

30/600

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

OA No. 271 of 96

... B. Thadang ... Applicant(s)
-Versus-

Union of India ... Respondent(s)

Mr. R. Dutta ... Advocates for Applicant(s)

Mr. G. Sarma, A.C.S. ... Advocates for Respondent(s)

Office Notes | Date | Courts' Orders

19.11.96

Mr. R. Dutta for the applicant.
Mr. G. Sarma, Addl. C.G.S.C. for
the respondents.

Adjourned for consideration of
admission on 20.11.1996.

[Signature]
Member

trd

20.11.96

Mr. R. Dutta for the applicant.
Mr. G. Sarma, Addl. C.G.S.C.
the respondents.

The application has been
submitted against the Order No. EO NO.
DA Cell/149 dated 25.10.96 conveying
under Memo No. DA Cell/10-I/92-93/1965-
1974 dated 6.11.1996 repatriating the
applicant to his parent department with
effect from 30.11.1996.

Heard counsel of the parties.
Issue notice on the respondents as to
why this application should not be
admitted.

List for show cause and
consideration of admission on
6.12.1996. Steps within today.

Heard counsel of the parties for
interim relief prayer. The respondents
are directed to keep the operation of
the order No. EO NO. DA Cell/149 dated
25.10.96 in abeyance till 6.12.96.

[Signature]
Member

trd

[Handwritten notes in margin]
16.11.96
18/11

21.11.96

Notice issued to
the concerned
parties vide D. No.
3933 to 3936.

[Signature]

Comply order dt
20.11.96

[Signature]
20/11

[Handwritten notes]
18/11

(2)

O.A. 27/96

1) Service Reports are still awaited.
2) Show Cause has not been filed.

6.12.96

Mr. R. Dutta for the applicant.

Mr. G. Sarma, Addl. C.G.S.C. for the respondents.

Service reports are awaited. Show cause has not been submitted.

List for show cause and consideration of admission on 2.1.1997.

The respondents are directed to keep in abeyance the operation of the order No. EO NO. DA Cell/149 dated 25.10.96 till next date, namely 2.1.1997. Liberty to the respondents to apply.

Copy of the order be supplied to both the counsels of the parties.


Member

Pl. comply order on 6.12.96.

mv
6/12

9.12.96

trd

Copy of order dt. 6.12.96 issued to the concerned parties vide S.No. 4026 to 4029. dt. 6/12/96.

BK

1) Service Report are still awaited.

2) Show Cause has not been filed.

Learned counsel Mr. R. Dutta for the applicant. Mr. G. Sarma Addl. C.G.S.C. seeks one month time to get instructions from the respondents to submit reply.

List for show cause and consideration of Admission on 4-2-97 as requested by Mr. Sarma.

The respondents are directed to keep the operation of the impugned order No. EO No. DA Cell/149 dated 25-10-96 till further order.


Member

1.1.97


3.1.97


lm
mv
2/11

Copy of order sent to the Respondent No. 1, 2, 3, & 4 vide order 4.2.97 Dated 2-1-97.

Mr G. Sarma, learned Addl. C.G.S.C., prays for further extension of time. Mr R. Dutta, learned counsel for the applicant, has no objection. Two weeks further time is granted. No further extension of time will be given.

List it on 24.2.97.


Vice-Chairman.


Member

1) Service Reports are still awaited.
2) Show Cause has not been filed.

nkm
mv
6/12

3.1.97

mv
3/12

24.2.97

On the prayer of Mr. R. Dutta appearing on behalf of the applicant, 15 days time is granted for consideration of admission.

List on 11.3.1997.

[Signature]
Member

[Signature]
Vice-Chairman

14-3-97

1/ Notice ISSUED on 21-11-96.
2/ Service report are still awaited

trd
w/ 10/3

11.3.97

Mr R., Dutta, learned counsel for the applicant is present. On the request of Mr G. Sarma, learned Addl. C.G.S.C., this case be listed on 17.3.97.

[Signature]
Member

[Signature]
Vice-Chairman

nkm
w/ 12/3

~~17.3.97~~

Mr R. Dutta, learned counsel for the applicant and Mr G. Sarma, learned Addl. C.G.S.C., are present.

In this application, the applicant prays for a direction to the respondents to keep him in the respondent borrowing department. The facts of the case, as stated by the applicant in his application, are:

The applicant was a permanent employee under the Public Works Department of Arunachal Pradesh. He was sent to the establishment of the Accountant General, Assam, Meghalaya etc., respondent No.1, on deputation. The period of deputation was initially for one year and it was extended twice, as a result of which the applicant worked in the office of the Accountant General, Assam, Meghalaya, etc. for a period of three years. The last extended period has ^{also been} already expired on 30.11.1996 and he wants to continue in the said department. However, the respondents are not willing to allow him to continue as a deputationist in the said department. Hence the present application.

~~17.3.97~~

4

Heard Mr R. Dutta, learned counsel for the applicant, and Mr G. Sarma, learned Addl. C.G.S.C., appearing on behalf of the respondents. Mr Dutta submits that a direction should be given to retain the applicant on deputation by the respondents. Mr G Sarma has vehemently opposed this prayer. According to Mr Sarma, the submission of Mr Dutta has got no force in law, inasmuch as the Department cannot, under the rules retain the applicant for more than the period for which the services of the applicant ^{been} were borrowed. Mr Dutta, very candidly, submits that there is no provision of law ^{for such retention}. However, he submits that there are many posts vacant to which the applicant can be appointed. Considering the submissions of the counsel for the parties, we are of the opinion that the direction as prayed for cannot be given in the present facts and circumstances of the case. Therefore, we are not inclined to give any direction to that effect. However, the applicant may approach the respondents and the respondents may consider the same if he can be accommodated.

The application is accordingly disposed of.

In view of the disposal of the application the stay order granted on 20.11.1996 stands vacated.

~~Member~~

~~Vice Chairman~~

nk4

17.3.97

Mr R. Dutta, learned counsel for the applicant and Mr G. Sarma, learned Addl. C.G.S.C., are present.

In this application, the applicant prays for a direction to the respondents to keep him in the respondent borrowing department. The facts of the case, as stated by the applicant in his application, are:

The applicant was a permanent employee under the Public Works Department of Arunachal Pradesh. He was sent to the establishment of the Accountant General, Assam, Meghalaya etc. - the respondent No.1, on deputation. The period of deputation was initially for one year and it was extended twice, as a result the applicant worked in the office of the Accountant General, Assam, Meghalaya, etc. for a period of three years. The last extended period has also been already expired on 30.11.1996 and he wants to continue in the said department. However, the respondents are not willing to allow him to continue as a deputationist in the said department. Hence the present application.

Heard Mr R. Dutta, learned counsel for the applicant, and Mr G. Sarma, learned Addl. C.G.S.C., appearing on behalf of the respondents. Mr Dutta submits that a direction should be given to retain the applicant on deputation by the respondents. Mr G. Sarma has vehemently opposed this prayer. According to Mr Sarma, the submission of Mr Dutta has got no force in law, inasmuch as the Department cannot, under the rules, retain the applicant for more than the period for which the services of the applicant had been borrowed. Mr Dutta, very candidly, submits that there is no provision of law for such retention. However, he submits that there are many posts vacant to which the applicant can be appointed.

Considering the submissions of the counsel for the parties, we are of the opinion that the direction as prayed for cannot be given in the present facts and circumstances of the case. Therefore, we are not inclined to give any direction to that effect. However, the applicant may approach the respondents and the respondents may consider the same if he

17.3.97

can be accommodated.

The application is accordingly disposed of.

In view of the disposal of the application the stay order granted on 20.11.1996 stands vacated.

8.4.97

Copy of the order
has been issued to
the parties vide
S.No.


Member


Vice-Chairman

nkm

sh.
Issued vide S.No.
1180 to 1184 on 11.4.97
Through Regd. with A.P.
sh.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

8

Filed by
 P. B. Thadang 18/11/96
 R. B. Thadang
 Maligaon, Guwahati-781011

(An application under Section 19 of the Administrative Tribunal Act, 1985)

O. A. No. 271 of 1996.

Shri B. Thadang : Applicant

- Versus -

Union of India & Others ; Respondents.

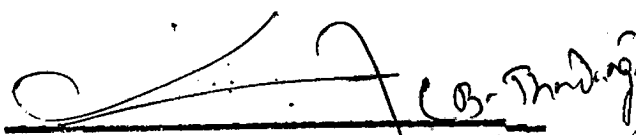
I N D E X

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3.	Applicant representation dated 27-9-96 for allowing him to sit for the examination.	A/2	-14-
4.	Applicant's representation dated 6-8-96 to the Comptroller and Auditor General of India.	A/3	15 to 17
5.	Deputy Accountant General (A&E), Shillong's letter No. DA Cell/2-69/93-94/4703 dated 16-2-96.	A/4	18 to 20
6.	Sr. Dy. Accountant General (A&E) Shillong's No. DA Cell/149 dated 25-10-96.	A/5	21 & 22
7.	Department of Personnel, Public Grievance and Pension's letter No. 36036/3/85-Estt(SCT) dated 29-6-85.	A/7	23 & 24

Handed over to
 Shri G. Savarna
 C.A.S.C.

Depth
 18/11/96

Read copy
 G. Savarna
 C.A.S.C.
 Guwahati
 18/11/96


 Signature of the applicant.

IN THE SUPREME COURT OF INDIA
Writ Petition No. 1000 of 1982

(An application under Section 19 of the Administrative Tribunal Act, 1982)

For the Petitioner: _____

Applicant: _____

Respondent: _____

Minister of India & Others; Respondents

FILED

1. Association of Accountants & Auditors, India

1. Application

2. Copy of the order of posting dated 13-11-82

3. Application for extension of time for filing of writ petition dated 27-9-82 for allowing him to sit for the examination

4. Applicant's representation dated 8-8-82 to the Controller and Auditor General of India

5. Reply received from the Controller and Auditor General dated 13-9-82

6. Letter from the Controller and Auditor General dated 28-10-82

7. Department of Personnel, Public Guidance and Foreign's letter No. 22032/82-1201 dated 29-2-82

Signature of the petitioner

File by
R. Datta 18/11/96
R. Datta (State)
Dislgaon, Guwahati-781014

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CURRENT BENCH :: GUWAHATI.

(An Application under section 19 of the Administrative Tribunal Act, 1985)

C.A. No. 271 of 1996.

Shri Bida Thadang
Divisional Accountant,
Office of the Executive
Engineer (E) Yingkong
Electrical Division,
Upper Siang District,
Arunachal Pradesh Applicant.

Versus

1. The Union of India,
represented by the
Accountant General (A&E)
Meghalaya Etc, Shillong
2. The Comptroller & Auditor
General of India,
Bahadur Shah Zafar Marg
New Delhi-110002.
3. Sr. Deputy Accountant
General (A&E)
Office of the Accountant
General Meghalaya etc.,
Shillong.

3/

16
4. Deputy Accountant General (S&E)
Office of the Accountant
General, Meghalaya etc.,
Shillong Respondents.

1. Particulars of the orders/grievances for which
the application is made:-

EO NO. DA Cell/149 dated 25.10.96 communicated
under Memo No. DA Cell/10-1/92-93/1965-1974 dated
6.11.96 repatriating the applicant to his parent
department arbitrarily. (Annexure A/5)

2. Jurisdiction of the Tribunal:-

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

3. Limitation:-

The applicant declares that the application
is within the period of limitation.

4. Facts of the Case:-

4.1. That, the applicant is a citizen of India
and is, therefore, entitled to rights & privileges
available to the citizen of India under the
constitution of India.

4.2. That, the applicant is a member of Schedule
Tribe and hails from Arunachal Pradesh.

4.3. The applicant was selected as Divisional Accountant in scale of Rs.1400-40-1600-50-2300-EB-60-2600/-(on deputation) in the cadre of Divisional Accountant under the Administrative control of the office of the Accountant General(A&E), Meghalaya etc., Shillong. At the time selection the applicant was working as Upper Division Assistant in the office of the Superintending Engineer, Rural Works Department, Arunachal Pradesh, Itanagar. The applicant was an employee of the State Govt. of Arunachal Pradesh.

4.4. That, consequent on his selection for the post of Divisional Accountant in the cadre of Divisional Accountants, the applicant was posted as Divisional Accountant in the office of the Executive Engineer, Bishnupur Electrical Division, Bishnupur, Manipur. The post of Divisional Accountant in the office of the Executive Engineer, Bishnupur Electrical Division, is a cadre post of Divisional Accountants, under the Administrative control of the Accountant General(A&E), Meghalaya etc., Shillong.

The copy of the posting order issued under No.DA Cell/124 dated 18-11-93 issued by Sr.Dy.Accountant General(A&E) and circulated under No.DA Cell/2-49/93-94/1592-1602 dated 23-11-93 is annexed as annexure A/1.

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4.5. That, the applicant performed his duties as Divisional Accountant efficiently and sincerely with entire satisfaction of the respondents and as a result respondents extended the period of deputation of the applicant twice.

4.6. That, in the recruitment rules for Divisional Accountant there is a provision under which a person can be appointed as Divisional Accountant on transfer on deputation basis.

4.7. That, previously a large number of persons who came on deputation as Divisional Accountant were absorbed as Divisional Accountant permanently after allowing them to sit for the examination for the post of Divisional Accountant.

4.8. That, in a number of applications the various branches of the Central Administrative Tribunal, including this Hon'ble Tribunal, directed for allowing the Divisional Accountants who came from different State Governments number of chances for their absorption as Divisional Accountant permanently.

4.9. That, the applicant while opting for deputation as Divisional Accountant expected that he would be given chances to qualify for absorption as ~~Divisional~~ Accountant and applied to sit in the departmental test examination on 27-9-95 for his absorption as Divisional Accountant permanently.

3

A copy of the said application dated 27-9-95 is annexed as Annexure A/2.

4.10. That, the applicant also submitted number of representation to the Controller and Auditor General of India(Respondent No.2) for allowing him to appear ~~at~~ the Divisional Accountant grade examination for permanent absorption in the cadre.

A copy of the representation dated 6-8-96 is annexed as Annexure A/3.

4.11. That, the Dy. accountant General(A&E), Shillong, Respondent No.4, for-warded the representation of the applicant to the Comptroller and auditor General of India, Respondent No.2, under letter No. DA Cell/2-49/93-94/4703 dated 16-2-96 giving the detailed vacancy position and recommending reconsideration of the decision as to whether the applicant be allowed to appear in the Divisional Accountant Grade Examination for permanent absorption in the Cadre.

A copy of the said letter is annexed as Annexure A/4.

4.12. That, a reply was received by the applicant to the effect that his representation for allowing him to sit for the examination of the Divisional Account grade examination was regreted by the Comptroller and Auditor General of India, Respondent No.2. But no reason what so

ever was indicated for rejecting the prayer of the applicant. Due to misfortune the applicant has misplaced the said reply.

