That it is stated that applicant earlier approached before the Hon'ble Gauhati High Court (Itanagar Bench). However, the Hon'ble High Court vide its order dated 18.01.2006 dispose of the said writ petition with the liberty to the applicant to move the appropriate court if so advised.

Hence the present application before this Hon'ble Tribunal.

A Copy of the order dated 18.01.2006 is enclosed as Annexure-10.

- 4.13 That it is stated that the applicant initially joined as LDC in the year 1975, while the entire administration of the A.P was under the control of North East Frontier Agency, popularly known as the then NEFA. Which was infact under the control of Union Govt. of India, it was a union territory and the applicant was appointed as an employee of the central public works department (in short CPWD). However when statehood was granted by the Govt. of India and created a separate state of "Arunachal Pradesh" in the year 1987 and accordingly the service of the applicant who was initially a Central Govt. employee have been placed at the disposal of the newly created Govt. of A.P. However, since creation of the separate state of Arunachal Pradesh, the Govt. of A.P have adopted all rules and regulations of the central Government for all purposes to govern the recruitment, service conditions, scale of pay fixation, family pension, pension, gratuity, provident fund and other pensionary benefits even the

L. Appal Swami

employees of the Govt. of A.P are governed by the CCS (Leave) rules 1972 of the Govt. of India and till date the service conditions of the employees of the Govt. of A.P are governed by the Central Govt. service rules. It is true that employees of the Govt. of A.P are liable to be retired at the age of 58 years like other central Govt. employees before enhancement of the age of retirement before publication of the Govt. of India's notification dated 13.05.1998, but after publication of the notification dated 13.05.1998 the employees of the Govt. of A.P are also liable to be retired on superannuation after attaining the age of 60 years since the retirement, pension and pensionary benefits of the employees of Govt. of A.P are governed by the rule 56 of the fundamental rule as well as in terms of the relevant provision of CCS pension rules 1972 as such the impugned notice dated 30.12.2005 is contrary to the provisions of the aforesaid rules and on that score alone the impugned notice is liable to be set aside and quashed.

4.14 That it is stated that Govt. of A.P has also adopted the central Govt. scale of pay for its employees, even the Govt. of A.P have adopted all along the recommendations of the central pay commissions in the matter of pay scales and other service benefits, therefore it will be unfair to retire the applicant at the age of 58 years, more particularly when the Govt. of A.P have adopted fundamental and supplementary rules of Govt. of India as well as central civil services (pension) rules 1972 for the purpose of the retirement and pension. Once a particular rule or regulation adopted by the Govt. of A.P it cannot make a departure from the said rule for its own advantage and convenience, and the said rule is applicable as a whole to the employees of the Govt. of A.P, as such impugned notice dated 3.12.2000 is liable to set aside and quashed.

4.15 That it is stated that since the applicant is sought to be retired on attaining the age of 58 years i.e. w.e.f 31.01.2006, as such there is no other alternative on the part of the applicant but to approach this Hon'ble Tribunal for

L. Appal Swami

redressal of his grievances, therefore Hon'ble Court be pleased to pass an appropriate order, directing the respondents to allow the applicant to continue in service till attaining the age of 60 years as per provision laid down in FR 56 (a) as well as in terms of the provision laid down in rule 35 of the CCs (pension) rule 1972 and further be pleased to set aside and quashed the impugned notice dated 30.12.2005 issued by the Executive Engineer, PHED and water Supply Division, Khonsa, A.P. It is further prayed that as an interim measure the Hon'ble Court be pleased to stay the operation of the impugned notice dated 30.12.2005 till disposal of the Original Application.

- 4.16 That your applicant submitted a representation on 04.01.2006 to the Respondent No. 7 but to no result.

A copy of the representation dated 04.01.06 is enclosed herewith as Annexure- 11.

- 4.17 That the applicant is made bonafide and for the cause of justice.

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

- 5.1 For that the Govt. of A.P has adopted all rules and regulations, more particularly the fundamental rules and supplementary rules of Govt. of India as well as central Civil service (pension) rules 1972, where specific provisions have been laid down declaring the age of retirement on superannuation on attaining the age of 60 years as such employees of the Govt. of A.P are also liable to be retired on superannuation only on the attaining the age of 60 years instead of 58 years.
- 5.2 For that the impugned notice dated 30.12.2005 issued by the Executive Engineer, PHED and water Supply division, Khonsa, A.P, whereby the applicant is sought to be retired w.e.f 31.01.2006 on attaining the age of 58 years on 25.01.2006, is contrary to the provision of retirement age laid down in FR 56 (a) as well as the notice is also contrary to the relevant

L. Appal Swami

provisions laid down in rule 35 of the CCs (pension) rules 1972 and as such the impugned notice is liable to be set aside and quashed.

- 5.3 For that retirement age under FR 56 (a) has been raised from 58 years to 60 years following the Govt. of India's notification dated 13.05.1998 and accordingly necessary amendment/correction/change is made accordingly in the fundamental and supplementary rules as well as in the relevant provision of the CCS (pension) rules 1972.
- 5.4 For that the applicant was initially appointed under the Central Govt. in CPWD, while the areas now falling under the jurisdiction of the State of A.P., was under the administrative control of the then North East Frontier Agency (NEFA) i.e. under the administrative control of Central Government. However after creation of a separate state namely the state of A.P by the central Government the services of the applicant along with other Govt. of India's employees were transferred and placed under the Govt. of A.P.
- 5.5 For that the newly created state of A.P in the year 1987 have adopted all rules and regulations, namely CCS (CCA) Rules 1965, fundamental rules and Supplementary rules of Govt. of India, scales of pay recommended by the Central Pay Commission from time to time, CCS Pension Rules 1972, CCS leave rules 1972, for the employees of the State of A.P, as such all provisions of central service rules and regulations are equally applicable in the case of employees of the state of A.P.
- 5.6 For that once the state of A.P adopted fundamental rules and supplementary Rule meant for central Govt. employees and CCs pension rules 1972, the state of A.P cannot make any departure in the matter of application of the said rules to its employees, moreso when the same is beneficial to the State Govt. employees, therefore provision of retirement age prescribed in the fundamental rule i.e. FR 56 (a) as well as relevant

L. Appal Swami

provision of the CCS (pension) rules 1972 are also equally applicable upon the Govt. employee of the State of A.P including the applicant.

- 5.7 For that there is a specific mention in the impugned notice dated 30.12.2005 that applicant is liable to be retired in terms of the provision laid down in central civil services pension rules 1972 whereas the CCS pension rules 1972 specifically provided 60 years is the retirement age of the Govt. servant as such action of the respondents to retire the applicant at the age of 58 years is highly arbitrary, unfair and the same is in violation of relevant provision of CCS (pension) rules 1972 as well as provision laid down in FR 56 (a).
- 5.8 For that Govt. of A.P have adopted the recommendation of the 4th Central pay Commission as well as 5th Central Pay commission for its employees and accordingly central scale of pay and other service benefit have been extended to the employees of the Govt. of A.P, therefore respondent cannot make a discrimination in the matter of retirement age now provided in FR 56 (a) for the employees of the state of A.P, after publication of Govt. of India's notification dated 13.5.1998.
- 5.9 For that as per impugned notice dated 30.12.2005, the applicant is sought to be retired from service on attaining the age of 58 years in violation of relevant provision of CCS pension rules 1972, as such the impugned notice dated 30.12.2005 is liable to set aside and quashed.
- 5.10 For that applicant could not avail an other remedy since the notice of retirement has been served upon the respondent only on 30.12.2005, as such approaching this Hon'ble Tribunal for protection of his valuable and legal right to retire from service on attaining 60 years of age in terms of the provision laid down in FR 56 (a) as well as in terms of the relevant provision of CCS (pension) rules 1972.

L. Appal Swami

- 5.11 For that there is no valid notification issued by the Govt. of A.P. in supersession of the provision of retirement age i.e 60 years laid down in FR 56 (a) as well as the provision laid down in rule 35 of the CCS (Pension) rules 1972.

6. Details of remedies exhausted.

That the applicants state 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 applicants further declare that he has not filed any application before this Hon'ble Tribunal on the subject matter contained in this application.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicants humbly pray 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) upon making the following declarations:

- 8.1 That the Hon'ble Tribunal set aside and quashed the impugned notice issued under letter no. KPHED/ESTT/PF-172/2000-01/1427 dated 30.12.2005 (Annexure- 9).
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to retire on superannuation only on attaining the age of 60 years in terms of the provision laid down in FR 56 (a) as well as in terms of rules 35 of CCS (Pension) Rules 1972.

L. Appal Swami

8.3 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in service till attaining the age of 60 years in terms of the prayer no.2.

8.4 Cost of the application.

8.5 Any other relief(s) to which the applicant is entitled as deemed fit and proper by the Hon'ble Tribunal.

9. Interim order prayed for.

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

9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned notice issued under letter no. KPHED/ESTT/PF-172/2000-01/1427 dated 30.12.2005 (Annexure- 9) 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.	: 266319020.
ii)	Date of Issue	: 25.1.06.
iii)	Issued from	: G. P. O. Surahali.
iv)	Payable at	: G. P. O. Surahali.

12. List of enclosures.
As given in the index.

L. Appal Swami

VERIFICATION

I, Shri L. Appal Swami, S/o Late L.A. Naidu, aged about 58 years working as Divisional Accountant, in the O/o- The Executive Engineer, P.H.E & Water Supply Division, Khunsa, Dist- Tirap, Arunachal Pradesh, applicant No. 1 in the instant Original Application, duly authorized by the others to verify the statements made in this application, 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 29th day of January 2006.

L. Appal Swami

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

-oooooooooooo-

EO No.DA.Cell/232

DATED 11-3-93

Consequent on his selection for the post Divisional Accountant (on deputation basis) in the pay scale of ~~Rs. 1400-40-5000-15~~ ^{8000/-} ~~1600-50-2300-60-2600/-~~ in the combined cadre of Divisional Accountants under the Administrative control of the office of the Accountant General (A&E), Meghalaya, etc., Shillong, Shri L. Appal Swami at present working in the office of the E. Engr. Roing PWD A.P. is posted on deputation as Divisional Accountant in the office of the E. Engr. Kalaktang PWD.

2. Shri L. Appal Swami should join the aforesaid post of Divisional Accountant on deputation within 30 days from the date of issue of this order, failing which his posting on deputation is liable to be cancelled without any further communication and the post may be offered to some other eligible and selected candidate. No representation for a change of the place of posting will be entertained under any circumstances whatsoever.

3. The period of deputation of Shri L. Appal Swami will be for a duration of 1(one) year only from the date of joining in the office of the E. Engr. Kalaktang P.W. Division Kalaktang, A.P.

4. The pay and deputation(Duty) allowances in respect of Shri L. Appal Swami will be governed by the Government of India, Ministry of Finance, Public Grievances and Pension (Department of Personnel and Training) letter No.2/12/87-Estt(Pay.II) dtd. 29-4-1988

Asst. Secy. Choudhury
Surajit Advocate
on 29/1/06.

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

and as amended and modified from time to time. While on deputation, Shri L. Appal Swami 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 L. Appal Swami, 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 L. Appal Swami shall be treated as final and cannot be altered/changed later under any circumstances whatsoever.

5. The Dearness Allowance, CCA, Children Education Allowance, T.A., L.T.C., 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. in Appendix 31 of Choudhury's C.S.R. Volume IV(13th. Edition) and as amended and modified from time to time.)

6. Shri L. Appal Swami on deputation will be liable to be transferred to any place within the State of Arunachal Pradesh, Manipur and Tripura, in the combined cadre of Divisional Accountants under the Administrative control of the Accountant General (A&E) Meghalaya, etc., Shillong.

7. Prior concurrence of this office must be obtained by the Divisional Officer before Shri L. Appal Swami (on deputation) is entrusted additional charges, appointed or transferred to a post/station other than that cited in this Establishment Officer.

Sd/
 Dy. Accountant General (Admin)
 Office of the A.G. (A&E),
 Meghalaya, Mizoram & A.P.
 Shillong- 793001

Senior Accounts Officer,
 I/C D.A. CELL.

Memo No. DA. Cell/2-49/94-95/2548-55

DATED 11-3-99

Copy forwarded for information and necessary action to :-

1. The Accountant General (A&E), Manipur, Imphal.
2. The Accountant General (A&E), Tripura, Agartala.

1 The Chief Engineer, PWD, Itanagar, A.P.

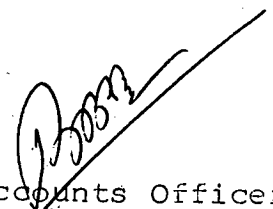
He is requested to release Shri L. Appal Swami
 immediately with the direction to report
 for duty to his place of posting on deputation under intima-
 tion to this office.

REGD. 2. The Executive Engineer, Roing P.W. Division Roing
P.O. Roing, A.P.. He is requested to
 release immediately Shri _____
 with the direction to report for duty to his place of
 posting on deputation under intimation to this office.

REGD. 3. The Executive Engineer, Kalaktang P.W. Divn.
Kalaktang, A.P.. He is requested
 to intimate the date of joining of Shri L. Appal Swami

REGD. 4. Shri L. Appal Swami, UDC.
 O/o the Executive Engineer Roing P.W. Divn.
Roing, A.P.

7. E.O. File.
8. S.C. File.
9. P.C. File. L. Appal Swami
10. File of the deputationist.
11. _____


 Senior Accounts Officer,
 I/c D.A. CELL.

OFFICE OF THE ACCOUNTANT GENERAL (AUDIT), ASSAM, MEGHALAYA
ARUNACHAL PRADESH & MIZORAM: SHILLONG

No. Co-ord/5-3/89-90/3885

Dated Shillong 20.2.90

NOTIFICATION

The following of the candidates who appeared for the Final Accounts Examination for Arunachal Pradesh Govt. employees held in January, 1990 are declared to have passed the examination.

<u>Sl.No.</u>	<u>Name</u>	<u>Index No.</u>
1.	Shri C.A. Manhai	AP/1
2.	Shri C.T. Loungchot	AP/2
3.	Shri Tari Maga	AP/3
4.	Shri Dorjee Phuntso	AP/4
5.	Shri S. Chakraborty	AP/5
6.	Shri Koj Tani	AP/6
7.	Shri Tasop Kiolu	AP/8
8.	Shri Someer Rigia	AP/9
9.	Shri Dongo Tara	AP/10
10.	Shri B. Gogoi	AP/11
11.	Shri S. Chanda	AP/12
12.	Shri Sanjoy Chakraborty	AP/13
13.	Shri P.C. Borthakur	AP/14
14.	Shri B.K. Chakraborty	AP/15
15.	Shri Kutpil Pertin	AP/16
16.	Shri Mrinal Basak	AP/17
17.	Shri L. Appal Swami	AP/18
18.	Shri S.K. Deb	AP/20
19.	Shri M.B. Nath	AP/21
20.	Shri Chow Wingkhom Lohan	AP/22
21.	Shri Abang Borang	AP/23
22.	Shri Chow Ming Mounkang	AP/24
23.	Smt Sakuntala Ering	AP/25
24.	Shri S. Sarmah	AP/26
25.	Shri S. Goswami	AP/27
26.	Shri P. Hasarika	AP/29
27.	Shri R.C. Upadhaya	AP/34

Sd/- Audit Officer.

