

# THE HIGH COURT OF MEGHALAYA

## WP(C). No. 179 of 2012

1. **The Union of India** represented by the Comptroller and Auditor General of India, Deen Dayal Upadhaya Marg, New Delhi – 110124.
2. **The Comptroller and Auditor General of India**, Deen Dayal Upadhaya Marg, New Delhi – 110124.
3. **The Accountant General (A & E), Meghalaya**, Shillong – 1.

.... **Petitioners**

**-Versus-**

1. **Shri Rajesh Kumar Rasaily**, son of Shri Budhiman Rasaily, presently working as Assistant Accounts Officer in the Office of the Accountant General (A & E), Meghalaya, Shillong – 1.

.... **Respondent**

2. **Shri Anand Kaushal**, Accounts Officer in the Office of the Accountant General (A & E), Meghalaya, Shillong – 1.
3. **Shri Priyotosh Chowdhury**, Accounts Officer in the Office of the Accountant General (A & E), Meghalaya, Shillong – 1.

.... **Proforma Respondents**

Shri R. Debnath, CGC, Shri U.K. Nair, Advocate, Shri B. Sarma, Advocate, Shri. A. Chetri, Advocate, Shri. G.Z. Ahmed, Advocate for the petitioners.

Smti T. Yangi, Advocate for the Respondents.

Date of Hearing 29<sup>th</sup> November, 2013

Date of Judgment & Order 29<sup>th</sup> November, 2013

**HON'BLE THE CHIEF JUSTICE,  
and HON'BLE MR. JUSTICE, S.R. SEN**

### ***JUDGMENT AND ORDER***

***(ORAL: Hon'ble Prafulla. C. Pant, Chief Justice)***

By means of this writ petition, the writ petitioners have challenged the Impugned Order dated 09.09.2011 passed by the Central Administrative Tribunal (for short 'CAT') Guwahati Bench in Original Application No. 282 of

2010 whereby, the present petitioners are directed to hold a Review Departmental Promotion Committee (for short 'DPC') treating 3(three) anticipated vacancies for the year 2010 in the DPC held on 09.12.2009.

2. Heard learned counsel for the parties and perused the Affidavits on record.

3. Brief facts of the case are that the respondent No. 1, Rajesh Kumar Rasaily is working as Assistant Accounts Officer in the Office of the Accountant General (A & E), Meghalaya, Shillong. He has filed the Original Application No. 282 of 2010 before the CAT, Guwahati Bench pleading that he was due for promotion to the post of Accounts Officer with effect from 01.01.2008, but for want of vacancy, he could not be promoted to the said post. According to the respondent No. 1 in the year 2010, there existed 3(three) anticipated vacancies in the Office of the Accountant General (A & E), Meghalaya, Shillong for which the DPC held its meeting on 9<sup>th</sup> of December 2009. Again, it was further pleaded by the respondent No. 1 before the CAT that out of the 3(three) anticipated vacancies, one vacancy was anticipated on account of superannuation of Shri H. Nongrum, who was due to retire with effect from 30<sup>th</sup> June 2010. The second vacancy occurred on account of voluntary retirement sought by one Shri B.R. Wahlang as Sr. Accounts Officer with effect from 01.03.2010. The third anticipated vacancy is pleaded by the respondent No. 1 on account of the fact that one Shri Swapan Kumar Nath, who had joined in the Office of the Accountant General (A & E), Tripura, as Deficit Officer on 01.07.2006 was due to be repatriated after a period of 4(four) years i.e. on 01.07.2010.

4. But the actual vacancy accepted by the present petitioners are:-

(1). On account of superannuation of one Shri H. Nongrum which was filled up by one Shri H. Thythul, and (2). On account of the voluntary retirement of one Shri B.R. Wahlang for which the post was filled up by promoting Shri Anand Kaushal. With regard to the alleged treated vacancy in respect of Shri Swapan Kumar Nath, the same was not accepted by the writ petitioners. However, later Shri Priyotosh Chowdhury was promoted against the said post with effect from 28.10.2010.

5. The respondent No. 1 who was a Member of the Scheduled Caste category has pleaded that, had the 3(three) vacancies of 2010 correctly calculated by the petitioners in its DPC held on 09.12.2009, the petitioner would have been promoted as Accounts Officer in the year 2010.

6. CAT in its Impugned Order has taken note of the fact that Shri Swapan Kumar Nath, who was permanently allocated in the Office of the Accounts General (A & E), Tripura was repatriated to his parent office on completion of 4(four) years after he worked as Deficit Officer in the Office of the Accountant General (A & E), Meghalaya, as such, there should have been no difficulty on the part of the present petitioners in anticipating the vacancy.

7. Referring to the Office Memorandum No. 22011/5/86-Estt (D) dated 10.04.1989 issued by the Department of Personnel and Training, Government of India, CAT directed the present petitioners to hold a Review DPC and to rectify the injustice done to the (applicant) present respondent No. 1. In the said memorandum dated 10.04.1989, the procedure has been laid down for filling up further vacancies in the same year where a DPC has already been held in a year due to the resignation or voluntary retirement, etc. In Para 6.4.2 it is provided that in case of non-reporting of vacancy due to error or omission

(i.e. though the vacancies were there but the same not reported to it). A Review DPC should be held keeping in mind the total vacancies of the year.

8. In the above circumstances, we do not find any error committed by CAT in the Impugned Order in directing the writ petitioners (who were respondents before CAT) to hold a Review DPC.

9. Therefore, this writ petition is dismissed summarily with further 3(three) months time provided to writ petitioners to comply with the order of the CAT (challenged before this court).

**JUDGE**  
**(Honble Mr. Justice S.R. Sen)**

**CHIEF JUSTICE**  
**(Honble Mr. Justice Prafulla C. Pant)**

*D. Nary*