4.13. That, there are large no. of posts of Divisional accountant lying vacant and proper compilation of monthly accounts are hampered due to posts of Divisional accountant lying vacant.

4.14. That, in May 1996, the applicant has been transferred from Manipur to Arunachal Pradesh in the same capacity as Divisional accountant.

4.15. That, the Sr. Deputy Accountant General (A&E), Shillong, Respondent No.3, vide Order EO No. DA Cell/149 dated 25-10-96, communicated under memo No. DA Cell/10-1/92-93/1965-1974 dated 6-11-96 for repatriation of the applicant to his parent department in Rural Works Department under the Government of Arunachal Pradesh with effect from 30-11-96 although the post held by the applicant is available and no one could be posted against the said post.

A copy of the said order dated 6-11-96 is annexed as Annexure A/5.

4.16. That, the Department of Personnel & Training, Govt. of India under O.M.No.36036/3/85-Estt(SCT) dated 29-6-1985 issued instructions

3

that the main objective for providing reservation for Scheduled Caste and Scheduled Tribes in appointment to Civil post and Services of the Govt. is not just to give jobs to some persons belonging to their communities and thereby, increase the ^{so} representation in Service but also to uplift the ^{so} people socially and merge them in the mainstream of the nation.

A copy of the said Office memorandum is annexed as Annexure A/6.

5. Ground for relief:-

5.1. That, the Recruitment rule for appointment of the Divisional Accountant provide for appointment by transfer on deputation. As such the applicant should have been appointed against the Cadre post. As such the order of repatriation is bad in law.

5.2. That, previously in a large number of cases the persons on deputation, from State Govt. Services, to the post of Divisional Accountant have been permanently absorbed as Divisional Accountant. Thus the applicant has been discriminated by ordering repatriation without giving him a chance to sit for the examination as was given to others.

5.3. That, the Hon'ble Central Administrative Tribunal have also laid down the law that the Divisional Accountant on deputation is to be given chances to sit for the examination for absorption in the cadre of Divisional accountant.

5.4. That, large number of vacancies exist and the work is suffering for want of Divisional Accountant.

5.5. That, the order of repatriation is violative of Art.14 and 16 of the Constitution.

5.6. That, most of the vacancies existing are for Scheduled Tribes and the applicant being a Scheduled Tribe of Arunachal Pradesh is to be considered for permanent absorption as Divisional Accountant ^{clerk}.

5.7. That, the repatriation of the applicant would result in huge financial loss as he would be reverted back to the post of Upper Division Assistant.

5.8. That, the applicant discharged the duty of Divisional Accountant efficiently and satisfactorily and his period of deputation extend twice and he earned the annual increments regularly.

6. Details of remedies exhausted:-

3

The applicant has made several representation including representation to the Comptroller and Auditor General of India as stated in para 4.10. However there is no statutory remedy available.

7. Matters not previously filed or pending in any Court:-

The applicant declares that he has not previously filed any application, writ petition or suit regarding the subject matter before any Court or any bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief Sought:-

That, the applicant humbly prays that the Hon'ble Tribunal may be ^{and grant} kind enough to call for the records ^{set aside} the order of repatriation issued by the Sr. Deputy Accountant General(A&E) Meghalaya etc., Shillong, Respondent No.3, under EO No.DA Cell/149 dated 25-10-96 circulated under Memo No.DA Cell/10-1/92-93/1965-1974 dated 6-11-96(Annexure A/5) and be kind enough to direct the respondents to allow the applicant to sit for the Divisional Accountant Grade Examination for permanent absorption in the cadre and to absorb him permanently in the Cadre if he qualifying in the examination.

9. Interim Relief:-

The applicant also humbly prays for an interim order staying the operation of impugned order of repatriation issued by the Sr. Deputy Accountant General(A&E) Meghalaya etc., Shillong Respondent No.3, under EO No.DA Cell/149 dated 25-10-96 circulated under Memo No.DA Cell/10-1/92-93/1965-1974 dated 6-11-96(Annexure A/5) and for directing the respondents not to repatriate the applicant till disposal of his application by the Hon'ble Tribunal.

10. Particulars of the Application fee:

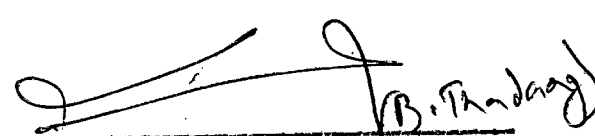
The applicant has annexed a Postal Order No. 09 349089 dated 16.11.96 for a sum of Rs.50/-(Rupees fifty)only.

11. List of documents: as in the Index

VERIFICATION

I, Shri Bida Thadang, son of Shri Nima Mangfi, aged about 33 years Divisional Accountant, in the office of the Executive Engineer(E), Yingkiong Electrical Division, Upper Siang District, Arunachal Pradesh, do hereby verify that the Contents of paras 4, 6, 7 and 10 are true to my information which I believe to be true and rest are my submission to the Hon'ble Tribunal and I have not suppressed any material facts.

Dated Guwahati, the
18th Nov. 1996.


Signature of the applicant.

An order of 19

- 11 -

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

EO.No.DA Cell/124

Dated: 18.11.93

Consequent on his selection for the Post of Divisional Accountant (on deputation) in the Pay Scale of Rs.1400-40-1600-50-2300-EB-60-2600/= in the cadre of Divisional Accountants (on deputation) under the Administrative Control of the Office of the Accountant General (A&E) Meghalaya etc, Shillong, Shri B.Thadang (Bida Thadang) I.D.C.

at Present working in the Office of the Superintending Engineer, Rural Works Deptt.

Arunachal Pradesh, Itanagar. is posted on deputation as Divisional Accountant in the Office of the Executive Engineer, Bishnupur Electrical Division, Bishnupur, Manipur.

2. Shri B.Thadang.

should join the Post of Divisional Accountant on deputation, within 1 (one) month from the date of issue of this order, failing which his posting on deputation will be treated as cancelled, without any further communication. No representation for a change of the place of posting will be entertained under any circumstances.

3. The Period of deputation of Shri B.Thadang will be for duration of 1 (one) year from the date of joining in the Office of the Executive Engineer, Bishnupur Electrical Division, Bishnupur, Manipur.

4. The Pay and deputation (duty) allowances in respect of Shri B.Thadang. will be governed by the Govt. of India, Ministry of Finance, Public Grievances and Pension (Department of Personal and Training) letter No.2/12/07-Estt.(Pay.II) dt. 29.4.1988 and as amended and modified from time to time, while on deputation, Shri B.Thadang

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) allowances. Shri B.Thadang

contd.F/2..

Attested,
Datta (Advocate)
Datta, Assam, TOWN

Annexure A/C Contd

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on deputation should exercise option in this regard within a period of 1 (one) month from the date of joining the new assignment (i.e. the Post of deputation). The option once exercised by Shri B. Thadang shall be final.

5. The Dearness Allowance, C.C.A., Children Education Allowance, T.A., LTC, Leave, Pension etc will be governed by the Govt. of India, Ministry of Finance OM.No.F.1(6)E-IV(A)/62 dt.7.12.1962 (Incorporated as Annexure to Govt. of India decision No.1 in Appendix-31 of Choudhury's C.S.R Volume.IV. (13th Edition) and as commended and modified from time to time.

6. Shri B. Thadang

on deputation will be liable to be transferred to any place within the States of Arunachal Pradesh, Manipur and Tripura, in the cadre of Divisional Accountant 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 B. Thadang

(on deputation) is entrusted with additional charges, appointed, transferred or transferred to a Post/is given any Station other than that cited in this Establishment order.

Authority: AG's Order dt.13.10.93

at P/9N of file No.DA Cell/2-49/93-94

Sr. Dy. Accountant General (A&E).

Memo No. DA Cell/2-49/93-94/1592-1602 Dated: 21.10.93
Copy forwarded for information and necessary action to :-

- 1) The Accountant General (A&E) Manipur, Imphal.
- 2) The Accountant General (A&E) Tripura, Agartala.
- 3) The Chief Engineer, Electricity Deptt. (Power), Manipur, Imphal.
- 4) Chief Engineer, Rural Works Deptt., Arunachal Pradesh, Itanagar.

He is requested to release Shri B. Thadang.

Answer A/2 ✓

REGISTERED

Dated Manipur, the 27th Sept 45

To

The Accountant General(A&E)
Meghalaya Etc.,
Shillong

Sub: Prayer for allowing to appear Departmental
Examination of D.A. Grade.

Sir,

With due respect and humble submission, I am to state the following few lines for favour of your sympathetic consideration please.

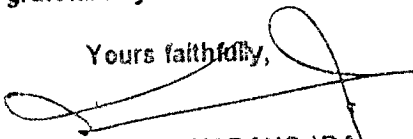
That Sir, I was appointed as D.A. on deputation vide your order No DA/Cell/124 dt 18th November, 1963 and I have been posted under Executive Engineer, Bishnupur Electrical Division, Manipur and where I have served as per satisfaction of my superior authority.

That Sir, I have completed my two years of service and I intend to sit in the next departmental test examination.

In this connection, I am once again requesting your honour kindly to allow me to appear before the examination. Hope your honour would consider my case sympathetically.

For act of your kindness I will remain ever grateful to you.

Yours faithfully,


(BIDA THADANG) DA
Bishnupur Elect. Division
Manipur.

Allegis
R. Datta
B. Datta (Advocate)
Wangan, Guwahati-781014

Annex-A/23

To
The Comptroller & Auditor General of India,
10 Bhadur Saha Jaffar Marg,
NEW DELHI- 11002

(THROUGH PROPER CHANNEL)

Subj:- Prayer for review of decision communicated vide letter No. DA Cell/2-49/93-94/12-16 dated, 22/4/96 from the Accountant General (A & E) Shillong on the representation of Divisional Accountant working on deputation basis to be treated as Emergency Divisional Accountant for appearing in the Divisional Accountant grade examination.

Sir,

I beg to state the following for your kind personal & sympathetic consideration please.

That Sir, I was considered for being appointed to work as Divisional Accountant (on deputation) by the Accountant General (A & E) Meghalaya Shillong vide his E.O. No. DA Cell/129 dated, 18/11/93 from the post of the U.D. Clerk in the Department of Arunachal Pradesh R.W.D. where I had been performing my duties to the utmost satisfaction of my superiors.

That Sir, there are number of vacancies of Divisional Accountant lying vacant in the establishment of the Accountant General (A & E) Meghalaya Shillong. Previously it was the practice to recruit Divisional Accountant in the existing regular vacancies from among the Divisional Accountant on deputation from amongst the account clerks working in PWD/RWD of Arunachal Pradesh, Manipur Tripura etc. and such appointments on deputation were made following standing order contained in Annexure-I of C.P.W.A. Code and such Divisional Accountants on deputation were called as Emergency Divisional Accountant. Unfortunately since 1988 the practice of naming such deputationist as Emergency Divisional Accountant is discontinued and instead they are designated as Divisional Accountant (on deputation) for the purpose of evading their entitlement to the categories mentioned in their sources of recruitment of the post Divisional Accountant as prescribed in the Comptroller Auditor and in 1988 recruitment rule.

Attested
R. Datta (Advocate)
Walgan, Guwahati-781011

2

Rights and responsibilities of the Accountants to the changed nomenclature remains the same. There is no gain of change in the duties and responsibilities or mode of recruitment to such Divisional Accountants on deputation as was in vogue in case of Emergency Divisional Accountants.

That Sir, the change in nomenclature in the grade has been done with the sole purpose of depriving the deputationists to wait for Divisional Accountant grade Examination after putting in qualifying service to complete and achieve their self improvement. Any condition in the recruitment rule of 1900 as such it puts them to serious discrimination. Which violates the principle enshrined in article 14 and 16 of the constitution of India are required to be struck down and modified to the extent of allowing the Divisional Accountants on deputation for all practical purposes with those similarly situated as Emergency Divisional Accountants.

That Sir, I belong to S.T. community and rendered more than 12 years service under R.W.D. in Arunachal Pradesh with great difficulties and I have been trying to improve upon my service career and I am confident to do my best in the Divisional Accountant grade examination for absorption in the post of Divisional Accountant. If I got the opportunity for appearing in the Divisional Accountant exam by treating me as Emergency Divisional Accountant as per ^{existing} ~~existing~~ practice and procedure applicable to the Emergency Divisional Accountants instead of denying me the facilities by restoring me by nomenclature to the nomenclature of the Divisional Accountant (on deputation).

That Sir, I may kindly be excused for intruding upon your valuable time with the above prayer. The Govt. of India is greatly concerned about the upliftment of the S.T. who are

Yours truly,

Alleged
R. Datta

R. Datta, Ph.D. (Economics)
Assistant Commissioner

always deprived from getting proper facilities to improve
 themself Govt. has provided various other benefits concessions
 and relaxations in service matter. In this connection O.M. No.
 42014/7/86-Estt(SCT) dated, 12/8/86 and O.M. No. 36036/3/
 85-Estt(SCT) dated, 24/6/85 of 24/6/85 may please be referred to.
 Should you consider my prayer by treating/avoiding discrimina-
 tion on Technical plea coming in my way of improving my service
 carrier and allow me to appear in the next Division grade exami-
 nation to be conducted by the Accountant General (A & E) Shillong
 for absorbing in the post of Divisional Accountant by treating
 me as Emergency Divisional Accountant. I shall remain ever grate-
 ful to you.

In view of the above facts and circumstances stated
 above I hope your honour will graciously reconsider my prayer
 for allowing me to appear at the next Divisional Accountant
 grade examination to be conducted by the Accountant General
 Shillong treating me as Emergency Divisional Accountant instead
 of Divisional Accountant (on deputation) and till such time
 I may be given an opportunity your honour will allow me to
 continue on deputation in my present post.

With regards.

(Signature)
 (Bida Thadang)
 Divisional Accountant
 Tingkiong Elect. Division,
 Upper Siang District,
 Arunachal Pradesh

Copy in advance:

- 1) The Comptroller & Auditor General of India, 10 Bahadur Saha, Jaffar Marg, NEW DELHI, for favour of kind information and sympathetic consideration please.

(Signature)
 (Bida Thadang)
 Divisional Accountant
 Tingkiong Elect. Division,
 Upper Siang District,
 Arunachal Pradesh

Attest
(Signature)

R. Dutta, (Advocate)
 Mangon, Guwahati-781011

Annexure A/4

REGISTERED

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

NO. DA Cell/2-89/93-94/4703

Dated, Shillong the 16/2/1996

To,

The Comptroller & Auditor General of India,
Bahadur Shah Zafar Marg,
New Delhi - 110002.

Subject:- Representation from Divisional Accountants working on deputation basis.