.....P/2

A. Desai
Surgeon General
Chowdhury
Advocate
on 29/11/06

Memo No. DA/Estt/27/89

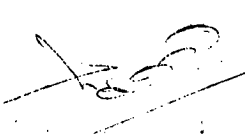
: 2 :

Dated Naharlagun, the 27.3.90

Copy forwarded for information and necessary action to the :

1. The Deputy Secretary (GA), Govt of Arunachal Pradesh, Itanagar.
2. The Deputy Commissioners, ~~Tawang~~/Daporijo/Pasighat/Khonsa/Changlang/Tezu/Seppa and Anini.
3. The Chief Engineer, PWD, Zone-I & II, Itanagar.
4. The Chief Engineer, RWD, Itanagar.
5. The Director of Industries, Itanagar.
6. The General Manager, State Transport Department, Naharlagun.
7. The Director of AH & Vety, A.P., Naharlagun.
8. The Director of Rural Development, AP, Itanagar.
9. The Dy. Director of Supply & Transport, Mohanbari.
10. The Director of Agriculture, A.P., Naharlagun.
11. The Executive Engineer, Planning Division, Rupa Circle, PWD, Rupa.
12. The Executive Engineer, Changlang Division, PWD, AP
13. The Superintending Engineer, Jairampur Circle, PWD, Jairampur - 792 121.
14. The Executive Engineer, Longding, PWD, Longding-786 631
15. All the trainees (by name as per list)

Shri L. Appal Sivaraj
C/o. Executive Engineer
Changlang Division
PWD. A.P.
Changlang.


(H.K. Seal.)
Accounts Officer,
Directorate of Accounts,
Naharlagun.



- 25 -

Gram : ARUNACCOUNTS

Phone : 214281 (O)

212637 (R)

Annexure-3

GOVERNMENT OF ARUNACHAL PRADESH

Director of Accounts & Treasuries

Naharlagun-791 110

No. DA/TRY/15/99

Dated, the 12th Jan. 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.

* 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.

Attested
Surajit Choudhury
Advocate
on 29/1/06

- 26 -
GOVT OF ARUNACHAL PRADESH
DIRECTORATE OF ACCOUNTS & TREASURIES
NAHARLAGUN

Annexure-4

NO. DA/TRY/15/99

Dated Naharlagun the 11th March '02.

To,

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

Sub:- Continuation of service in respect of the Divisional Accountant on deputation.

Sir,

I would like to inform you that the state cabinet of Arunachal Pradesh has already taken a decision for taking over of the administrative control of the cadres of Sr.DAO/DAO/DA of works divisions belonging to PWD/PHED/IFCD/RWD and Power department of Arunachal Pradesh. In order to ensure smooth transition of the controlling authority of the said cadres a scheme has already been formulated which is being submitted to you shortly for obtaining approval of the appropriate authority for issuance of a formal 'Notification'.

Meanwhile you are requested for not to make any fresh recruitment to the post of the Divisional Accountants against the Works divisions of the State of Arunachal Pradesh which is in continuation to our letter No. DA/TRY/15/99 dated 15/11/99. Fresh recruitment of the Divisional Accountants will be made by the state government through Arunachal Pradesh Public Service Commission. Therefore the Divisional Accountants those who are appointed by you on deputation from the state service of Arunachal Pradesh may be allowed to continue as Emergency Divisional Accountants for the time being as a working arrangement. But for their absorption on regular basis they will be given chance to qualify themselves in the Divisional Test examination which will be conducted by the state government through the authorized officer of the state government after taking over the administrative control of the cadres.

Yours faithfully,

(A.K. Guha)
Commissioner (Finance)
Govt. of Arunachal Pradesh
Itanagar.


Memo No. DA/TRY/15/99/

Copy to :-

Dated Naharlagun the 11th March '02.

- 1). The Chief Engineer, PWD (E/Z, W/Z)/PHED/IFCD/RWD and Power Department of Arunachal Pradesh for information.
- 2). All Executive Engineers, PWD/PHED/IFCD/RWD & Power department of Arunachal Pradesh for information. They are requested for not to release the Divisional Accountants, who are on deputation from the state service of Arunachal Pradesh, on expiry of their deputation term, until further order from this end.

*Attested
Surajit Choudhary
Advocate
on 29/1/06.*


(A.K. Guha)
Commissioner (Finance)
Govt. of Arunachal Pradesh
Itanagar.

(Typed)

Annexure-4 A

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

SHILLONG- 793001

Phone: 0364-2223191 (O) Fax: 0364-2223103

E.R. Solomon
Accountant General

D.O. No. DA Cell/1-8/Court Case/2000-2001/1909
Dated: March 24, 2005
28 MAR 2005

Dear

Otem,

Please recall our telecon a little while ago regarding the Divisional Accountants on deputation to my office and presently posted in the State of Arunachal Pradesh. With reference to your D.O. letter No. DA/TRY/27/2002 dated 10.3.2005, I am to inform you that my Headquarters has confirmed that we could consider extension of the deputation of the present 31 Divisional Accountants presently on deputation to our department. As you are aware the Division Bench of the Gauhati High Court, Itanagar Bench, had issued an order dated 10.2.2005 regarding the 12 Divisional Accountants on deputation who are to be reverted back to their parent departments in the Government of Arunachal Pradesh. This order is not being implemented presently and the remaining 19 Divisional Accountants who have cases pending in the Court/CAT may be immediately requested to withdraw all their court cases and once this is done, their continuity on deputation will be considered.

On the question of absorption of these 31 deputationists, my HQrs. has informed that the modalities will be worked out and this may be conveyed to these deputationists.

I request for your urgent action to ensure that the pending court cases of the 19 Divisional Accountants on deputation are withdrawn to facilitate their continued deputation/absorption.

Regards

Yours sincerely

Sd/-

Illegible

24.03.05.

Shri Otem Dai,
Financial Commissioner to the Govt. of Arunachal Pradesh.
Itanagar.

*Attested
Sub-
Advocate*

23/11 - 28 -
Annexure-5
5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

O.A. NO. 115 OF 2005

Shri L. Appal Swami & Ors

-Versus-

Union of India & Ors

WRITTEN STATEMENT ON BEHALF OF THE RESPONDENT NO. 11

I, Shri Jayanta Kumar Bhattacharya, son of late Anil Kumar Bhattacharya, aged about 47 years, presently posted as Finance & Accounts Officer in the Directorate of Accounts, Naharlagun and residing at Naharlagun, P.O. Naharlagun, Arunachal Pradesh do hereby solemnly affirm and state as follows :

1. That a copy of the original application being No. 115 of 2005 has been served upon me wherein I have been arrayed as Party Respondent No. 11, I have read the averments made in the application along with its annexures and understood the contents thereof.
2. That save and except what is specifically admitted in this Written Statement and the statements made in the application which are contrary to and inconsistent with the records shall be deemed to have been denied.
3. That the applicants filed the instant application seeking the relief viz :
 - i) That the applicants who are on deputation entitled to consideration as Divisional Accountant working under different Division offices of the Executive Engineers in the State of Arunachal Pradesh.

Tested
Swami
on 22/11/06.
Choudhary
A. Choudhary

- ii) That before dealing with the said relief as prayed for, the deponent deals with different paragraphs made in the instant application for conveniences of the case in hand.

4. That with regard to the statements made in paragraphs 4.1 and 4.3 of the instant application the deponent states that these are matters of record and any statement made therein which are contrary to records shall be deemed to have been denied.

5. That with regard to the statements made in paragraphs 4.4 of the application the deponent states that the State of Arunachal Pradesh through its Principal Secretary (Finance) Government of Arunachal Pradesh has formulated a scheme for taking over the Administrative control of the cadres of Senior DAO/DAO Grade-I/DAO Grade-II and DA of working divisions alleging to PHE/RWD/IFCD/PWD/Power Department of Arunachal Pradesh from the control of Accountant General (A&E) Meghalaya, Arunachal Pradesh, et Shillong. The said scheme has been sent to the Accountant General (A&E) Meghalaya, Arunachal Pradesh etc Shillong for taking over of the administrative control of the cadre of Divisional Accountant from the later vide office letter dated 30.7.2005. This has been done in consonance to cabinet decision taken on 28.11.2001.

6. That with regard to the statement made in paragraph 4.5 of the application the deponent states that the question has been dealt with in the scheme which is quoted hereunder :

"2.2. The Divisional Accountants (on deputation) those who have completed the existing terms of deputation will be continued as Emergency Divisional Accountant for the time being as working arrangement. But for their absorption as regular Divisional Accountant they shall have to qualify themselves in the Divisional test examination within two years from the date of taking over the cadre from the

administrative control of the Accountant General (A&E) , Meghalaya, Arunachal Pradesh etc. Shillong, for which they will be given three chances to qualify in the Divisional test examination. If any body fails to qualify in the Divisional test examination, shall be reverted to their parent department as and when qualified hand become available".

The said paragraph of the scheme ha put certain conditions and these conditions are required to be fulfilled in order to get the permanent absorption in the cadre of Divisional Accountant working under different divisions of the Government of Arunachal Pradesh.

Copies of the communication dated 30.7.2005 and the scheme are annexed hereto as Annexure A and B respectively to this Written Statement.

7. That with regard to the statements made in paragraphs 4.6 and 4.7 of the application the deponent states that the Government of Arunachal Pradesh had reiterated its stand for continuation of Divisional Accounts on deputation till the process of taking over administrative control from Accountant General (A&E) Meghalaya, Aruanchal Pradesh etc. Shillong is completed which is evident from Annexure I of the application dated 12.1.2000.

8. That with regard to the statements made in paragraphs 4.8,4.9,4.10,4.11,4.12 and 4.13 of the application the deponent states that these are matters of record and any statement made therein which area contrary to records shall be deemed to have been denied.

9. That with regard to the statements made in paragraphs 4.14,4.15 and 4.16 of the application the deponent states that before submission of the scheme for taking

over of the cadre, the State of Arunachal Pradesh has consented for permanent absorption of the deputationists under the administrative control of the Accountant General (A&E) Meghalaya, Arunachal Pradesh etc. Shillong.

The deponent further states that the Divisional Accountants on deputation be allowed to continue till such time the cadre is taken over by the State Government of Arunachal Pradesh keeping in view of the experience gathered by the serving deputationists and if the scheme is implemented and control of deputationists are taken over by the State of Arunachal Pradesh, the deputationists shall have to qualify themselves for permanent absorption indicated above.

VERIFICATION

I,, Shri Jayanta Kumar Bhattacharya, son of late Anil Kumar Bhattacharya, aged about 47 years, presently posted as Finance & Accounts Officer in the Directorate of Accounts to the Government of Pradesh, Naharlagun, do hereby verify that the facts states herein above are true to my knowledge, information and belief derived from relevant records. Nothing substantial to the issue raised by way of the present O.A. has been concealed.

Verify at Guwahati on this day of 26th September, 2005

DEPONENT

To,

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

Sub :- Submission of scheme for taking over the administrative control of the cadres of Sr. DAO/DAO Grade - I DAO, Grade - II and Divisional Accountant - thereof.

Sir,

I am directed to submit herewith the proposed scheme for taking over the administrative control of cadre of Divisional Accountants comprising Sr. DAOs / DAOs Grade - I & II and Divisional Accountants by the Government of Arunachal Pradesh presently vested under your kind control.

I am further directed to state that the State cabinet had since approved the proposal to take over the cadre and the Departments of Law & Judicial, Personnel & Administrative Reforms of the state have duly vetted the scheme after thorough examination.

In view of the progress as stated above, I am directed to request you to convey your approval facilitating smooth taking over of the cadre of DAs / DAOs / DAOs Grade - I & II from your kind control.

Kindly acknowledge the receipt of the scheme enclosed in quadruplicate.

Encls : As stated above.

Yours faithfully

(C.M. Mongmaw),
Director of Accounts & Treasury
Govt. of Arunachal Pradesh,
Naharlagun - 791110 (A.P)

Memo. NO. DA/TRY-27/2000

Dated July'2005.

Copy to :-

1. P.S. to Principal Secretary (Finance) to the Govt. of Arunachal Pradesh, Itanagar for information.
2. The Secretary, Law & Judicial to the Govt. of Arunachal Pradesh for information please.
3. The Secretary, Personnel & Administrative Reforms, to the Govt. of Arunachal Pradesh, Itanagar for information please.

(C.M. Mongmaw),
Director of Accounts & Treasury
Govt. of Arunachal Pradesh,
Naharlagun - 791110 (A.P)

The Scheme for taking over of the Administrative control of the Cadres of Sr. DAO/ DAO Grade- II and DA of Working Division belonging to PHE/RWD/IFCD/ Power Department of Arunachal Pradesh from the control of the Accountant general (A&E), Meghalaya, Arunachal Pradesh, etc. Shillong.

The posts of Divisional Accountants were created by the state Government in the Public Works/ rural Works Department/ Public Health engineering Department / Irrigation and Flood Control & Power department , But the administrative Control i.e appointment, Transfer, Posting and disciplinary control, etc. vested with the Accountant General (A&E) Meghalaya, Arunachal Pradesh, etc Shillong. The Division Accountant comes under the immediate control of the Executive Engineer of the Division. They assist the Executive Engineers while tendering accounts to the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc. Shillong. Their pay and allowances and other services condition are at present government by the central Govt. rule in force, but they are paid from the state Governments exchequer, the question of taking over the Cadres of the Divisional Accountants from the administrative control of the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc. Shillong had been under active consideration of the state Government for quite sometimes past in order to have proper control over expenditure and other accounts matter of the works division , since its was becomes essential for the State government to have better control on the heavy expenditure incurred in various Engineering Divisions of the state. Now the Government of Arunachal Pradesh has decided in pursuance of cabinet decision of the state for taking over of the administrative control of the cadres of Sr. DAO/DAO/DA for the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc. Shillong.

To take over the Cadre of the Sr. Division Accounts Officers/ Divisional Accounts Officers / Divisional Accountants from the Administrative Control of the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc. Shillong. Shall be subject to the following terms and condition:-

1. Absorption of DA/DAO and Sr. DAO (Regular) born on the Cadre of the AG to State Cadre.
- 1.1 Sr. Divisional Accounts Officers / Divisional Accounts Officers / Divisional Accountants (Regular) borne on the Cadre of the Accountant General who are presently working in the state of Arunachal Pradesh may opt to served in the State Cadre on status quo. The willing Sr. Divisional Officers / Divisional Accounts Officers / Divisional Accountants (Regular) working in the State may submit their option to the *Secretary to the Government of Arunachal Pradesh Department of Finance, Arunachal Pradesh, Itanagar.* Through the concerned Executive Engineers within 2 (two) months from the date of issue of the ' Notification' under intimation to their Parent Department.

- 1.2 The Sr. Divisional Accounts Officer / Divisional Accounts Officers / Divisional Accountants (Regular) who do not opt for the service condition, but willing to continue in the post shall be allow to serve on standard terms and condition of department duly approval by the state government for period upto 3 (three) years which may be extended upto 2 (two) years in the interest of Public Service. They shall be reverted to their parent Department immediately on expiring of their respective deputation period.
- 1.3 The Sr. Divisional Accounts Officer / Divisional Accounts Officers / Divisional Accountants (Regular) who opt to serve in Arunachal Pradesh shall continue to be governed by the central rules for pension and other retirement benefits as applicable from time to time.
- 1.4 The inter-se-seniority of the Sr. Divisional Accounts Officers /Divisional Accounts Officers / Divisional Accountants (Regular) who opt for the state Service shall be fixed in the state Cadre basing on their inter-se-seniority as Sr. Divisional Accounts Officers / Divisional Accounts Officers Grade-I, Divisional Accounts Officers Grade-II / Divisional Accounts on the date of taking over of the state.
- 1.5 Sr. Divisional Accounts officers /Divisional Accounts Officers Grade-I/Divisional Accounts Grade-II/ Divisional Accountants (Regular) are now drawing the following scale of pay as per central pay pattern.
- | | | |
|----|---|-----------------------|
| A) | Divisional accountant. | Rs. 5000-150-8000/- |
| B) | Divisional Accounts Officer (Grade-II) | Rs. 5500-175-9000/- |
| C) | Divisional Accounts Officers (Grade-I) | Rs. 6500-200-10,500/- |
| D) | Divisional Accounts Officer (Sr. Grade) | Rs. 7500-250-12000/- |

The cadre of Sr. Divisional Accounts Officers/Divisional Accounts Officers Grade-I & II/ Divisional Accountants who are working in Arunachal Pradesh on regular basis shall be allowed to continue for drawal of their pay and allowances in the existing scales of pay even after taking over by the state govt.

