

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 041/00009/2017

Date of Order: This, the 4th day of December 2018

Circuit Court at Agartala

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

Sri Shyamal Kishore Mallik
S/o Late Brajendra Kishore Mallik
Beltali, Chowrangeepara
P.O. – Arundhutinagar, Pin – 799003
Agartala, Dist – West Tripura.

...Applicant

By Advocate: Mr. C.S. Sinha

-Versus-

1. The Union of India
Represented by the Secretary
Ministry of Finance, Government of India
New Delhi – 110001.
2. The Comptroller and Auditor General of India (CAG)
9, Deen Dayal Upadhyay Marg
New Delhi – 110124.
3. The Accountant General (Audit)
Tripura, P.O. – Kunjaban, Pin – 799006
Agartala, District – West Tripura.
4. The Sr. Audit Officer (Admn)
Office of the Accountant General (Audit)
Tripura, P.O. – Junjaban, Pin – 799006
Agartala, District – West Tripura.

...Respondents

By Advocate: None

ORDER

N. NEHSIAL, MEMBER (A):

Being aggrieved with the letter dated 22.07.2016 (so far the applicant is concerned) whereby the applicant has been sought to be repatriated back to his parent department in the office of the Accountant General (A&E), Tripura, the applicant has preferred the instant O.A. under section 19 of the Administrative Tribunals Act 1985 with the following reliefs:

- “8.1 That, the Hon'ble Tribunal be pleased to set aside the order in E O. No. 82 dated 22.07.2016.
- 8.2 That, the Hon'ble Tribunal be pleased to set aside the Estt. Order No. 85 dated 29.07.2016.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to reinstate the applicant to report for duty in the office of the Accountant General (Audit), Agartala,
- 8.4 That the Hon'ble Tribunal be pleased to direct the respondents to provide all consequential service benefits to the Applicant on his reinstatement to the post of Assistant Audit Officer.
- 8.5 Any other relief is entitled to the applicant.”

2. Heard Mr. C.S. Sinha, learned counsel for the applicant. None appeared on behalf of the respondents. Since learned counsel for Accountant General Mr. G. Baishya had filed letter of absence expressing his inability to attend at Circuit Court at Agartala on 02.11.2018, as such, on 02.11.2018, this Court allowed to file written argument, if any, within a period of seven days and accordingly, the

respondent Nos. 2, 3 & 4 have filed their written argument on 12.11.2018.

3. Brief facts narrated by the applicant in his case are that pursuant to Office Circular No. 37 dated 16.12.2011 whereby applications were invited from SAS (Civil Audit) passed officials of A&E and were interested for appointment and absorption in the office of the Accountant General (Audit), Tripura, Agartala, against 15 (fifteen) vacant posts of Assistant Audit Officers in the Pay Band of Rs. 9300-34800/- plus Grade Pay Rs. 4800/- per month and the selected officials would be initially taken on deputation basis without deputation allowance. The applicant who passed SAS Examination held in August 2011, made application and got through and reported for duties on 30.03.2012 as Assistant Audit Officers. However, without prior intimation, vide order in E.O. No. 82 dated 22.07.2016, the applicant has been repatriated to the office of the Accountant General (A & E), Tripura with effect from 01.08.2016. Being aggrieved with the action of the respondent authority, he represented the respondent authority vide letter dated 28.07.2016 which was however, rejected by stating, inter alia, as hereunder:

"This office noted your unsatisfactory performance in audit assignments, cases of indiscipline involving in-subordination, unauthorized absence from duty station without informing Supervisor or Headquarter.

Further more, you have yourself communicated that it is not possible for you to be working in field audit assignment on account of your health status."

4. On going through the records submitted by the parties along with their pleadings, it is observed that the service details of individual who have applied for permanent absorption has to be submitted in Annexure B, Annexure C(i) & Annexure C(ii). Annexure C(ii) contains Composite statement of cadre clearance, Integrity, Vigilance clearance, Major/Minor Penalties etc. In addition to these, the ACR/APAR for a period of five years duly attested each and every page also has to been sent along with biodata of the concerned official in original.

5. Considering the above facts and detail analysis of the sequence of the events, it is clear that those who were taken on deputation for absorption have been duly scrutinized including their integrity before the approval has to be accorded by the competent authority in the office of the Controller & Auditor General, New Delhi. After having completed this exercise, the applicant has been approved on 26.11.2014. In the approval communication, no stipulation that the approved individual has to be kept under surveillance/further period regarding his integrity etc. But the individual has been denied the benefits of **permanent absorption after nearly a gap of 2 years i.e. vide Estt. Order No. 82 dated 22.07.2016. The ground for his denial has been stated to be his absence of two days without any prior sanction of leave and any prior intimation to the Supervisory Officer.**

6. On going through the Note submitted by the Supervisory Officer dated 14.03.2014, it is seen that the applicant was accused of absenting from duty for two days on 28.02.2014 & 01.03.2014 without any prior sanction of Casual Leave/Earned Leave and any prior intimation to the Supervisory Officer. But it is difficult to appreciate how a mere absence of duty for two days without prior intimation/ prior sanction of leave can be construed as lack of integrity as there could be some other reasons of personal exigencies to any employee. Subsequently the respondent authority also supported the argument that the applicant's integrity is not beyond doubt. In support of this argument, they have quoted the recordings of the APAR of 2015-16. On going through the copy of the APAR, it is observed that Reporting Officer has certified applicant's integrity 'beyond doubt'. The Reviewing Officer, however, who did oversee of the work of the applicant for five months, has disagreed with the assessment of the Reporting Officer and attached separate Note regarding integrity of the applicant. In his separate Note, the Reviewing Authority gave remark that he could not certify the integrity of the applicant by quoting incident as recorded in March 2014 whereas APAR was for the year 2015-16. What have been the assessments and recordings in the APAR of 2013-14 and 2014-15 has never been highlighted by the respondent authorities.

7. Considering the above facts and circumstances, it is felt that the respondent authorities have been unfair to the applicant in denying him the benefit of permanent absorption in (Civil Audit) in the office of the Accountant General (Audit), Tripura, Agartala inspite of the fact that they had already scrutinized, cleared, recommended and forwarded to the Competent Authority and also approved by the competent authority in their Headquarter Office on 26.11.2014. This action on the part of the respondent No. 3 is found to be unfair, against principles of natural justice and bad in law. The Estt. Order No. 82 dated 22.07.2016 of Accountant General (A&E), Tripura, Agartala repatriating the applicant to his previous parent office is liable to be quashed and set aside. Accordingly, the same is quashed and set aside. We hereby direct the respondents more particularly respondent No. 3 to issue suitable order immediately not later than one month from the date of receipt copy of this order, for his permanent absorption in compliance of the approval already accorded by Headquarter Office, New Delhi vide their letter dated 26.11.2014.

8. O.A. stands disposed of with no order as to costs.

(N. NEHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)