Sir,

I am forwarding herewith the representation received from 5 (five) Divisional Accountants who were appointed as Divisional Accountants on deputation basis from various P.W.D. offices of the State Government of Manipur, Tripura and Arunachal Pradesh. These Divisional Accountants have represented for allowing them to appear in the D.A. Grade Examination so that they can get themselves absorbed in the cadre of Divisional Accountants as the above mentioned Divisional Accountants on deputation who have submitted their representations, have joined during 12/93.

The terms of deputation had been fixed initially for one year, but due to the acute shortage in the cadre, the terms of deputation may be extended upto 3 years that is, upto December, 1996.

As per Recruitment Rules, the Divisional Accountant can be filled up by the direct recruitment, promotion and by deputation on transfer basis. As per the terms and conditions of the deputation, there is no provision under which the Divisional Accountant on deputation can be allowed to appear in the D.A. Grade Examination for absorption in the cadre of Divisional Accountant. Under the recruitment rules, however, there is a provision under which a person can be appointed as Divisional Accountant on transfer on deputation basis.

Atte des
R. D. S.

K. D. S. (in office)
MANGAL, GUWAHATI-781004

At present, there are 31 (thirty one) posts of Divisional Accountants under administrative control of this office which are lying vacant. Due to non receipt of Government approval on model Roster Point, points to be reserved for SC/ST/OBC, the vacant posts of Divisional Accountants could not be filled up on a regular basis. As a stop gap arrangement, experienced staff from P.W.D. offices are being recruited as Divisional Accountants on Deputation basis. But it is found that there is very poor response from experienced staffs to work as Divisional Accountants. Perhaps, it may be due to the reason that they are not allowed to appear in the D.A. Grade Examination for their permanent absorption in the cadre.

In this connection, I am further to inform you that a large number of vacancies of D.A. in the Divisions in Manipur, Tripura and Arunachal Pradesh, particularly in Manipur, are lying vacant. Divisional Accountants could not be posted due to acute shortage in the cadre of Divisional Accountants. The Accountant General, Manipur, in his letter (copy enclosed, enclo No.6) expressed his view that late submission of accounts by the Divisional (P.W.) offices to the A.G. (A & E), Manipur is due to non-posting of Divisional Accountants in different Division by this office which caused much inconveniences in the compilation of monthly accounts. The Accountant General further pressed this office to speed up the appointment of Divisional Accountants for smooth running of official work.

This office could not process the case of direct recruitment through Staff Selection Commission or by Initial Recruitment Test (conducted by this office) as the model Roster for reservation of SC/ST/OBC in the recruitment of Divisional Accountant has not yet been approved by the concerned Ministry/Deptt. is also enclosed herewith (enclo No7).

In view of the above, Headquarters may re-consider their decision on whether the 5 (five) applicants (applications enclosed) are to be treated as Emergency Divisional Accountants and allowed them to appear in the D.A. Grade Examination for permanent absorption in the cadre.

Allegis
R. Datta

R. Datta. (Advocate)
Muzgaon, Guwahati-781011

Contd/3

p/3

Headquarters decision may kindly be communicated at an early date.

This issues with the approval of Accountant General.

Yours faithfully,

sd/-

Deputy Accountant General (AGG)

Enclo:-

Application in original in respect of S/Shri:

1. V. Senthatharanga
2. Bida Thadanga
3. H. B. Dey
4. C. Hirachand Singh
5. Keshab Ch. Das
6. A. G. Manipur, Letter No. Estt. (AI)/5-3/DA/95-96/3151 dtd. 08/11/1995.
7. Copy of this office letter No. DA Cell/2-46/92-93/2613 dtd. 15/11/1995.

*AKK AS
P. D. K.*

M. P. (A. G. Office)
Kolkata, Contact-781911

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

EO NO. DA Cell/149

Dated 25-10-96

On expiry of the period of deputation to the post of Junior Grade Divisional Accountant under the Administrative Control of the Accountant General (A&E) Meghalaya, etc. Shillong.

Shri B. Thadang

at present posted in the office of the Executive Engineer,

Yingkiong Electrical Division, Arunachal Pradesh.

is repatriated to the parent Department i.e. Chief Engineer, /c Rural Works Department,

Itanagar with effect from 30-11-1996

On being relieved of his duties from the office of the Executive Engineer,

Yingkiong Electrical Division, Yingkiong, Arunachal Pradesh.

Shri B. Thadang is to report for duties to the Chief Engineer,

/c Rural Works Department, Itanagar.

As required under para 384 of the Comptroller and Auditor General's MSO (Adm.) Vol. I reproduced in Appendix-I of the CPWA Code, 2nd Edition 1964 the relieved official should prepare a memorandum reviewing the Accounts of the Division (in triplicate) which the relieving official should examine and forward promptly with his remarks, to the Accountant General, (A&E), Meghalaya,

Etc. Shillong.

through the

Divisional officer, who will record such observations thereon as he may consider necessary. This memorandum is required in addition to the handing over memo, of his charges to relieving officer.

Authority:-Sr. D.A.G.'s order dt 7-10-96 at p/1/14
in the fill No. DA Cell/10-1/93-93

Sd/-

Sr. Dy. Accountant General (A&E)

dt 6.11.96
Di 25.11.96

Memo No. DA Cell/10-1/92-93/1965 - 1074

Copy forwarded for information and necessary action to :-

1. The Chief Engineer, /c Rural Works Department,

Govt. Of Arunachal Pradesh, Itanagar.

He is requested to arrange for posting of Shri B. Thadang

Divisional Accountant on deputation on his repatriation to his parent Department. The concerned Executive Engineer, has been asked to release Shri B. Thadang

On before 30-11-1996 positively. He is also requested to convey his concurrence for the aforesaid Divisional Accountant up to the period 30-11-1996

Contd. P/2..

Alle [Signature]

2. The Superintending Engineer,

The Chief Engineer, /e Power Deptt. Govt. Of, Arunachal Pradesh, Itanagar,

4. The Executive Engineer,

5. The Executive Engineer, Yingkiong Electrical Division, Yingkiong, Arunachal Pradesh.

He is requested to release Shri B. Thandang of his Division positively on or before 30-11-1996 as his terms of deputation expires. He is also requested to instruct Shri B. Thandang to report to his parent Department, i.e O/o the Chief Engineer, R.W.D. Itanagar, on his release from your Department. He is also requested to intimate this office telegraphically the exact date of release.

6. The Executive Engineer, Yingkiong Division, PWD, Yingkiong, Arunachal Pradesh.

He is requested to direct Shri J. K. Lahiri, DAO of his Division to look after the work of the Divisional Accountant of the Office of the Executive Engineer, Yingkiong Electrical Division, PWD, Yingkiong, Arunachal Pradesh, in addition to his normal duties, with effect from 30-11-96.

7. Shri J. K. Lahiri,

DAO Grade-I of the O/o the Executive Engineer, Yingkiong Electrical Division, PWD, Youngkiong, Arunachal Pradesh. He is requested to take additional charge of the Division Youngkiong Electrical Division, with effect from 30-11-96 in addition to his normal duties, till a substitute is posted.

8. Shri B. Thandang,

Divisional Accountant on deputation, O/o the Executive Engineer, Yingkiong, Electrical Division, Along, Yingkiong, Arunachal Pradesh. He is hereby asked to report to his parent Department i.e O/o the Chief Engineer, P.W.D., Arunachal Pradesh, Itanagar.

9. Personal Files of Shri B. Thandang.

10. Personal Files of Shri J.K. Lahiri.

11. E.O. File.

12. SC File.

Sr. Accounts Officer.

Copy of M/Personnel Public Grievances and Pensions' O.M. No. 42014/7/85-Estt(SCT) dated the 12.8.85.

31

.....

The undersigned is directed to say that in the Department of Personnel & Training's O.M. No:36036/3/85-Estt(SCT) dated the 29th June, 1985, it is emphasised that Govt. servants should desist from any act of discrimination against members of Scheduled Castes/Scheduled Tribes communities on grounds of their social origin(copy enclosed).

2. It has come to notice that the contents of the O.M. referred to above dated 29th June, 1985, has not received wide publicity. It is once again emphasised that in order to achieve the objective of the Govt. to uplift officials belonging to the SC/ST socially and to merge them in the mainstream of the national life, it is absolutely necessary that the officials belonging to SC/ST are not subjected to any harrasment of discrimination.

3. Ministry of Finance are requested once again to bring the contents of O.M. dated 29th June, 1985 referred to above to the notice of concerned and action taken against officials who violate the instructions.

Sd/- Bata K.Dey,
Director.

Copy of O.M.No. 36036/3/85-Estt(SCT) dated 24.6.85.

Ministries/Departments are aware that the Govt. as a part of the programme for the general welfare of the persons belonging to the SC/ST, have provided reservation in Central Govt. services accompanied by various other benefits concessions and relaxations. The main objective for providing reservation for Scheduled Castes and Scheduled Tribes in appointment to civil posts and services of the Govt. is not just to give jobs to some persons belonging to these communities and thereby, increase their representation in service but to uplift these people socially and merge them in the mainstream of the nation.

2. It has, however, been pointed out to this Department that the Scheduled Castes and Scheduled Tribes officers, after appointment of their social origin. It has been pointed out that SC/ST officers are sometimes transferred to far off places and also placed at insignificant positions. It has also been stated that these officers are not accepted at their places of postings by the concerned superior officers in some cases.

Alle ...2
R. Surti

R. Surti, (Advocate)
Mullana, Contact-794611

3. In this connection, it emphasised that Government servants should desist from any act of discrimination against members of SC/ST communities on grounds- of their social origin. It is also requested that senior officers including the liaison officers of the Ministry/Department should keep a close watch to ensure that such incidents do not occur at all. However, if any such incidents come to the notice of the authorities, action should be taken against the erring official promptly.

4. Ministry of Finance etc. are accordingly requested to bring the contents of this office Memorandum to the notice of all concerned.

Sd/- S.K. Dasgupta
Under Secretary

AKS
R. D. M. W.

A. Datta, (Advocate)
Muzumdar, Circular 751011

3 2 3
17 MAR 1997

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI
BENCH AT GUWAHATI

33
File 3 by
Additional Secretary
Standing Counsel
Central Administrative Tribunal
Guwahati Bench
14/3/97

IN THE MATTER OF:-
OA NO. 271 OF 1996
Shri B. Thadang

-Versus-

Union of India and Others

-A N D-

IN THE MATTER OF :-
Written Statements submitted by
the Respondents 1,2,3 and 4

WRITTEN STATEMENTS

The humble Respondents submit their
Written Statements as follows :-

1. That with regard to the statements made in paragraphs 1,2,3 of the application, the Respondents submit that they have no comments on them.

2. That with regard to the statements made in paragraph 4.1, 4.2, 4.3, 4.4, and 4.5 of the application the Respondents submit that they have no comments on that, the same being matter of record.

3. That with regard to the statements made in paragraph 4.6, of the application, the Respondents submit that in November 1993 owing to some vacancies in the cadre of Divisional Accountant under the administrative control of this office and as it was not possible to conduct the Initial Recruitment Examination immediately for recruitment of Divisional Accountants, it was decided to cover the gap temporarily by taking on Divisional Accountants on deputation basis from amongst the State P.W.D. Clerks having 2 years experience in Public Works Accounts as per provision laid down in the Indian Audit & Accounts Department (Divisional Accountant) Recruitment Rules 1986 (Annexure 'A'). Accordingly the Chief Engineers of the Public Works/PHE etc., Departments of the State of Manipur, Arunachal Pradesh and Tripura were requested to forward the names of the suitable volunteers for posting as Divisional Accountant on deputation basis. On the basis of recommendations of the Chief Engineer, Rural Works Department, Arunachal Pradesh, Itanagar, Shri B. Thadang was selected for the post of Divisional Accountant (Junior Grade) on deputation for one year at the first instance and posted to the office of the Executive Engineer, Bishnupur, Electrical Division, Bishnupur, Manipur vide this EO No. DA Cell/124 dt 18.11.93 and he joined that office on 20.12.93.

Recd
14/3

The recruitment in the cadre of Divisional Accountant is guided by the Indian Audit and Accounts Department (Divisional Accountant) Recruitment Rules 1988, published in the Gazette of India September 24, 1988 Part-II-Sec-3(1), (Annexure -A) which came into force with effect from 24.9.88. The applicant was posted on deputation in terms of Note-2 (ii) under column-II of the Schedule prescribed in the aforesaid Recruitment Rules, 1988 which clearly states that vacancies caused by the incumbent being away on transfer on deputation or long illness or study leave or under other circumstances for duration of one year or more may be filled on transfer on deputation from State Public Works Departments. 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. Further Note-3 below column-II of the Recruitment Rules clearly states that the period of deputation in another ex-cadre post held immediately preceeding this appointment in the same or some other Organisation / Department of the Central Government, shall ordinarily not exceed 3 years. As the applicant was posted as Divisional Accountant on 18.11.1993 i.e. after the Recruitment Rules came into force, his selection and posting as Divisional Accountant (on deputation) was guided by Note-2 (ii) and Note-3 under column-II of the aforesaid Recruitment Rules.

4. That with regard to the Statement made in Paragraph 4.7 of the application, the Respondents deny the fact as stated by the applicant that previously a large number of persons who came on deputation as Divisional Accountant permanently after allowing them to sit for the examination for the post of Divisional Accountants. What the applicant has stated in para 4.7 is completely incorrect and baseless. It is to point out here that Shri P.K. Paul and others were appointed during 12/89, as DA on deputation; like the present applicant, (Shri B. Thadang) and were repatriated to their parent departments. Shri P.K. Paul and other DA's on deputation, filed cases against the order of repatriation in CAT, Gauhati [OA NO. 33/93] [Annexure B]. The Hon'ble CAT in its judgement, dismissed the application/Petition [Annexure C] and passed a favorable judgement in favour of this office.

5. That with regard to the statement made in paragraph 4.8 of the application, the respondents submit that as the applicant was posted as Divisional Accountant on deputation basis for a specific period, question of allowing him to appear in the Divisional Accountant Grade Examination, which is prescribed only for the emergency Divisional Accountants as well as Divisional Accountant recruited directly on the basis of a Recruitment Examination conducted by this Department, does not arise at all.

Emergency Divisional Accountant who were appointed prior to 24-9-1988 were allowed to appear D.A. Grade Examination for their permanent absorption and they were allowed 6(six) chances to pass their D.A. Grade Examination and those who could not pass the Examination within 6 chances were repatriated to their parent Departments. Some of the unqualified Divisional Accountants appointed before 24-9-1988 and who were repatriated

to their Parent Deptt. filed cases against such order of repatriation (one of such application / Petition enclosed, Annexure D). the Hon'ble CAT in its judgement had directed this office to allow those Divisional Accountants who did not physically avail the 6 chances till then to avail of the remaining chances and for those who had availed of the six chances already, the Hon'ble CAT allowed one more special chance (Annexure E).