- 1.6 The Accountant General (A & E), Meghalaya, Arunachal Pradesh, etc. Shillong shall obtain the option in triplicate in the prescribed form as annexed herewith from the Sr. DAO/ DAO Grade-I DAO Grade-II/DA borne on his cadre and serving in the State of Arunachal Pradesh on the date of taking over the cadre by the state government through the Executive Engineer of the Divisions and furnish one copy of each option exercised by the Sr. Divisional Accounts Officers /Divisional Accounts Officers Grades-I, Divisional Accounts Officers Grade-II/Divisional Accounts to the Secretary to Government of Arunachal Pradesh, department of Finance, on receipt of the option.

2. Divisional Accountants on Deputation.

- 2.1 Divisional Accountants who are working in the works divisions in Arunachal Pradesh of deputation shall be allowed to continue serving in the post of Divisional Accountant on deputation until they complete their normal terms of deputation.
- 2.2 The Divisional Accountants (on deputation) those who have completed the existing term of deputation will be continued as Emergency Divisional Accountant for the time being as working arrangement. But for their absorption as regular Divisional Accountant they shall have to qualify themselves in the Divisional test examination within two years from the date of taking over the cadre from the administrative control of the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc. Shillong, for which they be given three chances to qualify in the Divisional test Examination, shall be reverted to their parent department as and when qualified hand become available.

3. Administrative Control.

The administrative control of Sr. Divisional Accounts Officers/ Divisional Accounts Officers/ Divisional Accountants shall be vested with the Finance Department, Government of Arunachal Pradesh, Department of Finance.

4. Recruitment

The state government through Arunachal Pradesh Public Service Commission shall fill up all the vacancies of Divisional Accountants of Arunachal Pradesh.

1. Method of Recruitment:

- 1.1 The Arunachal Pradesh Public Service Commission shall make recruitment to the cadre of Divisional Accountant by selection on merit adjudged from the following sources through written and competitive and qualifying test called the initial Recruitment Examination for Divisional Accountant(Annexure-I).

1.2 Age Limit for "Direct Recruitment".

Candidate should not be less than 18th years and more than 28 years of age, provided that the initial limit may be relaxed to 33(thirty three) years incase of APST candidates in accordance with the order of the state government from time to time. In case of existing / working Divisional Accountants, upper age is relaxable upto 52 years.

1.3 Education Qualification.

Minimum Education qualification for direct recruit shall be a university Degree/graduate with any one of the subject namely mathematics, Statistics, Commerce, Economics, from a recognized candidate(s).

Note:- Age limit and Education as prescribed at serial 5.2. & 5.3 above shall not be applicable in case of eligible department candidate(s).

1.4 Appointment Authority:-

The Secretary to the government of Arunachal Pradesh Department of Finance shall be appointing authority subject to the approval of the Government.

1.5 Probation and Training:-

Candidates recruited through the Initial Recruitment Examination will be on probation for a period of 2 (two) years before their absorption in the cadre of Divisional Accountant. During this period he/she shall be given training for a period of 6(six) months in the Administrative Training Institute and thereafter intensive practical training in all aspects of Public works accounts for a further period of 6(six) months.

2. Transfer & Posting:-

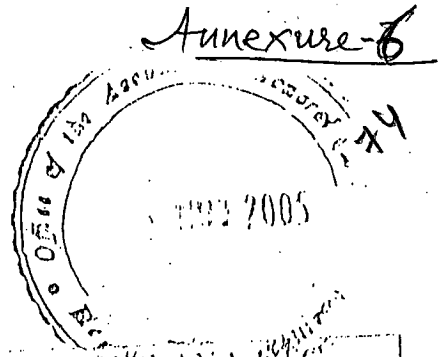
Divisional Accountants / Divisional Accounts Officers are to serve anywhere within Arunachal Pradesh and are liable for transfer to the establishments of Chief Engineers /Director of Accounts & Treasuries whereon such posts exists.

3. Transfer of record:-

The Accountant General (A& E) Meghalaya, Arunachal Pradesh etc. Shillong shall take necessary action to transfer the relevant records to the Secretary to the Government of Arunachal Pradesh Department of Finance within 3 (three) months from the date of issue of the notification.

Sd/-
(Tabom Bam),
Principal Secretary (Finance)
Govt. of Arunachal Pradesh.
Itanagar.

Registered Post



OFFICE OF THE ACCOUNTANT GENERAL (A&E) MEGHALAYA, ETC,
SHILLONG - 793001.

No.DA Cell/ 1-1/2000-2001/ 1509

Dated:- 25.11.2005

To

Shri C.M.Mongmaw,
Director of Accounts and Treasuries,
Government of Arunachal Pradesh,
Naharlagun - 791 110.
Arunachal Pradesh.

Sub:- Scheme for transfer of cadre of DAs/DAOs from the Administrative control of A.G.(A&E) Meghalaya, etc, Shillong to the Govt. of Arunachal Pradesh.

Sir,

In inviting a reference to this office letter No. DA Cell/1-8/Court case/Vol.11/1045 dated 23.8.2005 on the subject cited above, I am to state that the draft scheme framed by the C&AG's office regarding proposed transfer of DAs cadre has been received by this office. A Copy of the draft scheme is forwarded herewith for acceptance of the terms and conditions embodied in the scheme by Arunachal Pradesh Government.

Comments/suggestion if any, of the government may be communicated to this office for onward transmission to the O/o the C&AG of India for consideration/approval. Also the action taken by the State Government on this office letter No. DA Cell/1-1/2000-2001/1390 dated 31.10.2005 (Copy enclosed) may also please be communicated at an early date.

Encls:- As stated above.

Yours faithfully,


(A.K.Das)

Dy. Accountant General (Admn)

Attested
Surajit Choudhury
Advocate
on 29/11/06.

- 38 -

Draft Scheme for the transfer of the cadre of Divisional Accountants / Divisional Accounts Officers from the administrative control of A.G.(A&E) Meghalaya, Shillong to the Government of Arunachal Pradesh.

The Government of Arunachal Pradesh has decided to take over the existing cadre of Divisional Accountants / Divisional Accounts Officers from the administrative control of the Accountant General (A&E) Meghalaya, Shillong to its administrative control on the following terms and conditions-

1. Administrative Control:

The administrative control of the Divisional Accountants / Divisional Accounts officers, who are presently governed under the Central Civil Service Rules and are working under the administrative control of Accountant General (A&E) Meghalaya, Shillong shall on their transfer to services of Govt. of Arunachal Pradesh, vest with the Director of Accounts and Treasuries, Govt. of Arunachal Pradesh under Department of Finance who would exercise all the administrative powers like recruitment / promotion / leave / transfers & postings / disciplinary matters etc.

2. Status and composition of the cadre on transfer:

(a) The existing Divisional Accountants / Divisional Accounts Officers under the administrative control of Accountant General (A&E) Meghalaya, Shillong have the following cadre composition :

Sl. No.	Name of the Post / Grade	Scale of Pay (Rs)	Percentage composition of cadre strength
1.	Divisional Accountants (ordinary Grade)	5500-175-9000	35%
2.	Divisional Accounts Officers (Grade-II)	6500-200- 10500	25%
3.	Divisional Accounts Officer(Grade-I)	7450-225-11500	25%
4.	Sr. Divisional Accounts Officers	7500-250-12000	15%

(b) After taking over to the service of Govt. of Arunachal Pradesh, the existing regular Divisional Accountants / Divisional Accounts Officers would continue to constitute a separate cadre with the existing cadre structure and designations.

3. Option for transfer to service of Govt. of Arunachal Pradesh

(a) After publication of the order for the proposed transfer of cadre in the official Gazette of the State Government, Accountant General (A&E) Meghalaya, Shillong shall call upon all the regular Divisional Accountants / Divisional Accounts Officers of the combined cadre, who find place, on the date of Gazette Notification, in the Gradation list maintained by his office to exercise their option in the prescribed proforma appended herewith through the respective executive engineers within a period of two month for going over to the service of the State Govt. of Arunachal Pradesh or for their continuance in the Central Government Service under the administrative control of A.G.(A&E) Meghalaya. The option so exercised shall be final and in no case whatsoever it shall be altered. Those who do not exercise such option within the specified period for whatever reasons shall be deemed to have made an option to remain in the Central Govt. Service under the Administrative control of A.G.(A&E) Meghalaya. The pension and other retirement liabilities of those who opt for the State Service shall be borne by the Govt. of Arunachal Pradesh.

(b) Those Divisional Accountants / Divisional Accounts Officers who opt for their continuance in the Central Government Service under the administrative control of the A.G. (A&E) Meghalaya will be posted in Maipur / Tripura.

not received.

(c) The employees of office of the Accountant General (A&E) Meghalaya, Shillong and the employees of State Government who are on deputation to the posts of Divisional Accountants / Divisional Accounts Officers shall not be allowed to exercise any option to go over to the state Govt. Such employees, if required by the state Govt., may be allowed to serve on the standard terms and conditions of deputation duly approved by the State Govt.

4. Regulation of Conditions of service

Subsequent to transfer to the State Govt., the conditions of service of the existing Divisional Accountants / Divisional Accounts Officers shall be regulated as follows:

(I) Scales of Pay- Existing Divisional Accountants / Divisional Accounts Officers shall continue to be placed in their existing pay scales. However, in the event of any revision of pay scales of existing Divisional Accountants / Divisional Accounts Officers by the Govt. of India with effect from a date prior to the date of taking over the cadre control, the existing incumbents shall be entitled to such revised scales of pay from the said date. Any subsequent revision of pay scale by the State Govt. shall be applicable to them.

(II) Age of Superannuation- Since the age of Superannuation in respect of existing Divisional Accountants / Divisional Accounts Officers working under the administrative control of A.G. (A&E) Meghalaya is 60 years as applicable to the Central Govt. employees, they shall be, as a special dispensation, allowed a general extension of service without any discrimination for two years over the existing age of superannuation of 58 years applicable to the employees of state Govt. of Arunachal Pradesh, subject to the condition that the retirement age of the Divisional Accountants / Divisional Accounts Officers transferred to the State Service will be as is ordered by the Central Govt. from time to time for their employees.

(III) Seniority under State Govt.- The inter-se seniority of Divisional Accountants / Divisional Accounts Officers taken over to the cadre of State Govt. shall continue to be the same as existing on the date of taking over the cadre by the State Govt.

(IV) Recruitment- The recruitment to the post of Divisional Accountant after taking over the cadre by the State Govt. would be as per policy decided by the Govt. of Arunachal Pradesh.

(V) Promotions- After taking over the cadre, the State Govt. shall formulate suitable rules under the Arunachal Pradesh Service Rules to provide adequate promotional avenues for the cadre which shall, however, not be less advantageous than what is available under the administrative control of A.G.(A&E) Meghalaya. Till such rules are framed, the promotions shall be regulated by the extant rules / instructions applicable prior to the date of taking over the cadre.

(VI) Training / Departmental Examination - State Govt. shall, with a view to provide adequate qualified manpower to the taken over cadre of Divisional Accountants / Divisional Accounts Officers, evolve a system of theoretical / practical training in Public Works Accounting system and functioning of Public Works Divisions and a suitable departmental examination comparable to the existing training and examination to ensure that the existing quality and regularity of rendition of accounts to the A.G.(A&E) Meghalaya is maintained.

(VII) Transfers and postings- The transfer and postings of Divisional Accountants / Divisional Accounts Officers shall be made by the State Government. No employee from the state Govt. shall be posted to the regular charge of any division unless he / she has completed the special training required in Public Works Accounting system as well as the functioning of the Public Works Divisions and has subsequently qualified in an appropriate departmental examination to be introduced by the State Govt. of Arunachal Pradesh as referred to in clause 4(VI). Notwithstanding this provision, the Director of accounts and Treasuries, Arunachal Pradesh Govt. shall have the powers to appoint any employee of the State Govt. as Divisional Accountant / Divisional Accounts Officers on a temporary and ad-hoc basis for a specified period, till the post is filled by regular qualified personnel.

(VIII) Disciplinary Authority- Subsequent to the transfer of the cadre to the state Govt. the Director of Accounts and Treasuries, Arunachal Pradesh Govt. shall be the disciplinary authority in respect of Divisional Accountants / Divisional Accounts Officers.

(IX) Reporting and Reviewing Officers- The Executive Engineers of the various divisions shall continue to be the reporting officer for the purpose of writing of Annual Confidential Reports in respect of Divisional Accountants / Divisional Accounts Officers working under them. The FA/CAO of the concerned department shall be the Reviewing Officer and Director of Accounts and Treasuries, Arunachal Pradesh shall function as the accepting authority.

5. Transitional Provisions- Till such time the State Govt. frames appropriate rules concerning conditions of service of the taken over cadre, the incumbents shall be governed by the rules hitherto in force.

(c) Power to relax- Where the Govt. of Arunachal Pradesh is of the opinion that it is necessary or expedient to do so, it shall, after consultation with the Comptroller & Auditor General of India, by an order for reasons to be recorded in writing, relax any of the provisions of these terms and conditions with respect to any class or category of persons.

Speed Post

**OFFICE OF THE ACCOUNTANT GENERAL (A&E) MEGHALAYA, ETC,
SHILLONG :: 793001.**

No. DA Cell/2-46/2000-01/Vol.III/1667-67

Dated: 10 JAN 2006

To

1. The Director of Accounts & Treasuries,
Govt. of Arunachal Pradesh, Naharlagun,
Arunachal Pradesh.
2. The Executive Engineer,
P.H.E. Khonsa,
Khonsa Arunachal Pradesh.
3. The Executive Engineer,
Bomdila, R.W.D.
Bomdila, Arunachal Pradesh.

Sub:- Retirement on attaining the age of superannuation in r/o the Divisional Accountants on deputation- regarding there of

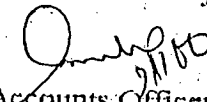
Sir,

In inviting a reference to the subject cited above, I am directed to state that as per records available in this office (the service Books is being maintained in the respective divisions), the following Divisional Accountant on deputation under the Administrative control of this office are due to retire from service on attaining the age of 58 years, as mentioned against their names.

Sl. No.	Names of DAs	Date of birth	Date of retirement	Posted to the Divisions.
1.	Shri L.Appal Swami ✓	25.1.1948	31.1.2006	O/o Executive Engineer,, P.H.E ,Khonsa, A.P.
2.	Shri Keshab Ch.Das ✓	1.5.1948	30.4.2006	O/o Executive Engineer, R.W.D, Division Bomdila, AP

In view of the above, it is requested to take necessary steps, so that the officials mentioned above to retire on due dates as per the retirement age of the officials of Govt. of Arunachal Pradesh.

Yours faithfully,


 Sr. Accounts Officer,
 DA Cell

Contd P/o

2455
 11/10/06
 Attested
 Surajit
 on 29/01/06.

Copy forwarded for information and necessary action with the request to take necessary steps in respect of their staffs i.e. Divisional Accountants on deputation (under the cadre control of this office) on attaining the age of superannuation are to retire in due date retirement.

1. The Chief Engineer, P.H.E Department, Govt. Arunachal Pradesh, Itanagar.
2. The Chief Engineer, R.W.D. Department Govt. of Arunachal Pradesh, Itanagar.
3. The Chief Engineer, (EZ)PWD Department, Govt. Arunachal Pradesh, Itanagar.
4. The Chief Engineer, (WZ)PWD Department, Govt. Arunachal Pradesh, Itanagar.
5. The Chief Engineer, I&FC Department, Govt. Arunachal Pradesh, Itanagar.
6. The Chief Engineer, Power Department, Govt. Arunachal Pradesh, Itanagar.

Sd/-
Sr. Accounts Officer,
DA Cell.

CHAPTER IX

Retirement

F.R. 56. ¹[(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.] -

²[Provided further that a Government servant who has attained the age of fifty-eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service.]

³[or on the expiry of any further extension in service granted by the Central Government in public interest, provided that no such extension in service shall be granted beyond the age of 60 years.]

(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

NOTE.— In this Clause, a workman means a highly skilled, skilled, semi-skilled, or unskilled artisan employed on a monthly rate of pay in an industrial or work-charged establishment.

⁴(c) Omitted

⁴(cc) Omitted.

¹[(d) No Government servant shall be granted extension in-service beyond the age of retirement of sixty years:

Provided that a Government servant dealing with budget work or working as a full-time member of a Committee which is to be wound up within a short period of time may be granted extension of service for a period not exceeding three months in public interest;

1. Substituted

4. Omitted.

by G.I., Dept. of Per. & Trg., Notification No. 25012/2/97-Estt. (A), dated the 13th May, 1998, published as GSR 248 (E) in the Gazette of India, Extraordinary, Part-II — Sec. 3 (i), dated the 13th May, 1998 and takes effect from that date.

2. Inserted by G.I., Dept. of Per. & Trg., Notification No. 25012/2/97-Estt. (A), dated the 27th May, 1998; published as GSR 276 (E), in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i), dated the 27th May, 1998, takes effect from that date.

3. Inserted by G.I., Dept. of Per. & Trg., Notification No. 25012/2/97-Estt. (A), dated the 8th December, 1998; published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i), dated the 8th December, 1998, takes effect from that date.

Provided further that a specialist in medical or scientific fields may be granted extension of service up to the age of sixty-two years, if such extension is in public interest and the grounds for such extension are recorded in writing:

" Provided also that the Appropriate Authority shall have the right to terminate the extension of service before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent or a quasi-permanent Government servant, or, of one month in the case of a temporary Government servant, or pay and allowances in lieu of such notice.]

¹(e) Omitted.

(f) Deleted.

(ff) Deleted.

¹(g) Omitted.

¹(h) Omitted.

²[(i) A Military Officer in a Civil Department shall cease to be in civil employment on the date he attains the age of sixty years.]

³(j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years;

Not printed. (Since Clause (e) has been Omitted)

(jj) (i) If on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement by the grant of leave of the kind due and admissible, including extraordinary leave, or by

1. Omitted.

2. Substituted

by G.I., Dept. of Per. & Trg., Notification No. 25012/2/97-Estt. (A), dated the 13th May, 1998, published as GSR 248 (E) in the Gazette of India, Extraordinary, Part-II — Sec. 3 (i), dated the 13th May, 1998 and takes effect from that date.

3. Substituted by G.I., Dept. of Per. & Trg., Notification No. 25013/11/87-Estt. (A), dated the 11th May, 1989, published as S.O. No. 1226 in the Gazette of India, dated the 27th May, 1989.

Attested
Sworn
G. Roy
A. Roy
on 29/06/06.

81

Classes of pensions, and conditions governing their grant

35. Superannuation pension

A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement.

GOVERNMENT OF INDIA'S DECISIONS

(1) Retirement on the afternoon of last day of the month in which superannuation falls.— It has been decided that as from 1st day of November, 1973, the Civilian Government servants in Groups 'B', 'C' and 'D' services of posts, and as from 1st day of April, 1974, the Civilian Government servants in Group 'A' services or posts, shall retire from service with effect from the afternoon of the last day of the month in which their date of retirement according to Fundamental Rule 56 falls, without prejudice to Clauses (j), (k), (l) and (m) of that rule.

[G.I., C.S. (Dept. of Per.), O.M. No. 33/12/73-Ests. (A), dated the 24th November, 1973 and the 2nd May, 1974.]

A Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

[Note 7 below F.R. 56.]

(2) Reckoning of date of birth when exact date/month is not known.— If a Government servant is unable to state his exact date of birth but can state the year or year and month of birth, the 1st July or the 16th of the month, respectively, shall be treated as the date of his birth. If he is only able to state his approximate age, his date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment.

[Rule 80, General Financial Rules.]

(3) No specific orders are necessary for retirement on due date.— A question has been raised whether the retirement of a Government servant is automatic on the date on which he attains the age of compulsory retirement or some specific orders by a competent authority are necessary specifying the date on which they should retire.

The rules regulating the age of superannuation or the terms and conditions may provide for the compulsory retirement of a Government servant

GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE EXECUTIVE ENGINEER : : PUBLIC HEALTH ENGINEERING
AND WATER SUPPLY DIVISION, KHONSA.

NO. KPHEd/ESTT/PF- 172/2000- 01/1427 Dated Khonsa the 30th December' 2005.

To,

✓ Sri L. Appal Swami,
Divisional Account (on deputation),
P.H.E & W.S Division,
Khonsa.

Sub :-

NOTICE FOR RETIREMENT ON SUPERANNUATION.

Sir,

It is to inform you that while scrutinising your service records, it is found that you are likely to attain the age of 58 years as on 25/01/2006, and according to CCS Pension Rule 72, all Group A, B & C grade employees under the Government of Arunachal Pradesh are to be retired from services only when they attain the age of 58 years, vide Director of Accounts & Treasuries, Naharlagun directive letter No. PEN/AP/2489/94/2102 dtd. 12/07/1995.

Since, you have not been observed under Central Services as full fledged Divisional Accountant under establishment of Accountant General (A&E), Shillong, your retirement on superannuation falls on 31/01/2006 (A/N). Hence, you are hereby requested to get in readiness and hand over the full charges of Divisional Accountant to Shri S. Roy, UDC yourself enabling us to process your pension papers to your parent department.

Further, it is to bring to your notice that, this office will not be responsible if any complicity arise in future by any lapses from your side.

Yours sincerely,



(Er. S.R. KUMAR)
Executive Engineer,
PHE & W/S Division,
Khonsa

Memo . NO. KPHEd/ESTT/PF- 172/2000- 01/

Dated Khonsa the 30th December' 2005.

Copy to:-

1. The Accountant General(A&E), D.A. Cell, Meghalaya, Arunachal Pradesh etc. Shillong- 793 001 for favour of his information please.
2. The Director of Audit & Pension, Govt. of Arunachal Pradesh, Naharlagun for favour of his information please.
3. The Chief Engineer, Zone-1(Eastern Zone) P.W.Department, Govt. of Arunachal Pradesh, Itanagar for favour of his information please.
4. The Chief Engineer, P.H.E. & W.S. Department, Itanagar for favour of his information please.
5. The Superintending Engineer, P.H.E & W.S Circle, Miao for favour of his information please.
6. Sri S.Roy, UDC P.H.E & W.S Division, Khonsa for information & necessary action.
7. Office copy.
8. Spare copy.

(Er. S.R. KUMAR)
Executive Engineer,
PHE & W/S Division,
Khonsa

Attested
Sujit Choudhury
on 29/01/06

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH

(CIVIL APPELLATE SIDE)

Appeal from
Writ Petition (Civil)

WP(c) No. 23. (100.) ... of 2006

19.1.06 — 20.1.06

Appellant
Petitioner

Sri L. Appal Swami

Versus

Union of India & Ors.

Respondent
Opposite Party

For Appellant
Petitioner

T. Michel, Adv.
M. Nihob
T. Hallen

For Respondent
Opposite Party

C.C.C.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signatures
1	2	3	4
<p>Certified to be a true copy</p> <p>Deputy Registrar Gauhati High Court, Itanagar Permanent Bench, Naharlagun. Authorized U/s 76 of Act I of 1972</p>			

Attested
Surgit Choudhary
Advocate
on 29/01/06.

IN THE MATTER OF :

Sri L. Appal Swami

S/o Late L. Anjinailu Naidu,

Resident of Khonsa,

Tirap District, Arunachal Pradesh.

..... PETITIONER

- VERSUS -

1. The Union of India, represented by the
Comptroller and Auditor General, Govt. of India,
10 Bahadur Shah Safer Marg, New Delhi-
110002.
2. The Accountant General (A&E)
etc. Meghalaya, Arunachal Pradesh & Mizoram,
Shillong.
3. The State of Arunachal Pradesh represented by
the Secretary, Department of PHE & WS, Govt.
of Arunachal Pradesh, Itanagar.
4. The Director of Accounts and Treasuries, Govt.
of Arunachal Pradesh, Naharlagun.
5. The Chief Engineer,
Department of PHE & WS, Govt. of Arunachal
Pradesh, Itanagar.

Certified to be a
true copy

Deputy Registrar

Gauhati High Court,

Itanagar Permanent Bench,

Naharlagun.

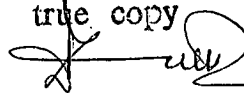
Authorised U/s 76 of Act I
of 1872

20/07/02

6. The Executive Engineer,
PHE & WS Division, Khonsa,
Tirap District, Arunachal Pradesh.

...RESPONDENTS

Certified to be a
true copy



Deputy Registrar 20/01/06
Gauhati High Court,
Itanagar Permanent Bench,
Nahaldagun.
Actions d O/ 76 of Act I
of 1872

Noting by Officer or Advocate	Serial no	Date	Office Notes, reports, orders or proceedings with signature
1	2	3	4

WP(C) 23 (AP) 2006

**BEFORE
THE HON'BLE MR. JUSTICE H.N.SARMA**

18.01.2006

Heard Mr. T. Michi, learned counsel for the petitioner.

From annexure-G to the writ petition dated 4.1.2006, which was written by the petitioner to the Executive Engineer, PHE & WS Division, Khonsa and as per submission of Mr. T. Michi, the learned counsel, the petitioner is under the control of the Accountant General and as such, on an earlier occasion, the petitioner has approached the Central Administrative Tribunal seeking certain relief in respect of his service conditions.

The order impugned in this writ petition being related to the service conditions of the petitioner on the submission of the petitioner, it falls under the jurisdictional authority of the Central Administrative Tribunal. Hence, the petitioner may approach the learned Tribunal for necessary relief and this writ petition is not maintainable.

In that view of the matter, this petition is not entertained for adjudication. However, liberty is given to the petitioner to move again before the appropriate Court, if so advised.

This disposes of this writ petition.

Sd/- H.N. Sarma
JUDGE

Certified to be a
true copy

Deputy Registrar
Gauhati High Court,
Itanagar Permanent Bench,
Naharlagun.
Authorized U/S 76 of Act I
of 1872

20/01/06

No. LAS/2006/66-79

Dated. Khonsa the 4th January '06.

To,

The Executive Engineer,
PHE&WS Division, Khonsa,
Khonsa (A.P.)

Sub : Notice for Retirement on Superannuation.

Ref : Your letter No. KPHE/ESTT/PF-172/2000-01/1427 dtd. 30/12/2005.

Sir,

In reference to your letter No. cited above, I have the honour to inform you that the matter which you have conveyed me about my retirement on superannuation is not appropriate. In fact, I am still under the Hon'ble Court of Central Administrative Tribunal, Guwahati Bench, Guwahati dated. 25/05/2005 for consideration of absorption as Divisional Accountant under the Administrative Control of the A.G(A&E) Shillong. As per court's order I am not to be disturbed from the present place of posting and status till pendency of the case. The copy of said order has already been issued to Accountant General (A&E) Shillong and Commissioner (Finance), Govt. of A.P., Itanagar and a copy endorsed to you also. **In this stage if the office will release/disturb me, it will be disobedience of the Hon'ble Court's Order.**

Moreover, I am allowed all the benefits as per Central Govt. Patterns as governed by the Govt. of India, Ministry of Finance OM No. F1(6) E - IV(A)/62 dtd. 07/12/1962 (incorporated as Annexure to Govt. of India decision No. in Appendix-31 of Choudhury's C.S.R. Volume-IV (13th Edition) and as amended and modified from time to time) and GOI, Ministry of Finance, Public Grievances and Pension (Department of Personal and Training) vide his letter No. 2/12/87-Estt. (Pay.II) dtd. 29/04/1988.

In this issue the Directorate of Account & Treasuries, Govt. of A.P. Naharlagun has also requested to A.G(A&E) Shillong to allow us to continue as Emergency Divisional Accountants even after completion of the existing term of Deputation until further order from their end vide his Memo No. DA/TRY/15/99 dtd. 11/03/2002 with copy endorsed to all CE's and all EE's of the Departments of A.P. Further, for taking over the administrative Control of the Cadre of all DAs/DAOs by the Govt. of A.P. from A.G(A&E) Shillong vide his Memo No. DA/TRY/15/99/Part/859-66 dtd. 18/07/2005 with copy endorsed to all CE's of the Departments of A.P. So, it is obviously still my service is under the establishment of Accountant General (A&E) Shillong.

So, I therefore request to my good office to seek for confirmation/Clarification from the Hon'ble learned CAT, Guwahati Bench, Guwahati/A.G(A&E) Shillong and Director of Accounts & Treasuries, Govt. of A.P., Naharlagun regarding the retirement on superannuation of Divisional Accountant Cadre before taking any further action on this issue from your end to avoid the future complications on or before 31/01/2006 please.

An early action in this issue is requested.

Yours faithfully,

*A. Theodor
Surajit Choudhury
Advocate
on 29/1/06*

(L.Appal Swami)
Divisional Accountant (Deptn.)
PHE&WS Division, Khonsa,
Khonsa, (A.P)

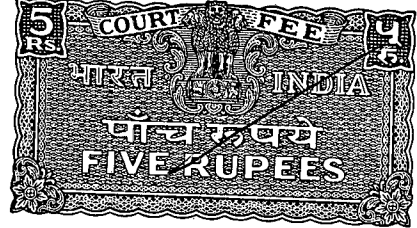
Memo No. LAS/2006/66-79

Dated. Khonsa the 4th January'06. 98

Copy forward to :

1. The Hon'ble Court of Central Administrative Tribunal, Guwahati Bench, Guwahati for favour of his kind information please.
2. The Chief Secretary, Govt. of A.P., Itanagar for favour of his kind information please.
3. The Commissioner (Finance), Govt. of A.P., Itanagar for favour of his kind information please.
4. The Principal Secretary, Govt. of A.P., Itanagar for favour of his kind information please.
5. The Secretary, PHE&WS Department, Govt. of A.P., Itanagar for favour of his kind information please.
6. The Accountant General (A&E), D.A. Cell, Meghalaya, Arunachal Pradesh etc. Shillong 793001 for favour of his kind information with reference to E.E's PHED, Khonsa letter No. KPHED/Estt./PF-172/2000-01/1427 dtd. 30/12/2005. He is requested to look into the matter sympathetically and consider me as Emergency Divisional Accountant and allow me to get the benefit as per service of Central Govt. employees pattern since I am working w.e.f. 07/04/1999 under your kind establishment of A.G.(A&E) Shillong and also communicate your valuable decision on the superannuation retirement of Divisional Accountant cadre under your control so that I may get the benefit of Central Service please.
7. The Director of Accounts & Treasuries, Govt. of A.P., Naharlagun for favour of his kind information and necessary action please.
8. The Director of Audit & Pension, Govt. of A.P., Naharlagun for favour of his information please.
9. The Chief Engineer, PHE&WS Department, Govt of A.P., Itanagar for favour of his information please.
10. The Chief Engineer(Eastern Zone), P.W. Department, Govt of A.P., Itanagar for favour of his information please.
11. The Superintending Engineer, PHE&WS Circle, Miao for favour of his information please.
12. Sri Manik Chanda, Advocate, Guwahati High Court, Bye Lane-7, Lachit Nagar Guwahati - 781007 for favour of his kind information and necessary action please along a copy of EE's PHED Khonsa letter No. KPHED/ESTT/PF-172/2000-01/1427 dtd. 30/12/2005.
13. Sri S.Roy, UDC, C/O. E.E, PHE&WS Division, Khonsa for information.