But that provision is not applicable in case of the applicant who was appointed as DA on deputation but applicable only in case of the emergency Divisional Accountant recruited before 24.9.88.

Thus, what the applicant has stated in Para 4.8 is entirely misleading, incorrect and baseless.

6. That with regard to the Statement made in Paragraph 4.9 of the application, the Respondent submits that in the appointment letter issued in favour of the applicant by this office (Annexure H), it had clearly been mentioned that the applicant was appointed purely as DA on deputation. So, there is no question of allowing him to appear at Departmental test for permanent absorption. This office cannot go beyond recruitment rule [Annexure A] framed by Comptroller & Auditor General of India. The contention of the applicant as stated in this Para 4.9 has no basis.

7. That with regard to the statement made in Para 4.10, 4.11 and 4.12 of the application, the Respondent submits that it is a fact that the applicant submitted a representation to Comptroller and Auditor General of India (Respondent No.2) for allowing him to appear at the Divisional Accountant grade Examination for permanent absorption in the cadre and same representation as a formality had been forwarded to Comptroller and Auditor General of India, which was turned down. It is to point out here that similar representations of eight Divisional Accountants submitted earlier also forwarded to the Comptroller and Auditor General of India, were also turned down vide letter No. 2495 NGE-III/17-92/Vol-I dated 2.12.92 (Annexure F)

It is further stated that the period of deputation as well as the pay and Deputation(Duty) allowance in respect of the applicant was governed by the Govt. of India, Ministry of Personal, Public Grievances and Pension (Deptt. of Personnel and Training) O.M.NO. 2/12/87-Estt(Pay-II) dated 29-4-88 (Annexure-G). Accordingly, it was specifically mentioned in his posting order issued vide this office E.O.No. DACe11/124 dated 18-11-93 (Annexure-H) that the period of deputation of the applicant will be one year at the first instance and his pay and Deputation(Duty) allowance will be governed by the Govt. of India O.M. dated 29-4-88 (Annexure-G) and he was also allowed to exercise option to draw either the pay in the scale of Pay of the deputation post or his basic pay in the parent cadre plus Deputation((duty) allowance, which itself indicates that the applicant was posted as Divisional Accountant (on deputation) for a specific period and was not appointed either as Emergency Divisional Accountant or Divisional Accountant recruited/appointed on probation. As such the conditions of recruitment and confirmation etc, as stated in the application in case of

emergency Divisional Accountants etc. are not applicable to the applicant as he was posted as Divisional Accountant purely on deputation basis.

8. That with regard to the Statement made in Paragraph 4.13. the respondents submits that this statement has no relevance to the conditions and appointment of the applicant or with the case. Besides, the statement is not at all true as the Divisional Accountants are most up to date and most of the vacancies have also been filled up.

9. That with the regard to the statement made in Paragraph 4.14. the Respondent submit that the applicant was transferred from Bishnour Electrical Manipur Division, Manipur to Yingkion Electrical Dvn, Arunachal Pradesh, at his own request.

10. That with the regard to the statement made in Paragraph 4.15 of the application. the Respondents submit that on completion of terms of deputation as laid down in recruitment rules, which came in force w.e.f. 24.9.1988 [Annexure A], the applicant repatriated to his parent Deptt. w.e. f. 30.11.96. What the applicant had stated in the last part of this paragraph is not correct. Shri J.K. Lahiri a qualified Divisional Accountant had already been posted in place of the applicant. But he could not take over the charge due to the stay order of the Hon'ble CAT. issued in favour of applicant.

11. That with regard to the Statements made in paragraph 4.16 of the application, the Respondent submits that Recruitment to the cadre of Divisional Accountant is guided by the Indian Audit and Accounts Department (Divisional Accountant) Recruitment Rules 1988 which came into force w.e.f. 24.9.88 (Annexure-A). It is specifically mentioned in Note.1, under column 11 of the Rules that the direct recruit will be selected on the basis of an entrance Examination conducted by an Authority specified by the Comptroller and Auditor General India (i.e. the Staff Selection Commission). During the period of probation they should qualify in the Prescribed Departmental Examination. As such the Department is going to recruit the Divisional Accountants against existing vacancies through the Staff Selection Commission. However, in Note 2 and 3 below column 11 of the Recruitment Rules (Annexure-A) it was specified that vacancies caused under some circumstances for a duration of 1 year or more may be filled in by transfer on deputation from Accountants/Sr.Accountants (belonging to the A. & E Office in whose jurisdiction the vacancies have arisen) who have passed the Departmental Examination for Accountants and have 5 (five) years regular service in the aforesaid Posts including 2 (two) years experience in works Section or State Public Works Clerks holding Posts equivalent to, or comparable with that of Accountant/Sr. Accountant on regular basis for ~~5 (five) years~~ including 2 (two) years experience in Public Works Accounts, but the period of deputation shall not ordinarily exceed 3 (three) years. As the applicant was a Divisional Accountant on deputation for a specific period instruction contained in department of Personnel & Training, Govt of India's D.M. No. 36036/dd3/85-Estt (SCT) dated 29.6.1985 is not applicable here. The applicant was posted on deputation basis as Divisional

Accountant for a specific period and he has been repatriated to his parent Department after the completion of maximum admissible tenure of 3 years, deputation as per provisions of the Indian Audit and Accounts Department (Divisional Accountant) Recruitment Rules 1988 (Annexure-A) and as such no injustice has been committed by the Department. As the application has no merit at all, the same is liable to be dismissed.

12. That with regard to the statements made in paragraph 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and 5.8 of the application, regarding reliefs sought for and the grounds for relief the Respondents submit that the applicant is not entitled to any one of the relieves sought for and as such the application is liable to be dismissed. The Respondents further submits that none of the grounds mentioned in this paragraph is maintainable in law as well as in fact and hence, the application is liable to be dismissed with costs.

Further the Respondents submit that Similar cases were filed by the deputationists against the order of repatriation by Shri P.K. Paul and 9 others deputationists (DA No. 33/93 Annexure B) before the Hon'ble Tribunal, Guwahati.

But the Hon'ble Tribunal Passed a favorable judgement in favour of this office and dismissed all the... cases.

[Copy of the judgement, Annexure C.]

In view of the above judgement [Annexure C], the Respondents pray that the Hon'ble Tribunal may vacate, the stay order, passed in favour of the applicant and dismiss the application.

13. As regards the statements made in paragraph 6 and 7 the Respondents submit that they have no comments on this, the same being matter of record.

14. That with regard to the statements made in paragraph 8 and 9 of the application regarding relief sought for and interim orders the Respondents submit that in view of the facts and circumstances of the case, the interim order granted in this case deserves vacation forthwith, and as such the respondents pray that the same may be vacated forthwith. In the light of the judgement [Annexure C..] passed by Hon'ble Tribunal Guwahati in similar DA No 33/93 and 9 others,

In the light of the above judgement passed earlier by the Hon'ble Tribunal, the Respondents submit that the application may be dismissed with cost.

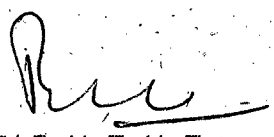
15. That with regard to the statement made in paragraphs 10 and 11 of the application, the respondents submits that they have no comments on them.

16. That the respondents humbly submit that the applicant was selected and posted as Divisional Accountant on deputation basis for specific period and the tenure/terms and conditions of deputation was governed by the Indian Audit & Accounts Department (Divisional Accountant) Recruitment Rules 1988 (Annexure-A) and G.I.O.M No. 2/12/87 -Estt. (Pay-II) dtd. 29.4.88 [Annexure.G] and he was repatriated to his parent

Department after completion of maximum admissible period of deputation as per provisions of the Recruitment Rules. No illegality, impropriety or arbitrariness has been committed by the Departments and as such the application has no merit at all and same is liable to be dismissed like judgement [Annexure-c] passed by the Hon'ble Tribunal in the similar nature of DA No. 33/93 and 9 others [Annexure B].

VERIFICATION

I, Shri R. Kharlukhi, Deputy Accountant General (Admn.), O/o the Accountant General (A & E) Meghalaya, Mizoram and Arunachal Pradesh, Shillong, do hereby solemnly declare, that the statements made above in the Written Statements are true to my knowledge, belief and information and I sign the verification on the 13 th day of March 1997 at Shillong.



DEPONENT.

इसके उप-महालेखाकार (प्रब)
The Accountant General (Admn)
कार्यालय, महालेखाकार (अ.द.ह.)
Office of the A.G. (A&E)
अ.प्र. शिल्लोंग
Shillong

(Department of Expenditure)

New Delhi, the 8th September, 1986.

G.S.R. 749.—In exercise of the powers conferred by clause (5) of article 146 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 entire 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, 1986.

(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. Disqualification.—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:

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-Servicemen and other special categories of persons, in accordance with the orders issued by the Central Government from time to time in this regard as applicable to persons employed in the Indian Audit and Accounts Department.

SCHEDULE

Name of post	No. of post	Classification	Scale of pay	Whether selection post or non-selection post	Whether benefit of added years of service admissible under Rule 30 of the Central Civil Service (Pension) Rules, 1972
1	2	3	4	5	6
Divisional Accountant	2504*(1986) *Subject to variation dependent on workload.	General Central Service Group 'C' Non-Gazetted Ministerial.	Rs. 1490-40-1600-50-2360-EB-60-2600	Not applicable	No

Age limit for direct recruits	Educational and other qualifications required for direct recruits	Whether age and educational qualifications prescribed for direct recruits will apply in case of promotees	Period of probation if any
7	8	9	10

Between 17 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 qualification 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

Handwritten signature

⊗ Categories of candidates eligible to appear at the IRE has been specified in para 10 of the notification.

FOR SERVICE OF RESPONDENT NO. 2
WITH APPLICATION.

Ammon
REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI - 5

No. -- 764

Dt. Guwahati, the 1/4/93

To,

(BT)

The Accountant General (A&E)

Meghalaya, Etc. Shillong.

Sub :- Original Application No. 33/93

Sri P. kr. Paul

APPLICANT

versus

U.O.I. & ors.

RESPONDENTS.

In the matter of an application u/s 19 of the Central Administrative Tribunal Act, 1985, I am directed to forward herewith a copy of application alongwith a copy of Order dtd 26.2.93 passed in the above noted case for information and necessary action

Please take notice that the above mentioned case will be listed for Admission/Orders/Hearing on 22.4.93 at 10-30 A.M. before this Tribunal.

You are, therefore, directed to appear on the said date and at the appointed time either in person or through an Advocate duly appointed by you for the purpose. In default of your appearance on the date fixed, the case will be heard ex-parte

Records, if any, connected with this case should be submitted before the fixed date.

Enclo - 1) Copy of Application
with annexures.

2) Copy of Order dtd.

26.2.93

BY ORDER

DEPUTY REGISTRAR (JUDL)

RV-3478
File 68
DA - Cell

W.M-1/Regd/14

help
SM

SB

8/4

11/4/93

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI-5

42

No :- 764

10

Dt. Guwahati, the 1/4/93

To,

The Accountant General (A&E).....
Meghalaya, Etc. Shillong.....
.....
.....

Sub :- Original Application No. 33/93

..... Sri. P. kr. Paul APPLICANT

versus

..... U. O. I. & Ors. RESPONDENTS.

In the matter of an application u/s 19 of the Central Administrative Tribunal Act, 1985, I am directed to forward herewith a copy of application alongwith a copy of Order dtd 26.2.93 passed in the above noted case for information and necessary action

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- Encl - 1) Copy of Application with annexures.
- 2) Copy of Order dtd.

BY ORDER

[Signature] 1/4/93

DEPUTY REGISTRAR (JUDL)

26.2.93

[Signature]
1/4/93

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI, 5

O.A.No.33/93

Sri P.K. Paul Applicant.

vs.

U.O.I.&ors Respondents.

P R E S E N T

THE HON'BLE MR.JUSTICE S.HAQE, VICE CHAIRMAN
THE HON'BLE MEMBER SRI G.L.SANGLYINE, ADMN.

For the Applicant, Mr. J.L.Sarkar, Mr. M.Chanda.

For the Respondents, Mr. S.Ali, Sr.C.G.S.C.

D A T E

COURT'S ORDER

26.2.93

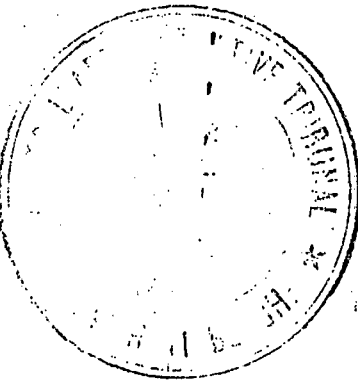
Heard learned counsel

Mr J.L. Sarkar on behalf of the
applicant, Sri Pradip Kumar Paul.

Perused the statement of grievances
and reliefs sought for in the
application.

This application is
admitted. Issue notice on the
respondents under Registered Post.
Learned Sr. C.G.S.C. Mr S. Ali k
takes notice of this case and prays
for six weeks time to file counter.
Time allowed as prayed for.

Heard Mr Sarkar on the
interim relief prayer. Also heard
Mr Ali on this point. The applicant
is serving as Jr. Grade Divisional
Accountant in the office of the
Executive Engineer, Southern
Division No.3 PWD, Udaipur(Tripura).
He has now been reverted to his
parent department wide order under
letter No.DA-Cell/178 dated
22.2.1993(Annexure-D) issued by



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6.2.93

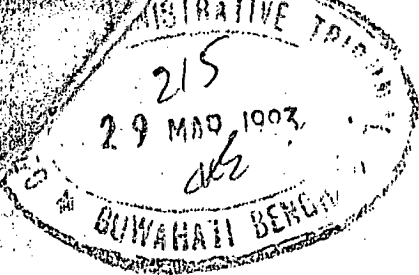
the Accountant General (A&E),
 Meghalaya, Shillong. Upon
 hearing the counsel for the xxx
 parties and in view of the facts,
 circumstances and previous
 decisions, we consider it a
 proper case for an interim order.
 Accordingly, the operation of
 the impugned order of repatria-
 tion in respect of the applicant
 Sri P.K. Paul under letter
 No. DA-Cell/178 dated 22.2.1993
 (Annexure-D) is stayed.

List on 22.4.1993 for
 counter and for further orders.

SD/ S. HAQUE,
 VICE CHAIRMAN
 SD/ G.L. SANGLYINE
 MEMBER (ADMN)

TRUE COPY
 [Signature]
 (Judicial)
 Tribunal
 Guwahati.

10/11/22



13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH.

GUWAHATI.

An application under Section 19 of the Central Administrative Tribunal Act, 1985.

O.A. No. 97 of 1993.

Shri P.K.Paul. Applicant.

-Vs-

Union of India ' Ors. Respondents.

I N D E X.

<u>Sl. No.</u>	<u>Annexure.</u>	<u>Particulars.</u>	<u>Page No.</u>
1.	A	A copy of the appointment order dated 24.10.89.	19.
2.	B	A copy of representation dated 16.9.91.	22.
3.	C.	Representation dated 21.8.92.	23.
4.	D	Order of repatriation issued by A.G., Meghalaya.	26.

14

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1. Particulars of the applicant :

Shri Pradip Kumar Paul,
Junior Grade Divisional Accountant,
O/O. the Executive Engineer,
Southern Division No. 3,
P.W.D. Udaipur, P.O. - Udaipur,
District - South Tripura, Tripura.

2. Particulars of the respondents :-

1. Union of India,
(Through Comptroller and Auditor
General of India, New Delhi).

2. The Accountant General (A & M),
Meghalaya, etc., Shillong.

3. The Executive Engineer,

Southern Division No. 3,

P.W.D. Udaipur, P.O. Udaipur,

District - South Tripura, Tripura.

4. The Chief Engineer, R.W.D.,

Arumchal Pradesh, Itanagar.

3. Particulars for which this application is made :

This application is made against the order of
repatriation of the applicant to the parent department,
issued by the Accountant General (A & M), Meghalaya,
Shillong under his letter No. Cell/178 dated 22.2.93
and also praying for a direction to the respondents for
retention of the applicant in the department and for
allowing him to appear in the Divisional test examination
for regular absorption in the existing post of Divisional
Accountant.

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4. Limitation.

The applicant declares that the application is within the limitation prescribed in section 21 of the Central Administrative Tribunal Act, 1985.

5. Jurisdiction :

The applicant further declares that the subject of the case against which he wants redressal is ~~outside~~ ^{within} the jurisdiction of the Hon'ble Tribunal.

6. Facts of the case :

1. That the applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed by the Constitution of India. The applicant presently working as Junior Grade Divisional Accountant in the Office of the Executive Engineer, Southern Division No. 3, P.S.D., Dhalpur, South Tripura, under the Accountant General (A & H), Meghalaya, Shillong etc.

2. That the applicant was initially appointed as I.D.C. on 29.11.78 in the office of the Chief Engineer R.W.D., Arunachal Pradesh, Itanagar. He was promoted as U.D.A. in the year 1984 in the same at Itanagar.

3. That during the year 1989 the Accountant General (A & H), Meghalaya etc. Shillong was in need of services of some divisional Accountants in the existing regular

vacancies.....

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16

vacancies of the Divisional Accountant of the department. There is a provision for recruitment of divisional Accountant, the following extracts from Chapter VII of the Comptroller and Auditor General's Manual of Standing Orders are quoted hereunder :-

" ORGANIZATION.

247. The Divisional Accountants are constituted in a separate cadre with its own leave and training reserve under the administrative control of the Accountant General. This cadre is intended to provide one trained Accountant for each Public Works division or other independent executive charge and one for each of certain appointments in the Audit office".

" Source of Recruitment.

249. Subject to such exceptions as may have been authorised by the Comptroller and Auditor General, recruitment to the cadre of Divisional Accountants is made by the Accountant General by selection from the following three sources through a competitive and qualifying test called the Initial Recruitment Examination for Divisional Accounts (vide Annexure- I to this Chapter) -

- (1) P.W.D., Accounts Clerks.
- (2) Upper Division Clerks of the Audit Offices.
- (3) Direct recruit".

It is.....

- 4 -

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It is quite clear from above that the P.W.D. Accounts Clerks are treated as the first category of source of recruitment of the Divisional Accountant.

4. That the Accountant General, Meghalaya (A & D), Shillong etc. however, prefer to recruit the Divisional Accountant in the year 1989 from amongst the P.W.D. Accounts Clerks of the Chief Engineer, P.W.D., Arunachal Pradesh, on deputation basis and requested the Chief Engineer, P.W.D. Arunachal Pradesh to recommend the names of volunteers having requisite qualification and experience in Public Works Accounts. Accordingly, the Chief Engineer, P.W.D., Arunachal Pradesh had recommended the name of the applicant for the post of Divisional Accountant. The applicant thereafter, selected by the office of the Accountant General (A & D) Meghalaya, Shillong and offered the post of Junior Grade Divisional Accountant in the pay scale of Rs. 1600-40-1600-50-2300-EB-60-2600/- under the Administrative Control of the Accountant General (A & D) Meghalaya etc. Shillong, under their office order No. P.O. No. MM-1/DA Cell/146 dated 26.10.89 on deputation basis. The applicant was initially posted in the office of the Chief Engineer, P.W.D. Irigaon, Agartala, thereafter he was transferred and posted as Divisional Accountant in the office of the Executive Engineer, Louthem Division No.3, P.W.D. Udaipur, and the applicant is still working at Udaipur.

A copy.....

A copy of the appointment order dated 24.10.89 is enclosed as Annexure - 1.

5. That your applicant submitted representation on 16.9.91 before the Accountant General (T. & E) Meghalaya etc. Shillong for regularisation of the service of the applicant in the present department, in the cadre of Divisional Accountant and also for allowing the applicant in the Divisional test examination as the applicant is completing two years of service in the Grade of Divisional Accountant on 16.12.91. As it is stated that the conditions of recruitment and confirmation of the Comptroller and Auditor General's Manual of Standing Orders are as follows :-

"Conditions of Recruitment and Confirmation."

250. All departmental candidates who have officiated as emergency Divisional Accountants for a period of not less than 2 years (including spells totalling 2 years) may be absorbed in the cadre on their passing the Divisional Test alone. The age limit for such emergency Divisional Accountants for appearing in the examination will be 49.

(2) Those who have reverted at their own request or as a disciplinary measure cannot however be considered ".

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"254. Every person appointed to the Cadre of Divisional Accountants will be on probation, his confirmation being governed by the provisions in paragraph 260. The period of probation for recruits from sources (1) and (2) will be two and half years (six to eighteen months for training and one year for trial as a Divisional Accountant) unless they are reverted earlier on account of being found unsuitable during the period of their training. The period of probation in the case of direct recruits will be three years (two years for training and one year for trial as a Divisional Accountant). If a direct recruit fails to pass the Divisional Test Examination within the period of probation he will be removed from service or if fully deserving of retention, offered an Upper Division clerical vacancy in the Audit Office.

Explanation - The periods of probation may be automatically extended in the case of recruits from sources (1) and (2) if an Accountant General holds for them under paragraph 257, the Divisional Test Examination only once in a year instead of twice to give candidates three normal chances. The Accountant General may also for special reasons, curtail the period of probation in whole or to the extent necessary. "

Therefore.....

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Therefore, it appears that there is a clear provision of recruitment of Divisional Accountant from amongst the P.B.L. Accounts Clerks and in the event of said recruitment, the applicant is liable to be under probation for a period of two and a half years (six to eighteen months for training and one year for trial as a Divisional Accountant) and it is further stated that Direct recruitment if fails to pass the Divisional test examination within the period of probation will be removed from the service or may be offered an upper Division clerical vacancy, whereas, the present applicant is eligible for regular absorption in the cadre of Divisional Accountant and he has already acquired 5 years practical experience of service of the Divisional Accountant and holding the post of Divisional Accountant till date is more beneficial and economical for the department and if he is allowed to continue in the post of Divisional Accountant and also allowed to appear in the divisional test examination for the purpose of regular absorption in the cadre of Divisional Accountant. But the respondents most surprisingly did not allow the applicant to appear in the said examination till date.

A copy of representation dated 16.9.91 is enclosed as Annexure - B.

6. That the applicant further approached to the Comptroller and Auditor General, through Accountant General (A & E) Meghalaya, Shillong for regularisation of the service of the applicant as Divisional Accountant through Divisional Test Examination, although the applicant working on deputation basis but as per the provision of C.P.W.A. Code, he is eligible in all respect for appearing in the Divisional test examination and thereby he is entitled to be regularised through the prescribed procedure as divisional Accountant. The applicant did not receive any response from the Comptroller & Auditor General as required his representation dated 21.8.92. The applicant submitted another representation dated 8.1.93 for extension of deputation service to the Comptroller and Auditor General of India, New Delhi, but to no result.

A copy of representation dated 21.8.92 is enclosed as Annexure - "C".

7. That the applicant further begs to state that he is belonged to the category - I of the source recruitment, as per C.P.W.A. Code (Appendix-I) and the applicant has completed 3 years of service as divisional Accountant, and the applicant is practically working in the field for last 3 years with the satisfaction of all concerned, therefore, if the applicant is allowed to retain in the

present.....

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present department and further if he is allowed to appear in the Divisional test examination, the process of recruitment will be more easier and it would be cost less to the department than going for a fresh process of recruitment of Divisional Accountant. He it stated that the respondents, are going to recruit a fresh set of deputations on the same process, as the present applicant was recruited earlier, for the posts of Divisional Accountant.

74. That most surprisingly, the Accountant General (A & B) Meghalaya, Shillong, etc. has issued the order of repatriation of the applicant under his letter No. DA - Cell/178 dated 22.2.93. - without any. without any prior intimation to the applicant and without following the principles of natural justice. The order of repatriation of the applicant is discriminatory while, others who came earlier from the same source are retained in the department and allowed to appear in the examination. The order of repatriation passed by the respondents in violation of the statutory rules of recruitment, therefore the order of repatriation is liable to be set aside and quashed.

A copy of the repatriation order dated 22.2.93 is enclosed as Annexure - "B".

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8. That there are 25 vacancies of Divisional Accountants including the vacancy of the present applicant which is he is working till date, and some of the Divisional Accountants who are working till date, and some of the Divisional Accountants who are working presently in the department will be retired shortly on superannuation and some of the new Division has already been created, therefore, there are more vacancies available for regular absorption of the present applicant through Divisional test examination.

9. That the applicant further begs to state that as per C.P.W.S. Code, the controller and Auditor General is duty bound to recruit from the source of category-1 of recruitment, and thereby the applicant has acquired a right for appearing in the Divisional test examination for regular absorption in the department. The rules of recruitment has been framed under Article 309 of the Constitution of India, therefore, the process of recruitment has got statutory force, therefore, the controller and Auditor General cannot make any deviation from the statutory rules of recruitment from the source of category-1. If there is any deviation from the aforesaid rules it would amount to violation of the statutory rules.

24/16

16. That the Accountant General (A & L) Meghalaya, Shillong, on all earlier occasion used to recruit Divisional Accountant temporarily from the parent department of the present applicant and they are allowed to appear in the Divisional Test Examination and used to be regularised in the Cadre of Divisional Accountant in the event of passing the said Examination whereas the respondents did not allow the present applicant to appear for appearing the said Divisional test Examination. The respondent in the instant case of the applicant had intentionally termed the temporary appointment as ad hoc, with the view of intention to deprive the opportunity for regular absorption. He it stated that many of the P.W.D. Accounts clerks of the same office of the applicant who were on deputation already regularised by the A.G. and some of the Upper Division Accounts Clerks are still working for 7/8 years as divisional Accountant under the administrative control of the Accountant General (A & L) Meghalaya, although they could not clear up the Divisional test Examination. However, they are allowed to appear in the Examination. Therefore, representation of the present applicant to the parent department and non allowing him to appear in the Divisional test examination by the respondents are highly arbitrary, discriminatory and unfair.

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11. That the applicant is eligible in all respect for appearing in the Divisional test Examination as per the statutory rules of the department, and he is still working as Divisional Accountant, if the applicant is reverted without providing him any appeal or opportunity of appearing in the examination it would cause loss of emolument, status and rank of the present applicant. Therefore the Hon'ble Tribunal be pleased to direct the respondent to retain the applicant and allow him to appear for Divisional test examination as per prevailing rules.

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

7. Reliefs prayed for :-

Under the facts and circumstances the applicant prays for the following reliefs :-

(1) That the respondents be directed to regularise the service of the applicant as Divisional Accountant under Accountant General (A & L) Meghalaya, etc. Shillong.

(2) That the order of reversion bearing letter No. E. xxx DA - Cell/178 dated 22.2.93. dated be set aside and quashed.

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(3) That the respondents be directed to retain the applicant as Divisional Accountant and be allowed to appear in the Divisional test examination.

(4) To pass any other order/orders deemed fit and proper by the Hon'ble Tribunal.

(5) Cost of the case.

The above reliefs are prayed on the following grounds -

GROUND 1

1) For that the applicant is working as Divisional Accountant for last 3 years under the Administrative Control of Accountant General (A & B), Meghalaya, Shillong etc.

2) For that the applicant has already acquired experience, by working in the post for more than 3 years and in all respect eligible for appearing in the Divisional test examination.

3) For that the applicant belonged to category-I of the source of recruitment as per Central Public Works Accountant Code Appendix-I (para 249) i.e. from P.W.D. Accounts clerks.

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4) For that as per C.P.W. Account Code (Appendix-I) para 250, the applicant has officiated for more than two years thereby has acquired the right for regular absorption in the Code on passing the Divisional test alone.

4) For that in terms of para 254 of C.P.W. Account Code (Appendix-I) applicant is eligible and entitled to be regularised in the post of divisional accountant on passing the Divisional Test Examination, hence the applicant is entitled to be retained in the department and also entitled to appear in the said examination.

5) For that the word deputation was used in the letter of appointment of the applicant by the respondent to deprive him for regular absorption in violation of the statutory recruitment rules as per C.P.W. Account Code.

6) For that the recruitment of the applicant by allowing to appear in the Divisional test Examination is not beneficial and economical for the establishment of the Accountant General when the Union of India, decided to reduce the establish expenditure considering the adverse economical condition of the country.

7)

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7) For that there are good numbers of temporary recruit divisional Accountants from the same establishment of the applicant are still working as divisional Accountant for less 7/8 years, and they are allowed to appear in the divisional test examination; so denial of the respondent as regard to appearance in the divisional test examination by the application is violative of Article 14 and 16 of the Constitution of India, and the order of repatriation is liable to be set aside, and quashed.

8) For that the repatriation of the application to the parent department will lead to civil consequences, and thereby it will cause loss of emolument, status and rank of the application.

9) For that there is a statutory provision for recruitment of Divisional Accountant as per C.F.W.A. Code from amongst the F.W.D. Accounts Clerks and the applicant belongs to category 'A-1' of the source of recruitment.

10) For that as per provision of direct recruit in terms of para 754 of Appendix - I of C.F.W.A. Code, if a direct recruit fails to pass Divisional Test Examination within 3 years of probation period, shall be removed

from.....

from service which will cause great hardship to the direct candidate whereas, if the applicant is allowed to appear in the divisional test examination being the candidate of category-1 of recruitment source, Department would find it more convenient to repatriate the applicant to his parent department in the event of his non-passing the examination.