(L.Appal Swami)
Divisional Accountant (Deptn.)
PHE&WS Division, Khonsa,
Khonsa, (A.P)



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L. Appal Swami

VAKALATNAMA
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O. A. No. 27 /2006

Sri L. Appal Swami

...Applicant(s)

-Vs-

Union of India & others

...Respondent(s)

Know all men by these presents that the above named Applicant do hereby appoint, nominate and constitute Sri Manik Chanda, Sri S. Nall, S. Choudhury and Sri G. H. Chakraborty; Advocate(s) and such of below mentioned Advocate(s) as shall accept this VAKALATNAMA to be my/our true and lawful Advocate(s) to appear and act for me/us in the above noted case and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and I/We agree to ratify and confirm all such acts to be mine/our for all intends and purposes. In case of non-payment of the stipulated fee in full, no Advocate(s) shall be bound to appear and/or act on my/our behalf.

In witness whereof, I/We hereunto set my/our hand on this the 30th day of January 2006.

Received from the Executant, Mr. _____
satisfied and accepted.

And accepted
Senior Advocate will lead me/us in the case.

Sanjit Choudhury
Advocate

S. Nall
Advocate

M. Choudhury
Advocate

From: M. Chandra,
Advocate.
C.A.T. Chhatra.

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- ① Sr. Advocate, Court of A.P.
Chhatra High Court.
- ② Sr. Advocate, C.A.T.
Chhatra Bench.

Dear Sirs,

Enclosed please find here with a copy of O.A. being filed by Shri A. Swami Divisional Accountant (deputation) of the - State of A.P.

It is further informed you that the case will be moved to-day on 30-1-2006, as an unlisted O.A. before C.A.T. Chhatra Bench. Chhatra. Therefore you are requested to attend the Hon'ble tribunal.

1. Copy Received.
B. Banerjee at 9.30 AM.
(Sr. Advocate, Court of A.P.)

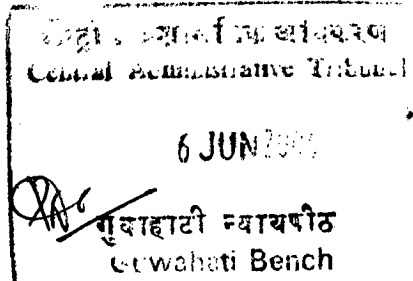
M. Chandra
Advocate
30/1

Copy received.

(Sr. Advocate, C.A.T.).

I undertake to serve
a copy to Shri G. Banerjee.

J. M.
Advocate.
30/1



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

O.A. No. 27 of 2006

Sri Apal Swami

- Versus -

Union of India & others

Filed by the Respondent
Through
R. Banerjee
Senior Govt. Advocate
Arunachal Pradesh

30.5.06
G. Yongam

WRITTEN STATEMENT ON BEHALF OF RESPONDENTS NOS 3 TO 7.

I, Sri Gesso Yongam Son of Late M. Yongam aged about 50 years, resident of Itanagar, presently posted as Under Secretary, Finance- E-II, Govt. of Arunachal Pradesh, Itanagar do hereby solemnly affirm and say as follows:

1. That a copy of the original application being No. O.A No.27 of 2006 have been served upon the Respondents mentioned herein above and the Respondent No.4 has directed me to look into the matter and accordingly I have been gone through the averments made in the O.A along with records pertaining to the case. I understood the contents thereof and filed the Written statement being authorised by them.
2. That save and except what is specifically admitted in this written statement and the statement made in O.A which are contrary to and inconsistent with the records shall be deemed to have been denied.
3. That the applicant in O.A filed the instant application seeking the following reliefs Viz;
 - a) That the order impugned dated 30.12.2005 Annexure-a shall be set aside and quashed; and

.....2.....

Mr. Datta
NS
6.6.06

an
G. Yonggam

b) That on setting aside the order dated 30.12.05 as aforesaid the applicant shall be allowed to continue in service till he attains the age of 60 years in terms of provision laid down in F.R 36(a) as well as in terms of rules 35 of CCS (Pension) Rules 1972.

4. That before dealing with the relief sought for in the original application, the deponent take up the pleadings made in different paragraphs in seriatim for perusal of the Hon'ble Tribunal in order to determine the controversies raised in the application in regard to his entitlement to continue in service till he attains the age of 60 years.

5. That with regard to the statements made in paragraphs 4.1., 4.2 and 4.3 of the application, the deponent states that originally he belongs to the cadre of Upper Division Clerk under the Government of Arunachal Pradesh which is admitted by the applicant. The applicant was selected for appointment on deputation to act as Divisional Accountant in the office of Executive Engineer Kalaktang PWD Division for a period of 1(one) year vide order dated 11.3.99, Clause 4 of the appointment letter dated 11.3.99 would show that while on deputation the applicant may elect to draw either the pay in the scale of the deputation post or his basic pay in the parent cadre plus personal pay, if any, plus deputation allowances which would go to show that he was on deputation and he ~~retains~~ retains a lien to his substantive post of U.D.C as admitted in paragraph 4.2. of the application. This policy decision as referred has yet to be implemented by the Government of Arunachal Pradesh and even if the policy decision is implemented he would not have been allowed to continue in service beyond 58 years.

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G. H. Gogoi

6. That with regard to the statements made in paragraphs 4.4., 4.5, 4.6 and 4.7 of the application the deponent states that the applicant has been repatriated to his parent department. The said repatriation was under challenge before the Hon'ble Tribunal and the Hon'ble Tribunal has upheld the order of repatriation which was taken on the file before the Hon'ble High Court and the Hon'ble High Court has affirmed the decision rendered by the Hon'ble Tribunal. The other averments relate to policy decision of the Government in regard to permanent absorption which has nothing to do with the age of retirement being fixed at 58 years. The facts stated in the application would show that the applicant has not been permanently transferred to Central Government service. Therefore the controversies raised in misconceived in the facts and circumstances of the case.

7. That with regard to the statements made in paragraph 4.8., 4.9, 4.10, 4.11 and 4.12 of the application the deponent states that the communication dated 10.1.2006 referred to in annexure -7 would reveal that the applicant is due to retire on attaining the age of 58 years on 31.1.2006 which is according to the retirement age of the officials of the Government of Arunachal Pradesh.

In regard to other averments relating to the applicability of FR 56(a) and the CCS (Pension) Rules 1972, the deponent states that though the Government of Arunachal Pradesh has adopted the CCS (Pension) Rules 1972 and other Central Rules as per adoption of Laws order No.4 1989 and the Notifications dated 6.1.99 and 16.2.1989 would show that the subsequent amendment by the Government of India vide Notification No. 25012/2/97 Estt(A) dated 13.5.1998 has not yet been adopted by the Government of Arunachal Pradesh. Therefore the relief sought for in regard

to continuation of service beyond 58 years is not available to the applicant and the applicant has rightly been superannuated on ~~31.1.2006~~ 31.1.2006 on attaining the age of 58 years. Therefore the original application is misconcieved and the same is liable to be dismissed with costs in the facts and circumstances of case.

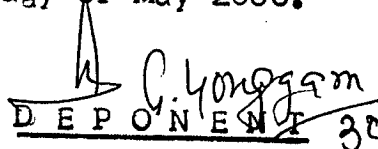
Copies of the Notification dated 6.1.99 and Notification dated 16.2.1989 are annexed hereto as Annexures A and B respectively to the written statement.

8. That with regard to the statement made in paragraphs 4.13, 4.14, 4.15, 4.16, 4.17, the grounds taken in the application and the relief prayed for, the deponent states that in view of the Notifications dated 6.1.99 and 16.2.1989 issued by the Government of Arunachal Pradesh, the contentions raised are misconceived. Therefore the grounds taken and the releif sought for fails and hence the application seeking releif for his entitlement to continue in service beyond 58 years fails and the application deserves to be dismissed with costs.

VERIFICATION

I, Sri Gesso Yongam Son of Late M. Yongam, aged about 50 years, presently posted as Under Secretary Finance E-II in the office of Finance Department, Government of Arunachal Pradesh, do hereby verify that the facts stated herein above are true to my knowledge, information and belief derived from relevant records. Nothing substantial to the issue raised by way of the present O.A has been concealed.

Verify at Guwahati on this day of May 2006.


DEPONENT 30.5.06

GOVERNMENT OF ARUNACHAL PRADESH
FINANCE DEPARTMENT
ITANAGAR

No.FIN, E-47/94

Dated Itanagar-791111, the 6th Jan.1999

NOTIFICATION

It is hereby notified for general information that the provisions of FRs - 56, 'Chapter-X' relating to 'Retirement' as adapted by this Government, vide No.Fin/E/47/87 (pt) dated 16th February, 1989 will continue to be applicable to all the government employees of the Government of Arunachal Pradesh.

By order and in the name of the Governor of Arunachal Pradesh

(P. K. Nandi)

Under Secretary(Finance)
Government of Arunachal Pradesh
Itanagar

Memo No.Fin/E-47/94 Dated Itanagar, the 1999.

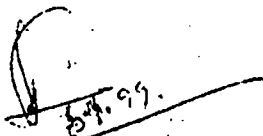
Copy to :-

1. The Accountant General, (AE), Meghalaya, A.P. etc., Shillong-1
2. The Secretary to the Governor of A.P. Itanagar
3. The Secretary to the Chief Minister, A.P. Itanagar
4. The PS to Ministers/Speaker/Dy.Speaker, AP,
5. P.S. to the Chief Secretary, Govt. of AP, Itanagar
6. The Development Commissioner, Govt. of A.P. Itanagar
7. All Commissioners, Govt. of A.P. Itanagar
8. All Secretaries/Jt. Secretaries/Dy. Secretaries/Under Secretaries, Govt. of A.P. Itanagar
9. All Chief Engineers, Govt. of A.P. Itanagar
10. The Inspector General of Police Govt. of A.P. Itanagar
11. The Principal Chief Conservator of Forest, Govt. of AP, Itanagar
12. APIDFC, Itanagar
13. Director (Trg), AP. Naharlagun

cont..... 2

C.T.C.

16. The Senior Analyst, Govt. of Arunachal Pradesh, Itanagar.
17. The Junior Analyst/Budget Officer, Arunachal Pradesh, Itanagar.
18. The Director(E&M), Planning and Development, Arunachal Pradesh, Itanagar.
19. All Heads of Departments (Major & Minor), Arunachal Pradesh, Itanagar, Naharlagun, Nirjuli, Jorhat.
20. The Liaison Commissioner, Govt. of Arunachal Pradesh, New Delhi.
21. All Deputy Commissioner/Addl. Dy. Commissioners, Govt. of Arunachal Pradesh.
22. The Director of Accounts, Govt. of Arunachal Pradesh, Naharlagun.
23. All Treasury Officer, and Sub-Treasury Officers, Arunachal Pradesh.
24. The Liaison Officer, Govt. of Arunachal Pradesh, Calcutta, Guwahati, Shillong, Lilabari, Mohanbari, Tezpur.
25. The Registrar, Arunachal Pradesh University, Doimukh.
26. The Chief Librarian, Govt. of Arunachal Pradesh, Itanagar.
27. The Secretary, Arunachal Pradesh, Public Service Commission, Itanagar.
28. The Chairman, Arunachal Pradesh State Social Welfare Advisory Board, Itanagar.


 (P.K.Nandi),
 Under Secretary(Fin),
 Government of Arunachal Pradesh,
 :: Itanagar ::

GOVERNMENT OF ARUNACHAL PRADESH
FINANCE DEPARTMENT

NOTIFICATION

THE STATE OF ARUNACHAL PRADESH ADAPTATION OF LAWS ORDER
(No. 4) 1989

The 16th February, 1989

No.FIN/E/47/87(Pt):- Whereas by ~~substitution~~ Sub-section (2) of section 46 of the State of Arunachal Pradesh Act, 1986 (Act No. 69 of 1986) for the purpose of facilitating the application of any law in relation to the state of Arunachal Pradesh the Government of the State of Arunachal Pradesh as the appropriate Government is empowered by order, to make such adaptation and modification of the law, whether by way of repeal or amendment, as may be necessary or expedient.

Now, therefore, in exercise of the power aforesaid the Government of the State of Arunachal Pradesh hereby makes the following order; namely :-

1. (1) The order may be called the State of Arunachal Pradesh Adaptation of laws order (No. 4), 1989.
(2) It shall be deemed to have come into force on the 20th day of February, 1987.
2. (1) In their application to the State of Arunachal Pradesh or Acts thereof, the following rules, namely
 1. The Fundamental Rules and Supplementary Rules (General).
 2. The Central Treasury Rules
 3. House Building Advance Rules;
 4. Central Civil Services (Extra-ordinary(Pension) Rules;
 5. The Central Provident Rules (Central Services) Rules
 6. The Contributory Provident Fund Rules(India), 1962
 7. The General Financial Rules, 1963

- 2 -

8. The Central Civil Services (Pension Rules), 1972
9. The Delegation of Financial Powers Rules, 1978
10. The Central Civil Services (Commutation of Pension) Rules, 1979x 1981.
11. The Central Civil Services (Joining Time) Rules, 1979.
12. The Union Territory Employees' Group Insurance Scheme, 1984.
13. The Central Civil Services (Revision of pay) Rules, 1986, shall, unless the context otherwise requires have effect and be deemed to have had effect as if reference therein to the Government Central Government.

GOVERNMENT OF INDIA, GOVERNMENT DEPARTMENT, authorities mentioned in the first column of the Table hereunder set of were reference to the Government, State Government, Government Departments authorities mentioned opposite to that in the Second Column of the Table

1	2
1. President	1. Governor of Arunachal Pradesh
2. Government/Central Government of India	2. State Government of Arunachal Pradesh
3. Union/Union of India/India	3. State of Arunachal Pradesh
4. Central Services/Central Civil Services	4. Arunachal Services/Arunachal Civil Services
5. Union Public Services Commission	5. Arunachal Pradesh Public Service Commission
6. Prime Minister's Secretariat.	6. Chief Minister's Secretariat

(2) All Schedules/Forms/Appendixes appended in the Principal Rules mentioned in (1) above shall mutatis mutandis apply under the respective principal Rules.

....3....

- (3) Reference to any Government Departments or authorities other than those specified in the Table in Column 2, shall be construed as reference to the corresponding Government Departments' or authorities exercising corresponding power or authority in Arunachal Pradesh.

Note Published in Arunachal Gazette No. 16 Vol.IV dated March 1, 1989.

To,

The Registrar (Central Administrative Tribunal)
Guwahati

Sub: O.A No.27 /2006

L.Appal Swami

.....Appellant

-Vs-

Union of India & ors

.....Respondent

Sir,

Please take notice that the State of Arunachal Pradesh makes appearance in the above case through their Senior Govt. Advocate Sri B.Banerjee, A. M. Buzarbaruah Govt. Advocate

Yours faithfully;

B. Banerjee
Govt. Advocate
Arunachal Pradesh
Guwahati.

FR: 56
60

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NOTICE

FROM : B. Banerjee
Sr. Govt. Advocate
Aruanchal Pradesh
Gauhati High Court

TO : Mr. M. Chandra Advocate
S. Nath

Sub : O.A. 27/2006
L. Appai Swami
-Vs-
Union of India & Ors

Sir,

Enclosed please find herewith a copy of the above mentioned case for your use and record, which is being filed before the Hon'ble Court by the respondent No. 3 to 7

Kindly acknowledge receipt of the same.

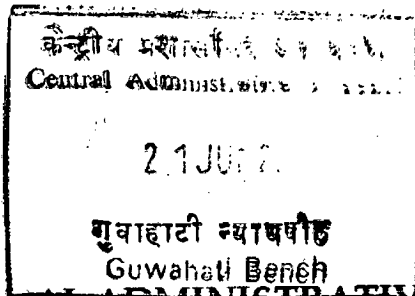
Yours faithfully;

B. Banerjee

(B. Banerjee)
Sr. Govt. Advocate
Aruanchal Pradesh

Receive Copy

Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of:-

O.A No. 27/2006

Sri Appal Swami

..... Applicant

- Versus-

Union of India.