11) For that the applicant is already working in the field as divisional accountant.

12) For that there are 15 vacancies of Divisional Accountant are there in the department under the control of Accountant General.

8. Interim Reliefs prayed for :-

During the pendency of the case the applicant prays for the following interim reliefs :-

- 1) That the operation of the repatriation order of the applicant to his parent department, issued under letter No. Dh - Cell/178 dated 22.7.93 ~~dated~~ he stayed till final disposal of the application.

the.....

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The above prayer is made on the grounds explained in para 7 of the application.

9. Details of remedy exhausted :-

There is no scope of any other remedy except the application before this Tribunal.

10. Matter not pending in any other court/Tribunal.

The applicant declares that he has not filed any other application before any other court/Tribunal.

11. Particulars of the postal order :-

Postal order No. _____

Date _____

Issued from _____

Payable at _____

12. Details of index :-

An index showing the particulars of documents is enclosed :

13. List of Enclosures :-

As per index.

In Verification.....

31

IN WITNESS WHEREOF.

I, Pradip Kumar Paul, son of late

P.C. Paul, resident of Udaipur, under South Tripura,

declares in the above case, do hereby declare that

the circumstances in para 1 to 13 are true to my

knowledge and I have not suppressed any material

facts.

Place :

Date :

Signature.

Annexure

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

DESPATCH NO. 1237

DATED GUWAHATI, THE 21/3/95

CURTAINMENT APPLICATION NO. : 33-333/44, 03/95
MISC. APPLICATION NO. :
CONTENTION PETITION NO. :
REVIEW APPLICATION NO. :
TRANSFER APPLICATION NO. :

Shri P.K. Paul & 7 Others..... APPLICANT (S)/
PETITIONER (S)

VERSUS

Union of India & Ors...... RESPONDENT(S)

To,

*The Chief Engineer, PND,
Assamchal Pradesh,
Itanagar.*

Sir,

I am directed to forward herewith a copy of Judgment/Order dtd. 16.1.95 passed by the Bench of this Tribunal comprising of Hon'ble Judices Shri M. G. Chandhari Vice-Chairman and Hon'ble Shri G. Sanglyine Member, Administrative in the above noted case, for information and necessary action, if any.

Please acknowledge receipt.

Yours faithfully,

Enclo. : As above.

(Sixteen sheets)

[Signature]
SECTION OFFICER (JT)

*3 (2)
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3/4*

*(6)
173*

5/4/95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(As Agartala)

ORIGINAL APPLICATION NO.33 of 1993

With

ORIGINAL APPLICATION NO.34 of 1993

ORIGINAL APPLICATION NO.35 of 1993

ORIGINAL APPLICATION NO.36 of 1993

ORIGINAL APPLICATION NO.37 of 1993

ORIGINAL APPLICATION NO.38 of 1993

ORIGINAL APPLICATION NO.44 of 1993

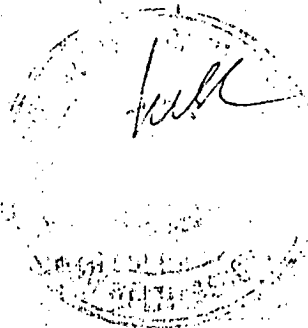
ORIGINAL APPLICATION NO.65 of 1993.

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

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (ADMINISTRATIVE).

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



7. Shri Bijit Bhusan Deb (in O.A.No.44/93) 34
 Junior Grade Divisional Accountant
 Office of the Executive Engineer
 Flood Management Division No.III
 Udaipur, Tripura, Agartala. Applicant
8. Shri Tapan Lal Mukherjee (in O.A.No.65/93)
 Office of the Executive Engineer
 Gumti Electrical Division
 Gumti Project, Tripura. Applicant.

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

-Versus-

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

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

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

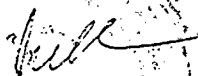
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ORDER

CHAUDHARI.J. V.C.

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

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

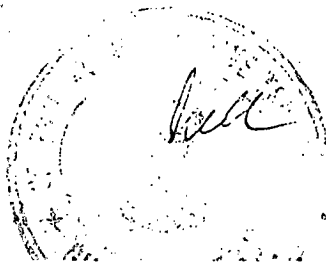


General (A&E), Meghalaya, Shillong, and being selected were transferred on deputation to that office. They were serving on deputation under the Accountant General (A&E) until 22.2.1993 when orders for their repatriation to the parent department, i.e. ^{office of} Chief Engineer, PWD, Arunachal Pradesh were passed by the Accountant General (A&E), Shillong. These orders are the subject matters of challenge in these applications. The applicants' grievance is that they have been arbitrarily repatriated illegally denying them the opportunity to appear at the selection test examination and to be absorbed in the borrowing department of Accountant General (A&E) on regular basis as Divisional Accountants. They therefore pray that the impugned order of repatriation dated 22.2.1993 may be set aside and the respondents be directed to allow them to appear in the Divisional test examination for regular absorption in the existing posts of Divisional Accountants (under the AG).

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

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

and....



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

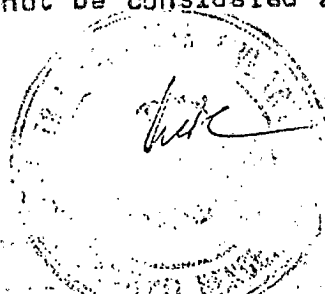
- 1) The applicants are governed by the standing orders issued by the Comptroller and Auditor General of India (contained in the Manual) in Chapter VII relating to Divisional Accountants and not by the Recruitment Rules 1988.
- 2) The President of India had no authority to make the Recruitment Rules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

We now proceed to examine each of these submissions.

Submissions at serial Nos. 1 and 2: 1/5 6

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

to.....



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

Submissions at serial Nos. 3, 4 and 5:

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

compete....

Kill

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

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

Divisional.....

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

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

Rule 3 provides the method of recruitment which shall be as specified in columns 5 to 14 of the schedule.

Heading of Column 11 in the schedule is as follows:

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

Column 12 is as follows:

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

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

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

Note 2 reads thus:

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

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



Will

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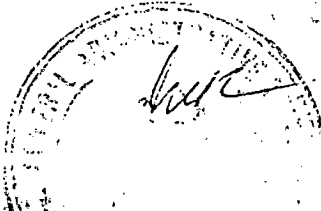
Accountant on a regular basis for 5 years including 2 years experience in Public Works Accounts."

Note 3 reads thus:

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

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

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



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

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

7. Submission at serial No.6

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

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

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

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

'Emergency

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

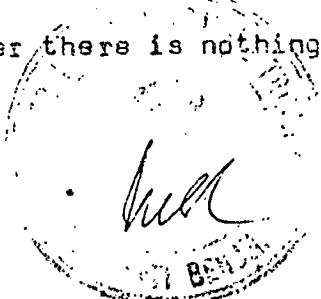
8. The second part of the learned counsel's ^{in equity} equity submissions may now be dealt with.

Submission No. 7: Mr. Sarkar submitted as follows:

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

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

Engineer.....



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

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

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

why.....

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

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

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

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

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14.

Interim orders vacated

Section Officer (I)

Central Administrative Department
Ghazipur Bench, Court No. 5
New Delhi, 110 055

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

copy of judgment to be kept in each one application and separated

Full
16-1-95

15/3

Encl No B

CENTRAL ADMINISTRATIVE TRIBUNAL

Annexure D

E.K. S. Nimbh... vs. J.C.I. & OR... respondents.
Respondent:-
MR. CHANDRANATH HIGH SETHI S. HAQUE, VICE CHAIRMAN.

For the petitioners:- Mr. G. K. S. Ghattacharjee,
Mr. ...
Mr. ...

For the respondents:-

Date:
6.1.92

C O R D E R

Heard learned counsel Mr. G.K. Ghattacharjee on behalf of the applicant. Perused the grievance and prayer in the application.

This application is admitted. Issue notice on the respondents under registered post. Learned Addl. C.G.S.C. Mr. G. Sarma takes notice of this case.

Fix 13.1.92 for further orders.

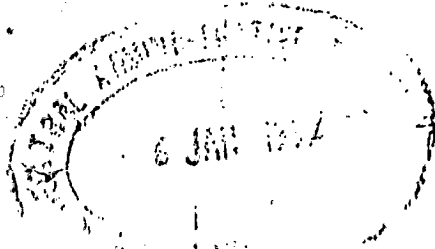
Heard counsel of the parties on the interim prayer. The operation of the impugned order No. LA Cell/148 dated 15.10.91 and the order under telegram dated 28.12.91 relieving the applicant from 15.1.92 are stayed and the applicant shall not be reverted to the parent department until further orders from the Court.

Sd/- S. Haque,
Vice-Chairman.

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Deputy Registrar (Judicial)
Central Administrative Tribunal
Guwahati Bench, Guwahati

2/1/92



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:
GUWAHATI.

Shri R.K. Sanajaoba Singh

..... Applicant

-Versus-

Union of India & others

..... Respondents.

1. Particulars of the applicant.

- (i) Shri R.K. Sanajaoba Singh
- (ii) Son of Shri Sanayama Singh.
- (iii) aged about 42 years.
- (iv) Divisional Accountant,
Office of Executive Engineer,
Mechanical Division No.2, P.W.D.,
Forepat, Imphal.

2. Particulars of the Respondents.

- (i) Comptroller and Auditor General of India,
New Delhi.
- (ii) Accountant General (A & E), Meghalaya etc. Shillong.
- (iii) Chief Engineer,
Irrigation & Flood Control Department,
Imphal, Manipur.

3. ...

3. The application is against the following order:

Order No. B.A. Cell ^{dt.} 14.10.91 passed by Respondent No. 2 reverting the applicant to his parent Department and Telegram from Respondent No. 2 directing that the applicant will be deemed to have been relieved with effect from 15.1.92.

4. The applicant declares that the subject matters of the orders are within the jurisdiction of this Tribunal.

5. The applicant declares that the application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

6. Facts of the case:

1) That the applicant was originally serving as a Upper Division Clerk in the office of the Executive Engineer, Flood Control and Drainage Division, Imphal under the State Government of Manipur. While serving as such, the Respondent No. 2 by his order No. Estt. Order No. Wt. 1/84 dated 5.8.85 appointed the applicant to officiate as Emergency Divisional Accountant under certain terms and conditions.

A copy of the said order is annexed herewith and marked as Annexure-1.

(ii) That the applicant duly joined his new post under the Accountant General and he is continuously serving in the said post and getting all the benefits given to the employees of the Accountant General in the Central Government scale of pay. The applicant has appeared in two Divisional Test Examinations and he has been selected in (1) English, Preces etc. and (2) P. & Account (Practical)..

(iii) That the respondents did not take any steps for getting the applicant qualified in the Divisional Test Examination although the appointment order specifically mentioned that the applicant would be eligible to appear in the said examination after successful officiation for two years and that he would be absorbed after passing the examination within the prescribed chances. In point of fact though the passing of the examination was a pre-condition, many emergency Divisional accountants were retained without insisting on their qualifying in the Departmental Tests. Moreover, no training or coaching facilities were given to the Divisional accountants for appearing and passing the said examination. The applicant, however, was carrying out his duties as Divisional accountant ably and to the satisfaction of all concerned and not clearing the test was not an independent while serving as Divisional accountant.

(iv)...

(iv) That, as per the existing circulars, an Emergency Divisional Accountant can appear in the examination six times and the Respondent No.2 has powers to give additional chances beyond the maximum of six chances.

(v) That, as stated above, inspite of the requirements of passing the examination, the Department was not seriously insisting on the Divisional Accountants to appear in the examinations and there were a large number of unqualified Divisional Accountants serving in the Department. Suddenly from October, 1990 some Emergency Divisional Accountants were reverted back to their parent Department on the ground that they had failed to qualify in the Departmental Tests within the maximum number of chances. These Divisional Accountants approached this Hon'ble Tribunal against their order of reversion and this Hon'ble Tribunal was pleased to stay the operation of the reversion orders. Thereafter, this Hon'ble Tribunal, after hearing the parties, by judgement dated 17.5.91 in OA No.196/90 and others disposed of the cases by directing that the applicants be given six chances physically to pass the examinations and on successful completion be considered for absorption as Divisional Accountants. This number of chances, the number of opportunities offered but not

availed...

availed of should be ignored. This Hon'ble Tribunal subsequently, in another set of nine similar application being OA 72/91, by judgement dated 12.9.91, passed similar directions.

(vi) That the applicant who is similarly situated and is covered by the decision of the aforesaid judgements was expecting that he would be getting the similar chances and as such he was surprised to receive the impugned order No. DA. Cell/148 dated 14.10.91 communicated vide Memo No. DA Cell/3-6/67-68/Vol. 1027-37 dated 2.9.91, whereby the applicant was reverted to his parent Department on the ground that he failed to qualify, himself in the Divisional Test Examination within the prescribed six chances.

(vii) That as similar cases had been disposed off by this Hon'ble Tribunal, the applicant was expecting that as he was similarly situated he would get the same benefit as others but the Respondent No. 2 has now by telegram received by the applicant on 28.12.91 directed that the applicant xxx2xx12x21 would be deemed to have been relieved with effect from 15.1.92 and as such he is approaching this Hon'ble Tribunal.

A copy of the telegraph is annexed herewith and marked as Annexure-II.

7. Details of the remedies exhausted.

The applicant does not have any remedies under the Rules.

8. The applicant further declares that he has not previously filed any application/writ petition or suit regarding the matter in respect of which this application has been made before any court of law or any other authority or any other Bench of the Hon'ble Tribunal and no such application/writ petition or suit is pending.

9. Relief sought and grounds:

I. For that the impugned order reverting the applicant to his parent department after he had put in several years of continuous service was passed in a most arbitrary manner in violation of all principles of natural justice and Rules and as such the impugned order is bad in law and liable to be set aside.

II. For that the applicant did not avail of all the number of chances available to him and as such the authorities ought to have given the applicant a chance to appear in the examinations and that having not been done the impugned order is bad in law and liable to be set aside.

III...

III. For that this Hon'ble Tribunal in CA 196/90 and others decided on 17.5.91 and CA 72/91 and others decided on 12.9.91 held that persons similarly situated were entitled to get six physical chances to pass the examinations and as such the applicant ought to have been given the six chances before being reverted to his parent Department.

IV. For that the applicant who is similarly situated ought to have been given the benefit of the judgment of this Hon'ble Tribunal in Case No. CA 196/90 and CA 72/91 before being reverted to his parent Department and that not having been done the impugned order is bad in law and liable to be set aside.

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

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the opposite parties to show cause as to why the impugned order (Annexure-II) should not be set aside and after hearing the parties set aside the impugned order and/or pass any other order/orders as Your Lordships would

deem...

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- 8 -
deem fit and proper so as to
grant adequate relief to the
applicant.

10. Interim Orders:

It is further prayed that pending disposal
of the application Your Lordships would be pleased
to stay the operation of the impugned order Annexure-II.

11. Does not arise.

12. Bank Draft No. 182321 dt. 31.12.91

Verification...

VERIFICATION

I, Shri R.K. Sankarjyoti Singh, son of Shri Ganayalaa Singh, aged about 42 years, at present posted as Divisional Accountant, Office of the Executive Engineer, Mechanical Division No. 2, P.W.D. Porompat, Imphal, Manipur, do hereby verify that the contents of paragraphs 1, 2, 3, 6, 8, 10, 11 and 12 are true to my knowledge, and those made in paragraphs 4, 5, 7 and 9 are believed to be true as legal advice and that I have not suppressed any material fact.

Signature.

~~Enclosure A~~

Judgment (-157)
Respect. No. 2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

Annexure E

Regd. 401
(10)
D. 02/11
DATED GUWAHATI THE 24/5/73
D.A. cell

DESPATCH NO. 1502

DATED GUWAHATI THE 24/5/73

Recd
1575
633
D.A. cell

ORIGINAL APPLICATION NO. : 208/91
MISC. CASE NO. :
CONTEMPT CASE NO. :
REVIEW APPLICATION NO. :
TRANSFER APPLICATION NO. :

56

Shri M. Hiranani Singh

APPLICANT (S) /
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

To

Accountant General (A & E),
Parsons, Nagaland etc. etc.,
Shillong.

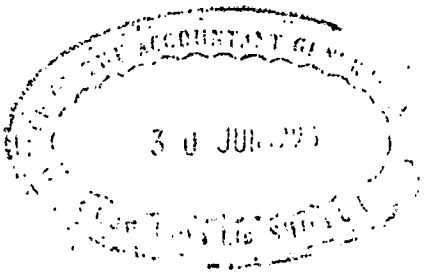
Sir,

I am directed to forward herewith a copy of Judgment/Order dated 8.6.73 passed by the Bench of this Tribunal comprising of Hon'ble Judicial Shri S. Narayana Vice-Chairman and Hon'ble Shri G. S. Sanglyne Member, Administrative in the above noted case, for information and necessary action, if any.

Please acknowledge receipt.

Yours faithfully,

Encl. : As above.



DEPUTY REGISTRAR (JUDL.)

2/6

Pl. Submt
duly processed
sent to
col. etc.
sc. etc.

Encl No. A.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Date of decision: the 0th day of June 1993

O.A.No. 208 of 1991

1. Shri M. Heraman Singh Applicant
-Versus-
Union of India & Ors. Respondents

O.A.No. 209 of 1991

2. Shri S. Bipin Chandra Singh Applicant
-Versus-
Union of India & Ors. Respondents

O.A.No. 210 of 1991

3. Shri Shangkhodun Chongloi Applicant
-Versus-
Union of India & Ors. Respondents

O.A.No. 211 of 1991

4. Shri O. Ibomeha Singh Applicant
-Versus-
Union of India & Ors. Respondents

O.A.No. 212 of 1991

5. Shri A. Shashibhuson Sharma Applicant
-Versus-
Union of India & Ors. Respondents

O.A.No. 213 of 1991

6. Shri B. Ibotomba Sharma Applicant
-Versus-
Union of India & Ors. Respondents

O.A.No. 214 of 1991

7. Shri M. Rohini Kumar Singh Applicant
-Versus-
Union of India & Ors. Respondents

O.A.No. 215 of 1991

8. Shri TH. Lalchomang Applicant
-Versus-
Union of India & Ors. Respondents

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O.A.No. 217 of 1991

9. Shri N. Joykumar Singh : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 218 of 1991

10. Shri P. Kancheng Naga : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 219 of 1991

11. Shri O. Manigum Singh : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 220 of 1991

12. Shri D. Khamza Chint : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 251 of 1991

13. Shri L. Tomba Singh : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 252 of 1991

14. Shri M. Krishnamoni Singh : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 260 of 1991

15. Shri Dinabandhu Roy : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 1 of 1992

16. Shri R.K. Sanajaoba Singh : Applicant
-Versus-
Union of India & Ors. : Respondents

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O.A.No. 112 of 1992

17. Md Noor Rahman : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 157 of 1992

18. Shri N. Kesho Singh : Applicant
-Versus-
Union of India & Ors. : Respondents

O.A.No. 203 of 1992

19. Shri L. Krishna Gopal Singh : Applicant
-Versus-
Union of India & Ors. : Respondents

For the applicants : Mr P.C. Katakai,
Mr G.K. Bhattacharjee,
Mr R. Barua,
Ms G.D. Mazumdar and
Mr G.N. Das, Advocates

For the respondents : Mr G. Sarma, Addl. C.G.S.C. &
Mr A.K. Choudhury, Addl. C.G.S.C.

C O R A M:

THE HON'BLE JUSTICE SHRI S. HAQUE, VICE-CHAIRMAN
AND

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A).

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment is to be circulated to the other Benches of the Tribunal?

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J U D G M E N T .

MADIE .J.

The facts of these 19(nineteen) cases and the reliefs sought for by each of the applicants in the cases are similar and the considerations for decisions on facts and law will be similar. So all these nineteen cases are taken up analogously for disposal by this single judgment.

2. The applicants in the above cases while serving as UDA Clerks in different departments under the Government of Manipur, had been appointed by respondent No.2, Accountant General (A & E), Assam, Meghalaya etc., Shillong and officiating as Emergency Divisional Accountants (EDA) under the terms and conditions vide separate orders in respect of each of the applicants. They are serving as officiating Divisional Accountants under the said Accountant General since appointment. Now the Accountant General (A & E), Assam, Meghalaya etc., Shillong by separate orders ^{with} reverted the applicants to their respective parent departments on the ground that they could not qualify in the Departmental Tests within six-chances as per terms of appointment. ^{Reverted} The particulars of each of the applicants are described hereunder:

Applicant	Appointment Order to EDA	Reversion Order
1. Sri Heramani Singh	E.lett. Order No. WM. I/78 dated 5.8.1985	E.O.No. DA-C611/144 dated 14.10.1991
2. Sri S. Bipin Chandra Singh	E.O.No. WM. I/79 dated 5.8.1985	E.O.No. DA-C611/137 dated 11.10.1991

Applicant	Appointment Order to CDA	Reversion Order
3. Shri Shongkhodun Shongloi	E.O.No.WM.1/45 dated 5.8.1985	E.O.No.DA-Cell/139 dated 11.10.1991
4. Shri D. Ibomsha Singh	E.O.No.WM.1/144 dated 5.8.1985	E.O.No.DA-Cell/145 dated 14.10.1991
5. Shri A. Shashi-Bhuson Sharma	E.O.No.WM.1/54 dated 5.8.1985	E.O.No.DA-Cell/150 dated 14.10.1991
6. Shri B. Ibotomba Sharma	E.O.No.WM.1/69 dated 5.8.1985	E.O.No.DA-Cell/149 dated 14.10.1991
7. Shri M. Rohini Kumar Singh	E.O.No.WM.1/41 dated 5.8.1985	E.O.No.DA-Cell/135 dated 11.10.1991
8. Shri TH. Lalkhomang	E.O.No.WM.1/62 dated 5.8.1985	E.O.No.DA-Cell/134 dated 11.10.1991
9. Shri N. Joykumar Singh	E.O.No.WM.1/72 dated 5.8.1985	E.O.No.DA-Cell/142 dated 14.10.1991
10. Shri P. Kenshong Naga	E.O.No.WM.1/70 dated 5.8.1985	E.O.No.DA-Cell/147 dated 14.10.1991
11. Shri D. Manigun Singh	E.O.No.WM.1/80 dated 5.8.1985	E.O.No.DA-Cell/140 dated 11.10.1991
12. Shri D Khamza Chin	E.O.No.WM.1/92 dated 5.8.1985	E.O.No.DA-Cell/141 dated 19.10.1991
13. Shri L. Tomba Singh	E.O.No.WM.1/89 dated 5.8.1985	E.O.No.DA-Cell/138 dated 11.10.1991
14. Shri M. Krishna- moni Singh	E.O.No.WM.1/68 dated 5.8.1985	E.O.No.DA-Cell/143 dated 14.10.1991
15. Shri Dinabandhu Roy	E.O.No.WM.1/63 dated 5.8.1985	E.O.No.DA-Cell/151 dated 14.10.1991
16. Shri R.K. Sana- jaoba Singh	E.O.No.WM.1/84 dated 5.8.1985	E.O.No.DA-Cell/148 dated 14.10.1991
17. Md. Noor Rahman	E.O.No.WM-1/162 dated 12.3.1987	E.O.No.DA-Cell/30 dated 29.4.1992
18. Shri N. Kesho Singh	E.O.No.WM.1/65 dated 5.8.1985	E.O.No.DA-Cell/56 dated 23.6.1992
19. Shri L. Krishna Gopal Singh	E.O.No.WM.1/159 dated 12.3.1987	E.O.No.DA-Cell/111 dated 1.10.1992

3. It was stated in the appointment orders that the candidates could be eligible to appear in the Divisional test examinations after successful officiation for two years and then they would be absorbed after passing the examination within the prescribed chances. As per the existing circulars, an EDA can appear in the examination six times and the respondent No.1 has power to give additional chances beyond the maximum of six.

It was stated that inspite of such requirement of passing examinations for absorption as Divisional Accountant, the respondents (Deptt) were not seriously insisting on the the applicants to appear in the tests and there were a large number of unqualified DA serving in the Department. But suddenly from 1990 the Respondent No.2 (AG) passed an order reverting some of the EDA back to their parent departments on the ground that they failed to qualify in the departmental tests within maximum number of chances. Some of these EDA approached this Tribunal against such orders in O.A.No.196/90 and series which were decided vide judgment dated 17.5.1991 with directions that they (EDA - applicants) should be given six chances positively/physically to qualify in the tests and on their successful completion be considered for absorption as Divisional Accountants and further holding that in counting the number of chances, the number of opportunities offered but not availed of should be ignored. Again this Tribunal subsequently in another set of nine(9) similar applications namely O.A.No.72/91 and series passed similar direction vide judgment dated 12.9.1991.

4. It was stated that the instant cases of 19 (nineteen) applicants are similar to those series

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(196/90 and 72/91) decided vide judgment dated 17.5.1991 and 12.9.1991 and therefore, these applications under Section 19 of the Administrative Tribunal Act, 1985 praying for similar reliefs. These 19 (nineteen) applicants of the instant cases are now serving as Divisional Accountants on the strength of stay orders passed in each of the cases.

5. The respondents by written statements besides mentioning requirement of passing the examinations it was further stated that the test is held twice a year and the unqualified EOAs are required to sit for each of the test till they qualify and they can avail maximum six chances. Whether they sit or not, unless get a specific exemption order from appearing in a particular test, every abstention from the test, when held, is counted as one of the six chances for the EOA. The AG (Respondent No.2) by a circular dated 8.2.1979 had warned the unqualified EOA who are eligible to sit in the departmental test should take the test and pass it within the earliest available chances, otherwise they would run the risk of reversion to their parent departments.

5. Learned counsel Mr G.K. Bhattacharjee for the applicants submits that these cases are covered by the previous judgments dated 17.5.1991 and 12.9.1991 of this Tribunal in series of cases namely G.A.No.196/90 and D.A.No.72/91 respectively. It is further submitted that this Tribunal relied upon the judgment dated 29.10.1990 of the Jabalpur Bench (C.A.F.) in C.A.Nos. 172/88 and series (15 cases) in rendering judgments in the previous two series of cases (G.A.No.196/90 and 72/91) and that the said judgment of Jabalpur Bench case be safely relied

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upon for disposing the present 19 (nineteen) cases.
Learned Asst. Central Government Standing Counsel,
Mr G. Sarma and Mr A.K. Choudhury submit that as per
terms of appointment as LDA when they failed to qualify
in the departmental tests by availing consecutive six
chances, the orders of reversion are justified. They
further submitted that the Divisional Accountants should
be technically qualified and fully conversant in Rules/
Regulations for efficient discharge of duties and
therefore, fixed chances are given to the unqualified
(EDA) to get qualified within the prescribed period,
else they are supposed to be treated as inefficient and
liable for reversion. It is further submitted that the
judgment passed by the Allahabad Bench (CAT) dated
12.2.1991 in U.A.No.906/90, U.A.No.912/90 and U.A.
No.914/90 dismissing those applications is fully
applicable in the instant nineteen cases and the facts
are similar to the Allahabad cases.

7. In our previous judgments dated 17.5.1991 and
dated 12.9.1991 in two sets (series) cases, we had
discussed the merits of both Jabalpur and Allahabad
decisions in order to eliminate one and accept the other
for actual fitting on facts and law to the cases before
us for decision in May 1991 and September 1991 and there
we held that the decision of Jabalpur Bench (CAT) stood
completely similar on facts and law and acted relying on
that decision of the Jabalpur Bench (CAT). We do not
find any reason to change our views. Therefore, the
decision of Jabalpur Bench dated 29.10.1990 is relied
upon for effectively disposing the instant nineteen cases.

8. Learned Advt. S.S.S.C. submit that some of the applicants (in S.A.No. 212/91, 213/91, 215/91, 220/91, 251/91 and 260/91) did not avail any of the last six chances and, therefore, they deserve no sympathy in regard to their order of reversion. Mr G.K. Bhattacharjee submits that such instances arose in the previously decided cases (2 sets) and they were allowed to avail six chances and the same may be maintained. We accept the submission of Mr Bhattacharjee.

9. We hold that these nineteen cases of the nineteen applicants are fully covered by our previous judgments dated 17.5.1991 and 12.9.1991 (O.A.No.196/90 series and S.A.No.72/91 series) and deserve similar reliefs.

10. These nineteen applications are allowed with the following orders/directions on the respondents:

Firstly, all the impugned orders of repatriation of the applicants(19) in these nineteen cases are quashed.

Secondly, to count the number of chances already physically taken by each of the applicants. The number of opportunities offered, but not availed of, should be ignored.

Thirdly, after counting the number of chances in this manner those who have physically availed of all the six chances shall be given one additional special chance for appearing in the test to be held in 1993 with atleast one months prior notice for preparations, and if no examination is held in 1993 hereafter, then in 1994 in the first examination with one months notice.

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Fourthly, those who have not availed of six physical chances shall be given the remaining chances so as to make a total of six chances for passing the departmental test. In their cases if they do not avail of any future chance they would be deemed to have appeared for the purpose of counting the total number of chances.

Fifthly, if any of these applicants succeed in the test to be held in future within the chances computed in sub-paragraphs, (secondly, thirdly and fourthly) above he shall be considered for absorption as Divisional Accountant. Those who fail will be liable to be repatriated to their parent cadre and departments.