..... Respondents.

-And-

In the matter of:-

Rejoinder submitted by the applicant against the written statement submitted by the respondents.

That the above named applicant most respectfully begs to state as under:-

1. That with regard to the statement made in paragraph 4 and 5 of the written statement, wherein the entitlement of the applicant to retire on superannuation on attaining the age of 60 years, has been described as "controversies" by the respondents is categorically denied, rather vide notification dated 06.01.1999 and vide notification dated 16.02.1989 (Annexure A and B of the W.S) are very much clear on the issue, by two notifications dated 16.02.1989 and dated 06.01.1999 makes it abundantly clear that the Govt. of Arunachal Pradesh has adapted the

101
Filed by the Applicant
Through Subroto Nath.
Advocate
on 19/6/2006

provision of fundamental Rule 56 of Govt. of India relating to retirement vide notification no. Fin/E/47/87 (pt) dated 16.02.1989, which came into force w.e.f 01.03.1989. Moreover, notification dated 06.01.1999 has been published after notification dated 13.05.1998, issued by the Govt. of India.

It is relevant to mention here that Govt. of Arunachal Pradesh has adapted the CCS (Pension) Rule 1972 and F.R 56 without imposing any condition to the disadvantage of the applicant as such Govt. of Arunachal Pradesh is bound to follow the rule of retirement, adapted through notification dated 06.01.1999 and their denial of such contention at this stage amount to violation of their own rule.

2. That the contention of the respondents raise in paragraph 6,7 and 8 to the effect that the applicant is due to retire on superannuation on attaining the age of 58 years is contrary to their own rule, which is very much in force. There is no ambiguity either in the notification dated 16.02.189 or in the notification dated 06.01.1999 issued by the State of Arunachal Pradesh as such applicant has acquired a valuable and legal right to continue in service till attaining the age of 60 years in terms of the notification dated 16.02.1989, 06.01.1999 and also under the provision of R 56 and relevant provision of CCS (Pension) rules 1972.

In the circumstances application is deserves to be allowed with cost.

3 103

VERIFICATION

I, Shri L. Appal Swami, S/o L.A. Naidu, aged about 58 years working as Divisional Accountant (Rctd.) verify the statements made in Paragraph 1 and 2 are true to my knowledge and legal advice and I have not suppressed any material fact.

And I sign this verification on this the 19th day of June' 2006.

L. Appal Swami

NOTICE

107

From

U. Dutta .

Advocate

Central Administrative Tribunal .

To,

Govt. Advocate,

Arunachal Pradesh.

Ref:- Rejoinder in O.A NO. 27/2006

Sir,

Please kindly find herewith a copy of rejoinder as mentioned above which has been filed today .

This is for your kind information and necessary action .

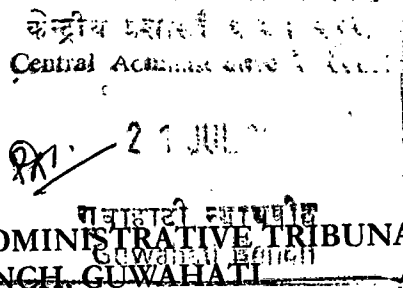
Kindly acknowledge receipt. of the same .

Thanking you,

Yours faithfully
Usha Dutta,

Received Copy

(Govt. Advocate)
A.P.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

IN O.A NO. 27/2006

SHRI L. APPAL SWAMI -- APPLICANT

-Vs-

THE UNION OF INDIA & OTHERS - RESPONDENTS

AND

IN THE MATTER OF :

WRITTEN STATEMENT SUBMITTED BY THE
RESPONDENTS NUMBERS 1 AND 2.

WRITTEN STATEMENTS

The humble Respondents submit their written statement as follows :-

1. That with regard to statements made in paragraphs 1 to 3 of the Original Application, the Respondents humbly submit that they have no comments to offer.
2. That with regard to the statement made in paragraphs 4.1 and 4.2 of the Original Application, the Respondents humbly submit that the Applicant is a regular employee of the Government of Arunachal Pradesh. Since there were vacancies in the cadre of Divisional Accountants administered by Respondent No. 2 and since direct recruitment (as provided in the Recruitment Rules 1988 for Divisional Accountants) through the Staff Selection Commission to fill up vacancies would take time, Respondent No. 2 from time to time called for applications from the experienced staff of Public Works Department, PHE, RWD, I&FC, Electricity Divisions serving under the State Governments of Tripura, Arunachal Pradesh and Manipur who were willing to serve as Divisional Accountants on deputation basis in the States of Tripura, Arunachal Pradesh, and Manipur. Accordingly, the Applicant had been selected and posted as Divisional Accountant on deputation basis under the administrative control of

10/8
The respondents
through Gopinath
Sr. Class

Respondent No.2. The letter of Respondent No.2, while appointing the Applicant as Divisional Accountant on deputation categorically stated that the period of deputation was initially for one year and that the Applicant was liable to work as a Divisional Accountant on deputation basis in any of the three States of Tripura, Arunachal Pradesh and Manipur. The said letter also stated that the period of deputation could be extended for a maximum period upto three years and in no case it will be extended beyond three years.

Recruitment Rules 1988 (Appendix I)

Appointment letter dated 11.3.1999 (Appendix II)

3. That with regard to the statement made in paragraph 4.3 of the application, the Respondent No. 2 humbly submits that in January 2000 the Government of Arunachal Pradesh submitted a proposal to transfer the cadre of Divisional Accountants to the control of the Director of Accounts & Treasuries, Govt. of Arunachal Pradesh. It was also stated that the formal notification in this regard would be communicated by the State Govt. in due course. However, no such notification was issued by the Govt. of Arunachal Pradesh. It may be pointed out here that State Govt. cannot unilaterally take over the cadre of the Divisional Accountants which is under the control of the any State Accountant General without the prior consent and approval of the Comptroller & Auditor General of India. Only after the State Govt. accept all the terms and conditions laid down by the Comptroller and Auditor General of India for such transfer and with the approval of the Comptroller and Auditor General of India, the administrative control of the cadre of Divisional Accountant can be taken over by a State Government.
4. That with regard to the statement made in paragraphs 4.4 & 4.5 of the application, the Respondent No. 2 humbly submits that on completion of the Applicant's deputation period, the repatriation order to his parent department was issued to the Applicant. However, the Applicant, instead of reporting back to his parent department filed an Application in the Hon'ble Tribunal against the repatriation order.

However, Hon'ble Tribunal dismissed the Application on withdrawal by the Applicant. Thereafter, the Applicant had filed Writ Petition WPC No. 301 (AP)/2002 in the Hon'ble Itanagar Bench of Guwahati High Court for permanent absorption in the Divisional Accountants Cadre. The Hon'ble Itanagar Bench of Guwahati High court in its order dated 1.2.2005 disposed of the case as the Hon'ble court did not find any merit in the batch of writ petition. In the light of the Hon'ble courts order dated 1.2.2005, the repatriation order was again issued to the Applicant. The Applicant then approached to the Hon'ble Central Administrative Tribunal vide O.A No.115/2005 which is still pending in the Hon'ble Court.

As stated earlier, the Government of Arunachal Pradesh had in January 2000 (vide its letter No. DA/TRY/15/99 dated 12/1/2000) informed Respondent No. 2 that the take over of the cadre of Divisional Accountant was under active consideration. Thereafter, the State Government of Arunachal Pradesh did not initiate any further move to take over the cadre of Divisional Accountants in the State of Arunachal Pradesh. After more than two years, the Commissioner (Finance), Govt. of Arunachal Pradesh vide his letter No. DA/TRY/99 dated 11/3/2002 requested this office that the Divisional Accountants who were appointed on deputation basis may be allowed to continue as Emergency Divisional Accountants for the time being as a working arrangement. But for their absorption on regular basis they will be given chance to qualify themselves in the Divisional Test Examination which will be conducted by the State Govt. of Arunachal Pradesh through the authorized officer of the State Govt. after taking over of the administrative control of the cadre of Divisional Accountants / Divisional Accounts Officer / Senior Divisional Accounts Officer of Works Divisions belonging to PWD/PHE/IFCD/RWD and Power Departments of Arunachal Pradesh.

More than four years had elapsed and the State Government of Arunachal Pradesh has not initiated any further move to take over the cadre of Divisional Accountants in the States from the administrative control of the Accountant General (A&E). However, it is admitted that

the Director of Accounts and Treasuries, Govt. of Arunachal Pradesh vide his letter No. DA/TRY/27/2000/1060-63 dated 30/7/2005 has forwarded a fresh scheme stating that the Govt. of Arunachal Pradesh has decided in pursuance of Cabinet decision of the State Government to take over administrative control of the cadre, of Divisional Accountants / Divisional Accounts Officer / Senior Divisional Accounts Officer from the Accountant General (A&E), Meghalaya etc. Shillong. The said scheme was forwarded to the Comptroller and Auditor General of India for a decision. The Comptroller and Auditor General of India in turn prepared a modified scheme based on the state government's proposal. The modified scheme as prepared by the Comptroller and Auditor General of India was forwarded to the state government under letter No. DA Cell/1-1/2000-2001/1509 dated 25.11.2005 for acceptance/comments. The state government was reminded vide letter No. DA Cell/1-1/2000-2001/28 dated 28.4.2006, letter No. DA Cell/1-1/2000-2001/96 dated 8.6.2006 and D.O. letter No. DA Cell/1-1/2000-2001/135 dated 19.6.2006 for its response to the scheme to which till date a reply is awaiting. It is again humbly submitted that the post of Divisional Accountant to which Applicant was appointed on deputation basis is a Civil Post under the Union of India. The handing over of the Divisional Accountants cadre from administrative control of Accountant General cannot take place without consent of the Comptroller and Auditor General of India.

Letter No. DA/TRY/99 dated 12/1/2000 (Appendix III)

Letter No. DA/TRY/99 dated 11/3/2002 (Appendix IV)

Letter No. DA/TRY/27/2000/1060-63 dated 30/7/2005 (Appendix V)

5. That with regard to the statement made in paragraphs 4.6 of the application, the Respondents humbly submit that some Original Applications have been preferred before the Hon'ble Tribunal registered as OA No. 114/2005, OA No. 115/2005 and OA No. 238/2005 but none of these O.As have been decided by the Court and the same are still pending before the Hon'ble Tribunal. The Respondent No. 2 also admits that the Financial Commissioner, Government of

Arunachal Pradesh was informed vide D.O. letter No. DA Cell/1-8/Court Case/2000-2001/1909 dated 28/3/2005 that the question of absorption of the Divisional Accountants on deputation was under consideration by the office of the Comptroller and Auditor General of India. Subsequent to this, the Comptroller and Auditor General of India (Respondent No. 1) had confirmed vide D.O. letter No. 425 NGE(APP)/10-2005 dated 6/7/2005 that the question of absorbing the Divisional Accountants in the Divisional Accountants cadre had been examined, but it was not found possible as the Recruitment Rules of Divisional Accountants do not provide for such absorption.

*D.O. letter No. DA Cell/1-8/ Court Case/2000-2001/1909
dated 28/3/2005 (Appendix-VI)*

6. That with regard to the statement made in paragraphs 4.7 of the Application, the Respondents humbly submit that in July 2005 the Government of Arunachal Pradesh forwarded a scheme for taking over the cadre of Divisional Accountants from the administrative control of the Respondent No. 2. The said scheme was forwarded to the Comptroller and Auditor General of India for a decision. The Comptroller and Auditor General of India in turn prepared a modified scheme based on the State Govt.'s proposal. The modified scheme as prepared by the C&AG of India was forwarded to the State Govt. vide letter No. DA Cell/1-1/2000-2001/1509 dated 25/11/2005 for acceptance / comments. The State Govt. was reminded vide letter No. DA Cell/1-1/2000-2001/28 dated 28/4/2006, 8/6/2006 and 19.6.2006 for its response to the scheme to which till date reply is awaiting. It is again humbly submitted that the post of Divisional Accountant to which the Applicant was appointed on deputation basis is a Central Civil post under the Union of India. The handing over of the Divisional Accountants cadre from the administrative control of the AG cannot take place without the consent of the Comptroller and Auditor General of India.
7. That with reference to the statement made in paragraph 4.8 of the Application, the Respondents humbly submit that the Applicant is a

regular employee of the Government of Arunachal Pradesh who was appointed as Divisional Accountant on deputation basis under the administrative control of the Respondent No.2 for a specific period only. On expiry of deputation period the Applicant was repatriated back to his parent department. In spite of repatriation order the Applicant continued in the deputation post as the Applicant challenged his repatriation and the matter is now before the Hon'ble Central Administrative Tribunal as earlier detailed in para 4. The Applicant is holding a lien in his parent department of the State Government of Arunachal Pradesh. As a state government employee, the Applicant was due to retire on superannuation on 31.1.2006 on attaining the age of 58 years which is the superannuating age for all the state government employees of Government of Arunachal Pradesh. It is humbly submitted that though the Government of Arunachal Pradesh vide notification No. FIN/E/47/87 (PT) dated 16th February 1989 adopted Central Government rules and regulations including Fundamental Rules and Supplementary rules as well as Central Civil Service (Pension) Rules, CCS (leave) Rules etc which govern the service conditions of employees of Government of Arunachal Pradesh, the retirement age of employees of the Government of Arunachal Pradesh continues to be 58 (Fifty Eight) years vide Notification No. FIN/E-47/94 dated 5th January 1999. This is also confirmed by the Director of Accounts and Treasuries, Government of Arunachal Pradesh vide his D.O. Letter No.DA/Try/18/2002 dated 6.6.2006.

The Executive Engineer, P.H.E & Water Supply Division, Khonsa Arunachal Pradesh while issuing the retirement notice to the Applicant vide letter No. KPHE/ESTT/PF-172/2000-01/1427 dated 30.12.2005 had also confirmed the 58 (fifty eight) years which is superannuating age of the employees of Government of Arunachal Pradesh

Copy of Notification dated 16.2.1989 & dated 5.1.1999 Appendix -VII & VIII)

Copy of DO letter No.DA/Try/18/2002 dated 6.6.2006 (Appendix-IX)

Copy of letter No. KPHE/ESTT/PF-172/2000-01/ 1427 dated 30.12.2005 (Appendix - X)

8. That with reference to the statement made in the paragraphs 4.9,4.10, 4.11,4.12 4.13 4.14 and 4.15 of the Application, the Respondents humbly submit that in view of the position as explained in para 7 above, there is absolutely no question of any doubt or misinterpretation as to the fact that employees of the State Government of Arunachal Pradesh retire on attaining 58 years of age. The Applicant, who is under the administrative control of Respondent No.2 by virtue of his holding the post of Divisional Accountant on deputation basis, holds a lien on a post in the Government of Arunachal Pradesh and is very much an employee of the State Government. This being the undisputed service status of the Applicant, he is, like every other employee of the Government of Arunachal Pradesh, to retire on attaining 58 years of age.

The Respondents further submit that the petition filed by the Applicant before the Hon'ble Tribunal is absolutely without any basis. By including extraneous and irrelevant matters in his petition so as to mask the absurdity of his prayer, the Applicant has sought to mislead and confuse the Hon'ble Tribunal and waste its valuable time. The Respondents too have expended labour and time funded by the public exchequer to attend to this frivolous petition totally devoid of any merit.

The Respondents therefore, humbly submit to the Hon'ble Tribunal that not only the petition should be dismissed with costs but the Applicant should also be penalized for filing the petition on misleading, fallacious and unjustifiable grounds thereby wasting the Hon'ble Tribunal's valuable time as well as the time of the Respondents.