Sixthly, the stay order passed in each of the nineteen cases are now made absolute.

11. Intimate all concerned with copy of the judgment for implementation.

SD/ S.HAQE,
VICE CHAIRMAN
SD/G.L.SANGLYINE
MEMBER (ADMN)

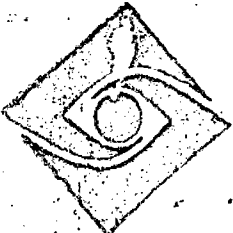
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23/6/23
Deputy Registrar (Judicial),
Central Administrative Tribunal,
Guwahati Bench, Guwahati

9/22/6

002119- dt 29/11/92
/214 of 30-11-92
M/CA/11/11
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No.2495 NGE.III/17-92 vol.I
भारत के नियंत्रक-महालेखा परीक्षक का कार्यालय
OFFICE OF THE COMPTROLLER
AND AUDITOR GENERAL OF INDIA



लोकहितार्थं यत्नानिष्ठा

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दिनांक
Date 30-11-1992

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To
The Accountant General (A&E)
Assam, Meghalaya
Shillong -793001

Subject :- Representation of Divisional Accountants
working on deputation basis.

Sir,
I am directed to invite a reference to your office letter No. DA ce/11/10-1/91-92/1508 dated 24.9.1992 on the above mentioned subject and to state that the matter has been examined. We have not found any contradiction in the appointment of Accountants/Senior Accountants/State Public works Clerks as Divisional Accountant on deputation as per the Recruitment Rules of Divisional Accountant. The requests of eight Divisional Accountants on deputation for allowing them to appear in Divisional Accountants Grade examination have not been agreed to.

Yours faithfully,

(Signature)

(R.L.KAPOOR)
ADMINISTRATIVE OFFICER(N)

507 SA - Cell
Annul. M. to 507-10
S/S
29/11/92

Annexure G

Annexure B

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No. 2/12/87-Estt (Pay-II) M
Government of India
Ministry of Personnel, Public Relations &
Pension
(Department of Personnel
and Training).

New Delhi, the 29 th April,
1988.

OFFICE MEMORANDUM

Subject: Transfer on deputation of Central Government employees to ex-cadre posts under Government-Deputation (Duty) Allowance and other terms and conditions - regarding.

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

2. Application:

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

- (a) Members of the All India Services and those deputed to posts whose terms are regulated under specific statutory rules or orders;
- (b) Officers appointed on deputation to posts in the Central Secretariat such as Under Secretary, Deputy Secretary, Director, Joint Secretary, Additional Secretary, Secretary, etc. for whom separate orders as issued from time to time will continue to apply.

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- (c) Deputation to posts outside India; and
 - (d) Appointments of a specific category of employees to a specified class of posts where special orders are already in existence such as appointments made in the personal staff of Ministers etc., to the extent the provisions contained therein are at variance with those contained in these orders.

3. Scope of Admissibility.

3.1 The term 'deputation' will cover only appointments made by transfer on a temporary basis to other posts in the same or other departments/offices of the Central Government provided the transfer is outside the normal field of the deployment and is in the public interest.

3.2 The question whether the transfer is outside the normal field of deployment or not will be decided by the authority which controls the service or the post from which the employee is transferred.

3.3 Appointments of serving Government servants made either by promotion or by direct recruitment with open market candidates, whether on a permanent or temporary basis, will not be regarded as 'deputation'.

3.4 Permanent appointments made by transfer will also not be treated as 'deputation'.

3.5 Temporary transfers made on the basis of personal requests of employees otherwise than in public interest will also not be treated as 'deputation'.

4. Exercise of option:

4.1 An employee on deputation 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. In no case will the pay so fixed be less than the minimum of the scale of the ex-cadre post.

✓ 4.2 The borrowing authority should obtain the option of the employee within a period of one month from the date of joining the ex-cadre post.

4.3 The option once exercised shall be final. However the employee may revise the option under the following circumstances:-

- (a) When he received proforma promotion in his parent cadre under the Next Below Rule;
- (b) When he is reverted to a lower grade in his parent cadre;
- (c) When he is appointed to another grade in the borrowing organisation; and
- (d) When the scale of pay of the cadre post on the basis of which his emoluments are regulated during the deputation or of the ex-cadre post held by the employee on deputation is revised either with retrospective effect or from a prospective date.

✓ 5. Pay Fixation:

5.1 When an employee on deputation elects to draw pay in the scale of pay attached to the ex-cadre post, his pay may be fixed under the normal rules with reference to his pay in the cadre post to which he has been appointed on a regular basis.

5.2 In cases of appointments/promotion from one ex-cadre post to another ex-cadre post where the employee opts to draw pay in the scale of pay of the ex-cadre post, the pay in the scale of the second or subsequent ex-cadre posts shall be fixed under the normal rules with reference to pay in the cadre post only. In respect of appointments to ex-cadre posts on time-scale of pay identical with the time-scale of pay of ex-cadre post(s) held on an earlier occasion (s), the benefit of proviso 1 (iii) to FR 22 will, however, be admissible.

2.3 In cases of appointments to a second or subsequent ex-cadre post (s) in a higher pay scale than that of the previous ex-cadre post, the pay may be fixed with reference to the pay drawn in the cadre post and if the pay so fixed happens to be less than the pay drawn in the previous ex-cadre post, xxxxxx the difference may be allowed as personal pay to be absorbed in future increases in pay. This is subject to the condition that on both the occasions the employee should have opted to draw pay in the scales of pay attached to the ex-cadre posts.

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

5.5 No employee whose basic pay at the time of his proposed deputation exceeds the maximum of the scale of pay of the ex-cadre post or the fixed pay of the ex-cadre post, as the case may be, shall be deputed to such a post.

6. Deputation (duty) Allowance:

6.1 The Deputation (duty) allowance admissible shall be at the following rates:

- (a) 5% of the employee's basic pay subject to a maximum of Rs. 250 p.m. when the transfer is within the same station.
- (b) 10% of the employee's basic pay subject to a maximum of Rs. 500/-p.m. in all other cases provided that the basic pay plus the deputation (duty) allowance shall at no time exceed Rs. 7300/-p.m.

Note (1): The term 'same station' for this purpose will be determined with reference to the station

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where the person was on duty before proceeding on deputation.

Note (2): When there is no change in the headquarters with reference to the last post held, the transfer should be treated as within the same station and when there is change in headquarters it would be treated as not in the same station. So far as places falling within the same urban agglomeration of the old headquarters are concerned, they would be treated as transfer within the same station.

6.2 Special rates of deputation (duty) allowance may be admissible under separate orders in any particular area, on account of conditions of living there being particularly arduous or unattractive. Where special rate is more favourable than that under 6.1 above, employees deputed to the area will be given the benefit of the special rate.

6.3 The deputation (duty) allowance, as admissible vide 6.1 above, shall be further so restricted that the basic pay of the employee in his parent cadre from time to time, plus deputation (duty) allowance does not exceed the maximum of the scale of pay of the post held on deputation.

6.4 The employee on deputation may be given the benefit of the Next Below Rule subject to the application of the provisions of 6.3 above in regard to the regulation of the deputation (duty) allowance.

6.5 Whenever extension of the period of deputation for the fifth year or the second year in excess of the period prescribed in the Recruitment Rules is granted, it would be on the specific understanding that the officer would not be entitled to draw deputation (duty) allowance.

6.6 If an employee (with the permission of the competent authority) proceeds on deputation from one post

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xxxx In one Ministry/Department/Organisation to another post in the same or another Ministry/Department/Organisation without reverting to his parent cadre, and even if the second ex-cadre post is at the same station as the first ex-cadre post, then the rate of deputation (dut.) allowance would remain unchanged.

6.7 In cases where a deputationist is transferred by the borrowing authority from one station to another without any change in the post held by him, the rate of deputation (duty) allowance will remain the same as was decided at the time of initial posting and will not undergo any change.

7. Admissibility of any other pay and allowances while on deputation:

7.2 Any other special pay drawn by an employee in the parent department should not be allowed in addition to the deputation (duty) allowance provided, however, the Government may, by general or special order, suitably restrict the deputation (duty) allowance where, under special circumstances, the special pay drawn by an officer in a non-tenure post in his parent cadre is allowed to be drawn, in addition to basic pay, in his deputation post. This will require the specific prior concurrence of the Department of Personnel & Training.

7.3 The personal pay, if any, drawn by an employee in his parent department will continue to be admissible until it is absorbed in other increases in pay i.e., increments or increase of pay by promotion or for any other reason unless it is personal pay (or special pay in the nature of personal pay like qualification etc.) of non-absorbable nature.

7.4 In case special pay is attached to the scale of pay of the ex-cadre post and the employee has opted to draw pay in that scale, in addition to his pay in that scale, he will also be entitled to draw such special pay.

7.1 Any project allowance admissible in a project area may be drawn in addition to deputation(duty) allowance.

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8. Tenure of Deputation:

8.1 The period of deputation shall be subject to a maximum of three years in all cases except for those posts where a longer period of tenure is prescribed in the Recruitment Rules.

8.2 The Administrative Ministries may grant extension beyond this limit upto one year, after obtaining orders of their Secretary, in cases where such extension is considered necessary in public interest.

8.3 The borrowing Ministries/Departments may extend the period of deputation for the fifth year or for the second year in excess of the period prescribed in the Recruitment Rules, where absolutely necessary, subject to the following conditions-

- (i) While according extension for the fifth year, or the second year in excess of the period prescribed in the Recruitment Rules, the directive issued for rigid application of the tenure rules should be taken into consideration and only in rare and exceptional circumstances such extensions should be granted.
- (ii) The extension should be strictly in public interest and with the specific prior approval of the concerned Minister of the borrowing Ministry/Department.
- (iii) Where such extension is granted, it would be on the specific understanding that the officer would not be entitled to draw deputation (duty) allowance.
- (iv) The extension would be subject to the prior approval of the lending organisation, the officer on deputation, and wherever necessary, the U.P.S.C.

8.4 In cases where the extension is beyond the fifth

year or beyond the second year & in excess of the period prescribed in the Recruitment Rules, the same would be allowed only after obtaining the prior approval of the Department of Personnel & Training. Proposals in this regard should reach this Department at least three months before the expiry of the extended tenure.

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

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

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

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

9. Promotions during period of deputation:

9.1 When an employee already on deputation is to be

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promoted/appointed to another post by the borrowing authority, the borrowing authority should obtain the concurrence of the lending authority prior to the promotion/appointment.

9.2 The employees on deputation may be given the benefit of the Next Below Rule subject to the application of the other provisions contained in this office Memorandum.

10. Grant of leave on expiry of tenure of deputation

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

11. Premature reversion of deputationist to parent cadre.

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

12. Sanctioning of deputation (duty) allowance:

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

13. Relaxation of conditions:

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

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

15. These orders take effect from the 1st April, 1988, in so far as the modifications incorporated now are concerned (Hindi version is also enclosed).

Sd/-

(S. HARIHARAN)

Under Secretary to the Govt. of India.

To

All Ministries/Departments of the Govt. of India etc.
No.2/12/87-Lstt (Pay.II) dt. the 29th April, 1988.

Copy also forwarded to:-

The Comptroller & Auditor General of India and all States under his control. etc.

D.A. Cell

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on deputation should exercise option in this regard within a period of 1 (one) month from the date of joining the new assignment (i.e. the Post of deputation). The option once exercised by Shri B. Thadang shall be final.

5. The Dearness Allowance, C.C.A, Children Education Allowance, T.A., LTC, Leave, Pension etc will be governed by the Govt. of India, Ministry of Finance OM.No.F.1(6)E-IV(A)/62 dt.7.12.1962 (Incorporated as Annexure to Govt. of India decision No.1 in Appendix-31 of Chaudhury's C.S.R Volume.IV (13th Edition) and as amended and modified from time to time.

6. Shri B. Thadang on deputation will be liable to be transferred to any place within the States of Arunachal Pradesh, Manipur and Tripura, in the cadre of Divisional Accountant 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 B. Thadang

(on deputation) is entrusted with additional charges, appointed, promoted or transferred to a Post/is given any Station other than that cited in this Establishment order.

Authority: AG's Order dt. 13.10.93 at P/O of file No. DA Cell/2-49/93-94

Sr. Dy. Accountant General (A&E)

Memo No. DA Cell/2-49/93-94/1592-1602 Dated: 23.11.93

- Copy forwarded for information and necessary action to :-
- 1) The Accountant General (A&E) Manipur, Imphal.
- 2) The Accountant General (A&E) Tripura, Agartala.
- 3) The Chief Engineer, Electricity Deptt. (Power), Manipur, Imphal.
- 4) Chief Engineer, Rural Works Deptt., Arunachal Pradesh, Itanagar.

It is requested to release Shri B. Thadang

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

EO.No.DA Cell/124

Dated: 18.11.93

Consequent on his selection for the Post of Divisional Accountant (on deputation) in the Pay Scale of Rs.1400-40-1600-50-2300-EB-60-2600/= in the cadre of Divisional Accountants (on deputation) under the Administrative Control of the Office of the Accountant General (A&E) Meghalaya etc, Shillong, Shri B.Thadang (Bida Thadang) is at Present working in the Office of the Superintending Engineer, Rural Works Deptt.

Arunchal Prasad, Isanagar is posted on deputation as Divisional Accountant in the Office of the Executive Engineer, Bishnupur Electrical Division, Bishnupur, Manipur.

2. Shri B.Thadang should join the Post of Divisional Accountant on deputation, within 1 (one) month from the date of issue of this order, failing which, his posting on deputation will be treated as cancelled, without any further communication. No representation for a change of the place of posting will be entertained under any circumstances.

3. The Period of deputation of Shri B.Thadang will be for duration of 1 (one) year from the date of joining in the Office of the Executive Engineer, Bishnupur Electrical Division, Bishnupur, Manipur.

4. The Pay and deputation (duty) allowances in respect of Shri B.Thadang will be governed by the Govt. of India, Ministry of Finance, Public Grievances and Pension (Department of Personal and Training) letter No.2/12/87-Estt (Pay.II) dt. 29.4.1988 and as amended and modified from time to time, while on deputation, Shri B.Thadang

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) allowances. Shri B.Thadang

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

~~Superintending Engineer (Co-Ord.)~~ is requested to release immediately Shri B. Thadung

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

The Executive Engineer, ~~...~~ is requested to intimate the date of joining of Shri

B. Thadung

Shri B. Thadung U.P.C.

Office of the Superintending Engineer (Co-Ord.) Road Works Department, Arunachal Pradesh, Itanagar.

- 8. B.C. File
- 9. S.C. File
- 10. P.C. File
- 11. File of the deputationist.

[Signature]
By: *[Signature]* General (S&E).