9. With reference to the paragraphs 4.16 and 4.17 of the Application, the Respondents humbly submit that they have no comments to offer.

Ground for relief(s) with legal provisions.

10. With reference to the paragraphs 5.1,5.2,5.3,5.4, 5.5, 5.6 5.7,5.8, 5.9, 5.10 and 5.11 of the Application, the Respondents humbly submit that although the Government of Arunachal Pradesh had adopted all rules and for all purposes including FR & SR, CCS Pension Rules, CCS Leave Rules etc which are applicable to its employees regulation (similar to the central government

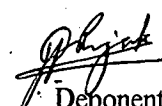
employees), but the amendment / change in FR-56(a) i.e. retirement age of 58 (fifty eight) to 60 (sixty) years for the employees of the government of Arunachal Pradesh has not been adopted. Therefore, the Applicant is not entitled to get any relief as prayed in the Application. Rather, the Hon'ble Tribunal should penalise the Applicant for the reasons as stated in paragraph 8.

11. That with regard to statement made in paragraphs 6.7, 8.8, 1 to 8.5, 9 and 9.1 of the application, the Respondents humbly submit that they have no comments to offer.

In view of the fact and circumstances mentioned above, the Respondents most respectfully and humbly pray that the present application as filed be dismissed with costs in favour of the Respondents, the interim order dated 30.1.2006 in this case be vacated and the order dated 30.12.2005 be allowed to be implemented.

Verification

I, Shri J.P. Rajak, Deputy Accountant General (Admn) Office of the Accountant General (A&E), Meghalaya, Arunachal Pradesh and Mizoram Shillong do hereby solemnly declare that the statements made above in the written statement are true to my knowledge, belief and information and I sign the verification on 7th of July 2006 at Shillong.



Deponent

उप महालेखाकार (प्रशासन)

Deputy Accountant General (ADMN)

महालेखाकार का कार्यालय (ले.व.ह.)

Office of the Accountant General (A & E)

मेघालय, हस्तादि शिलांग

Meghalaya etc., Shillong.

(Department of Expenditure)
New Delhi, the 8th September, 1988.

Annexure No.

S.R. 749 - In exercise of the powers conferred by clause (5) of article 148 of the Constitution, and after consultation with the Comptroller and Auditor General of India, the President hereby makes the following rules to regulate the method of recruitment to the post of Divisional Accountant under the cadre control of the Accounts and Entitlement Offices of the Indian Audit and Accounts Department, namely :-

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 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 selecti- on post or non-selecti- on post	Whether benefit of added years of service ad- missible under rule 30 of the Central Civil Ser- vice (Pen- sion) Rules 1972
1.	2.	3.	4.	5.	6.

- 2 - / 10

	2.	3.	4.	5.	6.
Accountant	2504*(1988) General *Subject to variation dependent on work- load.	Rs.1400-40- Central Service Group 'C' - 2600 Non-Graded Ministerial	1600-50- 2300-EB-60	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

- 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.

147
115
22

If a Departmental Promotion Committee exists, what is its composition.

Circumstances in which Union Public Service Commission is to be consulted in making recruitment.

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)

Appendix - II

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

EO No. DA. Cell/232

DATED 11-3-99

Consequent on his selection for the post Divisional Accountant (on deputation basis) in the pay scale of ~~Rs. 1400-40-5000-15~~ ^{8000/-} ~~1600-50-2300-60-2600/-~~ in the combined cadre of Divisional Accountants under the Administrative control of the office of the Accountant General (A&E), Meghalaya, etc., Shillong, Shri L. Appal Swami at present working in the office of the E. Engr. Roing PWD A.P. is posted on deputation as Divisional Accountant in the office of the E. Engr. Kalaktang PWD.

2. Shri L. Appal Swami should join the aforesaid post of Divisional Accountant on deputation within 30 days from the date of issue of this order, failing which his posting on deputation is liable to be cancelled without any further communication and the post may be offered to some other eligible and selected candidate. No representation for a change of the place of posting will be entertained under any circumstances whatsoever.

3. The period of deputation of Shri L. Appal Swami will be for a duration of 1(one) year only from the date of joining in the office of the Kalaktang P.W. Division Kalaktang, A.P. E.E.

4. The pay and deputation (Duty) allowances in respect of Shri L. Appal Swami will be governed by the Government of India, Ministry of Finance, Public Grievances and Pension (Department of Personnel and Training) letter No.2/12/87-Estt(Pay.II) dtd. 29-4-1988

June 10/77
R. J. Adams

and as amended and modified from time to time. While on deputation, Shri L. Appal Swami 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 L. Appal Swami, 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 L. Appal Swami shall be treated as final and cannot be altered/changed later under any circumstances whatsoever.

5. The Dearness Allowance, CCA, Children Education Allowance, T.A., L.T.C., 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. in Appendix 31 of Choudhury's C.S.R. Volume IV(13th. Edition) and as amended and modified from time to time.)

6. Shri L. Appal Swami on deputation will be liable to be transferred to any place within the State of Arunachal Pradesh, Manipur and Tripura, in the combined cadre of Divisional Accountants under the Administrative control of the Accountant General (A&E) Meghalaya, etc., Shillong.

7. Prior concurrence of this office must be obtained by the Divisional Officer before Shri L. Appal Swami (on deputation) is entrusted additional charges, appointed or transferred to a post/station other than that cited in this Establishment Officer.

Sd/
By. Accountant General (Admin)
Office of the A.G. (A&E),
Meghalaya. Mizoram & A.P.
Shillong- 793001

Senior Accounts Officer,
I/C D.A. CELL.

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3

Memo No. DA.Cell/2-49/94-95/2548-55

DATED 11-3-99

A2

Copy forwarded for information and necessary action to :-

1. The Accountant General (A&E), Manipur, Imphal.
2. The Accountant General (A&E), Tripura, Agartala.
- 1 The Chief Engineer, PWD, Itanagar, A.P.

He is requested to release Shri L. Appal Swami
 immediately with the direction to report
 for duty to his place of posting on deputation under intima-
 tion to this office.

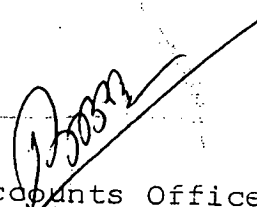
REGD. 2. The Executive Engineer, Roing P.W. Division Roing
P.O. Roing, A.P.. He is requested to
 release immediately Shri

with the direction to report for duty to his place of
 posting on deputation under intimation to this office.

REGD. 3. The Executive Engineer, Kalaktang P.W. Divn.
Kalaktang, A.P.. He is requested
 to intimate the date of joining of Shri L. Appal Swami

REGD. 4. Shri L. Appal Swami, UDC.
 O/o the Executive Engineer Roing P.W. Divn.
Roing, A.P.

7. E.O. File.
8. S.C. File.
9. P.C. File. L. Appal Swami
10. File of the deputationist.
11. _____


 Senior Accounts Officer,
 I/C D.A. CELL.

GOVERNMENT OF ARUNACHAL PRADESH

Director of Accounts & Treasuries
Naharlagun-791 110

No. DA/TRY/15/99

Dated, the 12th Jan 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.

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,

(Signature)
12-11-2000
(Y. Megu)

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

*Done Gopp
Rosh
Adv.*

- 16 Regd/181 dt 27/3/02

Appendix - IV

REGD. POST

GOVT OF ARUNACHAL PRADESH
DIRECTORATE OF ACCOUNTS & TREASURIES
NAHARLAGUN

NO. DA/TRY/15/99

Dated Naharlagun the 11th March '02

To,

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

Sub:- Continuation of service in respect of the Divisional Accountant on deputation.

Sir,

I would like to inform you that the state cabinet of Arunachal Pradesh has already taken a decision for taking over of the administrative control of the cadres of Sr.DAO/DAO/DA of works divisions belonging to PWD/PHED/IFCD/RWD and Power department of Arunachal Pradesh. In order to ensure smooth transition of the controlling authority of the said cadres a scheme has already been formulated which is being submitted to you shortly for obtaining approval of the appropriate authority for issuance of a formal 'Notification'.

Meanwhile you are requested for not to make any fresh recruitment to the post of the Divisional Accountants against the Works divisions of the State of Arunachal Pradesh which is in continuation to our letter No. DA/TRY/15/99 dated 15/11/99. Fresh recruitment of the Divisional Accountants will be made by the state government through Arunachal Pradesh Public Service Commission. Therefore the Divisional Accountants those who are appointed by you on deputation from the state service of Arunachal Pradesh may be allowed to continue as Emergency Divisional Accountants for the time being as a working arrangement. But for their absorption on regular basis they will be given chance to qualify themselves in the Divisional Test examination which will be conducted by the state government through the authorized officer of the state government after taking over the administrative control of the cadres.

Yours faithfully,

(A.K. Guha)
Commissioner (Finance)
Govt. of Arunachal Pradesh
Itanagar.

Memo No. DA/TRY/15/99/

Copy to :-

Dated Naharlagun the 11th March '02.

- 1). The Chief Engineer, PWD (E/Z, W/Z)/PHED/IFCD/RWD and Power Department of Arunachal Pradesh for information.



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- 2). All Executive Engineers, PWD/PHED/IFCD/RWD & Power department of Arunachal Pradesh for information. They are requested for not to release the Divisional Accountants, who are on deputation from the state service of Arunachal Pradesh, on expiry of their deputation term, until further order from this end.



(A.K. Guha)
Commissioner, (Finance)
Govt. of Arunachal Pradesh
Itanagar.

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GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE DIRECTORATE OF ACCOUNTS & TREASURIES
NAHARLAGUN - 791110
③
Dated 20 July 2005.
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NO. DA/TRY-27/2000/1060-63

To,

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

Sub :- Submission of scheme for taking over the administrative control of the cadres of Sr. DAO/DAO Grade - I DAO, Grade - II and Divisional Accountant - thereof.

Sir,

I am directed to submit herewith the proposed scheme for taking over the administrative control of cadre of Divisional Accountants comprising Sr. DAOs / DAOs Grade - I & II and Divisional Accountants by the Government of Arunachal Pradesh presently vested under your kind control.

I am further directed to state that the State cabinet had since approved the proposal to take over the cadre and the Departments of Law & Judicial, Personnel & Administrative Reforms of the state have duly vetted the scheme after thorough examination.

In view of the progress as stated above, I am directed to request you to convey your approval facilitating smooth taking over of the cadre of DAs / DAOs / DAOs Grade - I & II from your kind control.

Kindly acknowledge the receipt of the scheme enclosed in quadruplicate.

Encls : As stated above.

Yours faithfully

(C.M. Mongmaw),
Director of Accounts & Treasuries,
Govt. of Arunachal Pradesh,
Naharlagun - 791110 (A.P)

Memo. NO. DA/TRY-27/2000

Dated 20 July 2005.

Copy to :-

1. P.S. to Principal Secretary (Finance) to the Govt. of Arunachal Pradesh, Itanagar for information.
2. The Secretary, Law & Judicial to the Govt. of Arunachal Pradesh for information please.
3. The Secretary, Personnel & Administrative Reforms, to the Govt. of Arunachal Pradesh, Itanagar for information please.

(C.M. Mongmaw),
Director of Accounts & Treasuries,
Govt. of Arunachal Pradesh,
Naharlagun - 791110 (A.P)

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Adw.

The Scheme for taking over of the Administrative Control of the Cadres of Sr. DAO/DAO Grade-I/DAO Grade-II and DA of Working Divisions belonging to PHE/RWD/IFCD/PWD/Power Department of Arunachal Pradesh from the control of the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc. Shillong.

The posts of Divisional Accountants were created by the State Government in the Public Works Department / Rural Works Department / Public Health Engineering Department /Irrigation & Flood Control & Power Department, but the administrative control i.e. appointment, transfer, posting & disciplinary control, etc. vested with the Accountant General (A&E), Meghalaya, Arunachal Pradesh etc. Shillong. The Divisional Accountants comes under the immediate control of the Executive Engineer of the Divisions. They assist the Executive Engineers while rendering accounts to the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc., Shillong. Their pay and allowances and other service condition are at present governed by the Central Government rules in force, but they are paid from the state Government's exchequer. The question of taking over the cadres of the Divisional Accountants from the administrative control of the Accountant General (A&E), Meghalaya, Arunachal Pradesh etc. Shillong had been under active consideration of the state Government for quite sometimes past in order to have proper control over expenditure and other accounts matters of the works Divisions, since it has become essential for the state Government to have better control on the heavy expenditure incurred in various engineering divisions of the state. Now, the Government of Arunachal Pradesh has decided in pursuance of cabinet decision of the State for taking over of the administrative control of the cadres of Sr. DAO/DAO/DA from the Accountant General (A& E), Meghalaya, Arunachal Pradesh, etc., Shillong.

To take over the cadre of Sr. Divisional Accounts Officers/Divisional Accounts Officers/Divisional Accountants from the administrative control of the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc., Shillong, shall be subject to the following terms and conditions.

1. **Absorption of DA/DAO and Sr. DAO (Regular) borne on the cadre of the A.G to State Cadre.**
 - 1.1 Sr. Divisional Accounts Officers / Divisional Accounts Officers / Divisional Accountants (Regular) borne on the cadre of the Accountant General who are presently working in the State of Arunachal Pradesh may opt to serve in the State cadre on status quo. The willing Sr. Divisional Accounts Officers/Divisional Accounts Officers /Divisional Accountants (Regular) working in the State may submit their options to the *Secretary to the Government of Arunachal Pradesh, Department of Finance, Arunachal Pradesh, Itanagar* through the concerned Executive Engineers within 2 (Two) months from the date of issue of the 'Notification' under intimation to their parent department.
 - 1.2 The Sr. Divisional Accounts Officers / Divisional Accounts Officers /Divisional Accountants (Regular) who do not opt for state service condition but willing to continue in the post shall be allowed to serve on standard terms and conditions of deputation duly approved by the state Government for period up to 3 (Three) years which may be extended up to 2 (Two) years in the interest of Public Service. They shall be reverted to their parent Department immediately on expiry of their respective deputation period.
 - 1.3 The Sr. Divisional Accounts Officers/Divisional Accounts Officers /Divisional Accountants (Regular) who opt to serve in Arunachal Pradesh shall continue to be governed by the Central Rules for pension and other retirement benefits as applicable from time to time.
 - 1.4 The inter-se- seniority of the Sr. Divisional Accounts Officers / Divisional Accounts Officers/Divisional accountants (Regular) who opt for the State Service shall be fixed in the state cadre basing on their inter-se- seniority as Sr. Divisional Accounts Officers / Divisional Accounts Officers Grade-I Divisional Accounts Officer Grade-II/Divisional Accountants on the date of taking over of the cadre.

1.5

Sr. Divisional Accounts Officers/Divisional Accounts Officers Grade-I/Divisional Accounts Grade-II/Divisional Accountants (Regular) are now drawing the following scale of pay as per central pay pattern:

A) Divisional Accountant	Rs.5000-150-8000/-
B) Divisional Accounts Officer (Grade-II)	Rs.5500-175-9000/-
C) Divisional Accounts Officer (Grade-I)	Rs.6500-200-10,500/-
D) Divisional Accounts Officer (Sr. Grade)	Rs. 7500-250-12000/-

The cadre of Sr. Divisional Accounts Officers/ Divisional Accounts Officers Grade-I & II/ Divisional Accounts who are working in Arunachal Pradesh on regular basis shall be allowed to continue for drawal of their pay and allowances in the existing scales of pay even after taking over by the state Govt.

1.6

The Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc., Shillong shall obtain the option in triplicate in the prescribed form as annexed herewith from the Sr. DAO/DAO Grade-I DAO Grade-II/DA borne on his cadre and serving in the state of Arunachal Pradesh on the date of taking over the cadre by the state Government through the Executive Engineer of the Divisions and furnish one copy of each option exercised by th Sr. Divisional Accounts Officers/Divisional Accounts Officers Grade-I Divisional Accounts officers Grade-II/Divisional Accountants to the *Secretary to Government of Arunachal Pradesh, Department of Finance*, on receipt of the options.

2.

Divisional Accountants on Deputation

2.1

Divisional Accountants who are working in the works divisions in Arunachal Pradesh on deputation shall be allowed to continue serving in the post of Divisional Accountant on deputation till they complete their normal terms of deputation.

2.2

The Divisional Accountants (on deputation) those who have completed the existing term of deputation will be continued as Emergency Divisional Accountant for the time being as working arrangement. But for their absorption as regular Divisional Accountant they shall have to qualify themselves in the Divisional test examination within two years from the date of taking over the cadre from the administrative control of the Accountant General (A&E), Meghalaya, Arunachal Pradesh, etc., Shillong, for which they will be given three chances to qualify in the Divisional test examination. If any body fails to qualify in the Divisional test examination, shall be reverted to their parent department as and when qualified hand become available.

3.

Administrative Control

The administrative control of Sr. Divisional Accounts Officers/Divisional Accounts Officers/Divisional Accountants shall be vested with the *Finance Department, Government of Arunachal Pradesh, Itanagar* and will be exercised by the *Secretary, to the Government of Arunachal Pradesh, Department of Finance*.

4.

Recruitment

The state government through Arunachal Pradesh Public Service Commission shall fill up all the vacancies of Divisional Accountants of works divisions.

5.

Method of Recruitment:

5.1

The Arunachal Pradesh Public Service Commission shall make recruitment to the Cadre of Divisional Accountant by selection on merit adjudged from the following sources through written and competitive and qualifying test called the Initial Recruitment Examination for Divisional Accountant (Annexure-I)

5.2

Age Limit for "Direct Recruitment":

Candidate should not be less than 18 years and more than 28 years of age, provided that the initial age limit may be relaxed up to 33 (thirty three) years in case of APST candidates in accordance with the order of the state government from time to time. In case of existing / working Divisional Accountants, upper age limit is relaxable upto 52 years.

5.3

Education Qualification:

Minimum Educational qualifications for direct recruit shall be a University Degree / graduate with any one of the subjects namely Mathematics, Statistics, Commerce, Economics, from a recognized University.

Note:- Age Limit and Education as prescribed at serial 5.2 & 5.3 above shall not be applicable in case of eligible departmental candidate(s).

5.4

Appointing Authority:-

The Secretary to the Government of Arunachal Pradesh Department of Finance shall be the appointing authority subject to the approval of the Government.

5.5

Probation and Training:-

Candidates recruited through the Initial Recruitment Examination will be on probation for a period of 2 (Two) years before their absorption in the cadre of Divisional Accountant. During this period he/she shall be given training for a period of 6 (six) months in the Administrative Training Institute and thereafter intensive practical training in all aspects of public works accounts for a further period of 6 (Six) months.

After this training , the candidates are required to pass the Divisional test, which will be conducted by Director of Accounts and Treasuries. Till such time as the trainees, they are posted as Divisional Accountant on probation. After passing the Divisional Test Examination supernumerary posts equal to the number of such trainees will be deemed to be created for their absorption on completion of probation period.

6.

Transfer & Posting:-

Divisional Accountants / Divisional Accounts Officers are to serve anywhere within Arunachal Pradesh and are liable for transfer to the establishments of Chief Engineers /Director of Accounts & Treasuries whereon such posts exists.

7.

Transfer of record:-

The Accountant General (A&E), Meghalaya, Arunachal Pradesh etc. Shillong shall take necessary action to transfer the relevant records to the Secretary to the Government of Arunachal Pradesh Department of Finance within 3 (Three) months from the date of issue of the notification.

Sd/-

(Tabom Bam),
Principal Secretary (Finance)
Govt. of Arunachal Pradesh
Itanagar.



E. R. Solomon
Accountant General

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

Phone : 0364-2223191 (O) Fax : 0364-2223103

D.O.No.DA Cell/1-8/Court Case/2000-2001/1909

Dated: March 24, 2005

7 & MAR 2005

Dear Otem,

8/486^c Please recall our telecon a little while ago regarding the Divisional Accountants on deputation to my office and presently posted in the State of Arunachal Pradesh. With reference to your D.O.letter No.DA/TRY/27/2002 dated 10.3.2005, I am to inform you that my Headquarters has confirmed that we could consider extension of the deputation of the present 31 Divisional Accountants presently on deputation to our department. As you are aware the Division Bench of the Gauhati High Court Itanagar Bench had issued an order dated 10.2.2005 regarding the 12 Divisional Accountants on deputation who are to be reverted back to their parent departments in the Government of Arunachal Pradesh. This order is not being implemented presently and the remaining 19 Divisional Accountants who have cases pending in the Court/CAT may be immediately requested to withdraw all their court cases and once this is done, their continuity on deputation will be considered.

On the question of absorption of these 31 deputationists, my HQrs. has informed that the modalities will be worked out and this may be conveyed to these deputationists.

I request for your urgent action to ensure that the pending court cases of the 19 Divisional Accountants on deputation are withdrawn to facilitate their continued deputation/absorption.

Respectfully

Yours sincerely

Shri Otem Dai,
Financial Commissioner to the Govt. of Arunachal Pradesh,
Itanagar.

24/3/05

True copy
24/3/05
Adv.

NOTIFICATIONTHE STATE OF ARUNACHAL PRADESH ADAPTATION OF LAWS ORDER
(NO. 4) 1989

The 16th February, 1989

NO. FIN/E/47/87(Pt). - Whereas by sub-section (2) of section 46 of the State of Arunachal Pradesh Act, 1986 (Act NO. 69 of 1986) for the purpose of facilitating the application of any law in relation to the State of Arunachal Pradesh, the Government of the State of Arunachal Pradesh as the appropriate Government is empowered by order, to make such adaptations and modification of the law, whether by way of repeal or amendment, as may be necessary or expedient.

Now, therefore, in exercise of the power aforesaid the Government of the State of Arunachal Pradesh hereby makes the following order, namely:

1. (1) This order may be called the State of Arunachal Pradesh Adaptation of Laws Order (No. 4), 1989.
- (2) It shall be deemed to have come into force on the 20th day of February, 1987.
2. (1) In their application to the State of Arunachal Pradesh or part thereof, the following rules, namely:-
 1. The Fundamental Rules and Supplementary Rules (Central);
 2. The Central Treasury Rules;
 3. House Building Advance Rules;
 4. Central Civil Services (Extra-ordinary Pension) Rules;
 5. The Central Provident Fund (Central Services) Rules, 1962;
 6. The Contributory Provident Fund Rules (India), 1962;
 7. The General Financial Rules, 1963;
 8. The Central Civil Services (Pension) Rules, 1972;
 9. The Delegation of Financial Powers Rules, 1978;
 10. The Central Civil Services (Joining Time) Rules, 1979;
 11. The Central Civil Services (Commutation of Pension) Rules, 1981;
 12. The Union Territory Employees' Group Insurance Scheme, 1984;
 13. The Central Civil Services (Revision of Pay) Rules, 1986, shall, unless the context otherwise requires have effect and be deemed to have had effect as if reference therein to the Government Central Government,

June 6/87
R. S. S. S.
R. S. S. S.

Government of India, Government Department, authorities mentioned in the first column of the Table hereunder set out were references to the Government, State Government, Government Departments authorities mentioned opposite to that in the Second Column of the Table:-

1. President.	1. Governor of Arunachal Pradesh.
2. Government/Central Government of India.	2. State Government of Arunachal Pradesh.
3. Union/Union of India/India.	3. State of Arunachal Pradesh.
4. Central Services/Central Civil Services.	4. Arunachal Services/Arunachal Civil Services.
5. Union Public Services Commission.	5. Arunachal Pradesh Public Service Commission.
6. Prime Minister's Secretariat.	6. Chief Minister's Secretariat.

(2) All the Schedules/Forms/Appendixes appended in the Principal Rules mentioned in (1) above shall mutatis mutandis apply under the respective Principal Rules.

(3) References to any Government Departments or authorities other than those specified in the Table in Column 2, shall be construed as referring to the corresponding Government Departments or authorities exercising corresponding power or authority in Arunachal Pradesh.

Note : Published in Arunachal Pradesh Gazette No. 16, Vol. IV dated March 1, 1989.

E-47/94

Dated Itanagar-791111, the 5th Jan. 1999

N O T I F I C A T I O N

It is hereby notified for general information that the provisions of FRs - 55, 'Chapter IX' relating to 'Retirement' as adapted by this Government, vide No. Fin/E-47/94 dated 16th February 1989 will continue to be applicable to all the government employees of the Government of Arunachal Pradesh.

By order and in the name of the Governor of Arunachal Pradesh

(P. K. Mandi)
Under Secretary (Finance)
Government of Arunachal Pradesh
Itanagar

Memo No. Fin/E-47/94 Dated Itanagar, the 5th Jan. 1999.

Copy to :-

1. The Accountant General (AE), Meghalaya, A.P. sec., Shillong-1
2. The Secretary to the Governor of A.P. Itanagar
3. The Secretary to the Chief Minister, A.P. Itanagar
4. The PS to Ministers/Speaker/Dy. Speaker, AP,
5. P.S. to the Chief Secretary, Govt. of AP, Itanagar
6. The Development Commissioner, Govt. of A.P. Itanagar
7. All Commissioners, Govt. of A.P. Itanagar
8. All Secretaries/Jt. Secretaries/Dy. Secretaries/Under Secretaries, Govt. of A.P. Itanagar
9. All Chief Engineers, Govt. of A.P. Itanagar
10. The Inspector General of Police, Govt. of A.P. Itanagar
11. The Principal Chief Conservator of Forest, Govt. of AP, Itanagar
12. APIDFC, Itanagar
13. Director (Trg), AP, Naharlagun

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16. The Senior Analyst, Govt. of Arunachal Pradesh, Itanagar.
17. The Junior Analyst/Budget Officer, Arunachal Pradesh, Itanagar.
18. The Director (E&M), Planning and Development, Arunachal Pradesh, Itanagar.
19. All Heads of Departments (Major & Minor), Arunachal Pradesh, Itanagar, Naharlagun, Nirjuli, Jorhat.
20. The Liaison Commissioner, Govt. of Arunachal Pradesh, New Delhi.
21. All Deputy Commissioner/Addl. Dy. Commissioners, Govt. of Arunachal Pradesh.
22. The Director of Accounts, Govt. of Arunachal Pradesh, Naharlagun.
23. All Treasury Officer, and Sub-Treasury Officers, Arunachal Pradesh.
24. The Liaison Officer, Govt. of Arunachal Pradesh, Calcutta, Guwahati, Shillong, Lilabari, Mohanbari, Tezpur.
25. The Registrar, Arunachal University, Doimukh.
26. The Chief Librarian, Govt. of Arunachal Pradesh, Itanagar.
27. The Secretary, Arunachal Pradesh, Public Service Commission, Itanagar.
28. The Chairman, Arunachal Pradesh State Social Welfare Advisory Board, Itanagar.

(P.K.Nandi),

Under Secretary (Fin),

Government of Arunachal Pradesh,

Itanagar ::

Appendix - IX

GOVERNMENT OF ARUNACHAL PRADESH



C.M. MONGMAW

Director of Accounts & Treasuries
Naharlagun - 791 110Phone : 0360 : 244680 (O)
: 244140 (O)
: 212365 (R)
Fax : 0360 : 244680 (O)

Gram : ARUNACCOUNTS

D.O. NoDA/TRY/18/2002..

Dated, the 6th June 2006.....

Respected Sir,

Am in receipt of your D.O. No. DA. Cell/1-1/2000-2001/95 dated 5.6.2006 regarding retiring age of Divisional Accountant originally an employee of Govt. of Arunachal Pradesh holding ex-cadre post of Divisional Accountant and at present under your control.

In fact, after adaptation of State laws vide Govt. Notification No. FIN/E/47/87 (PT) dated 16th February 1989 on attainment of statehood by this State, the Govt. of Arunachal Pradesh had adopted the F.R. & S.R. But, afterwards vide another Notification No. FIN/E-47/94 dated 5th January 1999, the Govt. stated its stand to continue with 58 years of age for retirement which was prevalent at the time of adoption of law. In this context, both the copies of orders referred to in this para are enclosed for ready reference please.

With warm regards,

Yours faithfully,

(C.M. Mongmaw)

Sri A.W.K. Langstieh
Accountant General (A&E),
Meghalaya, Arunachal Pradesh, etc.,
Shillong.

FR 56

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Bofu Adv.

AAO/DA AH

(H) - 28 - Appendix

GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE EXECUTIVE ENGINEER : : PUBLIC HEALTH ENGINEERING
AND WATER SUPPLY DIVISION, KHONSA.

NO. KPHED/ESTT/PF- 172/2000- 01/ 1427 Dated Khonsa the 30th December' 2005.

To,

✓ Sri L. Appal Swami,
Divisional Account (on deputation),
P.H.E & W.S Division,
Khonsa.

Sub :-

NOTICE FOR RETIREMENT ON SUPERANNUATION.

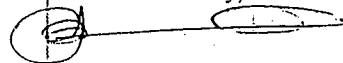
Sir,

It is to inform you that while scrutinising your service records, it is found that you are likely to attain the age of 58 years as on 25/01/2006, and according to CCS Pension Rule 72, all Group A, B & C grade employees under the Government of Arunachal Pradesh are to be retired from services only when they attain the age of 58 years, vide Director of Accounts & Treasuries, Naharlagun directive letter No. PEN/AP/2489/94/2102 dtd. 12/07/1995.

Since, you have not been observed under Central Services as full fledged Divisional Accountant under establishment of Accountant General (A&E), Shillong, your retirement on superannuation falls on 31/01/2006 (A/N). Hence, you are hereby requested to get in readiness and hand over the full charges of Divisional Accountant to Shri S. Roy, UDC yourself enabling us to process your pension papers to your parent department.

Further, it is to bring to your notice that, this office will not be responsible if any complicity arise in future by any lapses from your side.

Yours sincerely,



(Er. S.R. KUMAR)
Executive Engineer,
PHE & W/S Division,
Khonsa

Memo NO. KPHED/ESTT/PF- 172/2000- 01/
Copy to:-

Dated Khonsa the 30th December' 2005.

1. The Accountant General (A&E), D.A. Cell, Meghalaya, Arunachal Pradesh etc. Shillong- 793 001 for favour of his information please.
2. The Director of Audit & Pension, Govt. of Arunachal Pradesh, Naharlagun for favour of his information please.
3. The Chief Engineer, Zone-1 (Eastern Zone) P.W. Department, Govt. of Arunachal Pradesh, Itanagar for favour of his information please.
4. The Chief Engineer, P.H.E. & W.S. Department, Itanagar for favour of his information please.
5. The Superintending Engineer, P.H.E & W.S Circle, Miao for favour of his information please.
6. Sri S. Roy, UDC P.H.E & W.S Division, Khonsa for information & necessary action.
7. Office copy.
8. Spare copy.

(Er. S.R. KUMAR)
Executive Engineer,
PHE & W/S Division,
Khonsa

Total copy 7
2005
Adv.

From - Mr. G. Baishya
Sr. CLSC, CAT

To, Mr. M. Chanda
Advocate, CHL

O.A. NO. 27 of 2006

Shri L. Appal Swami
— Applicant

Union of India & Ors.
— Respondents

Please find herewith a copy of written statement with annexures which is going to be filed on behalf of Respondent nos. 1 and 2 in connection with the abovesaid case.

Kindly acknowledge the receipt thereof.

Thanking you

Yours faithfully
Rishi Gogoi
Advocate

Received copy
Mr. M. Chanda
Advocate