

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

D.A./XXX No. 203 of 1998 and series

DATE OF DECISION 19.12.2000

Shri R.S. Pathak and others

PETITIONER(S)

Mr J.L. Sarkar, Mr B.K. Sharma, Mr M. Chanda,
Mr D.K. Misra, Mr A. Dutta, Mr R. Agarwal, Mrs S. Deka,
Mrs N. D. Goswami, Mrs U. Dutta, Mr G.N. Chakrabarty
and Ms T. Das

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.,
Mr B.C. Pathak, Addl. C.G.S.C. and
Mr B.S. Basumatary, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE MR M.P. SINGH, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.203 of 1998 and series

Date of decision: This the 19th day of December 2000.

The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr M.P. Singh, Administrative Member

1. O.A.No.203/1998

Shri R.S. Pathak and 423 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mrs S. Deka.

- versus -

Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

2. O.A.No.207/1998

Shri Hemendra Nath Sharma and 24 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mrs S. Deka.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

3. O.A.No.222/1998

Shri Bimal Kumar Chatterjee and 31 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mr S. Mukherjee.

- versus -

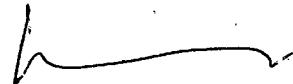
The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

4. O.A.No.225/1999

Shri Subrata Kumar Dhar and 23 othersApplicants
By Advocates Mr M. Chanda, Mrs U. Dutta and
Mr G.N. Chakrabarty.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.



5. O.A.No.268/1999

Shri V.S. Sarma and 86 othersApplicants
By Advocates Mr B.K. Sharma and Mr S. Sarma.

- versus -

The Union of India and OthersRespondents
By Advocate Mr B.S. Basumatary, Addl. C.G.S.C.

6. O.A.No.312/1999

Shri Keshab Choudhury and 67 othersApplicants
By Advocates Mr D.K. Mishra, Mr A. Dutta and
Mr R. Agarwal.

- versus -

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

7. O.A.No.372/1999

Smt Sunita Devi Bhuyan and 41 othersApplicants
By Advocates Mr J.L. Sarkar and Mrs S. Deka.

- versus -

The Union of India and othersRespondents
By Advocate Mr B.S. Basumatary, Addl. C.G.S.C.

8. O.A.No.144/1999

Shri Arun Chandra Chanda and 19 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mrs U. Dutta.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, SR. C.G.S.C.

9. O.A.No.194/1999

Shri Bidhan Chandra Roy and 20 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs U. Dutta and Mr G.N. Chakrabarty.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

10. O.A.No.285/1999

Shri Samir Ch. Kar and 9 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami and Mr G.N. Chakrabarty.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

11. O.A.No.379/1999 O.A.No.379/1999

Shri M.R. Chakraborty and 78 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mrs N.D. Goswami.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

12. O.A.No.442/1999

Shri A. Mahendra Kumar and 5 othersApplicants
By Advocates Mr M. Chanda and N.D. Goswami.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

13. O.A.No.129/2000

Shri K. Bayan and 154 othersApplicants
By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami and Mr G.N. Chakrabarty.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

14. O.A.No.166/2000

Shri Bhabendra Nath Deka and 5 othersApplicants
By Advocates Mr J.L. Sarkar and Mrs S. Deka.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

15. O.A.No.168/2000

Dr Ajit BoraApplicant
By Advocates Mr B.K. Sharma and Mr S. Sarma.

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

16.

O.A.No.284/1999

Shri Gaj Bahadur Singh Thapa and 98 others
By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami and Mr G.N. Chakrabarty.

.....Applicants

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

17.

O.A.No.109/2000

Dr Priya Kumar Singh and 6 others

.....Applicants

By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami and Mr G.N. Chakrabarty.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

18.

O.A.No.341/2000

Shri Pulak Chakraborty and 5 others

.....Applicants

By Advocates Mr B.K. Sharma and Mr S. Sarma.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

19.

O.A.No.345/2000

Dr Basab Ghosh and 2 others

.....Applicants

By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mr S. Ghosh.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

20.

O.A.No.425/2000

Dr Songkhongam Dimngel and 12 others

.....Applicants

By Advocates Mr J.L. Sarkar, Mrs S. Deka and
Ms T. Das.

- versus -

The Union of India and others

....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

21.

O.A.No.429/2000

Shri Bhupendra Nath Talukdar and 16 others

.....Applicants

By Advocates Mr M. Chanda, Mrs N.D. Goswami and
Mr G.N. Chakrabarty.

- versus -

The Union of India and others

....Respondents

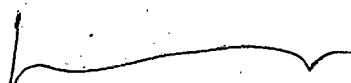
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

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O R D E R (ORAL)CHOWDHURY.J. (V.C.)

The admissibility of Special (Duty) Allowance is the main question in all these applications, and therefore, all these applications were taken up together for consideration. For the purpose of adjudication of this proceeding, however, we shall mainly refer to O.A.No.203 of 1998 as the lead case.

2. All the applicants are working in different capacities under the Director General, Assam Rifles. The applicants are civilian employees working under the Central Government. The Union Government, with a view to provide some incentives to the civilian employees of the Central Government in the States and Union Territories of the North Eastern Region, amongst others, granted Special (Duty) Allowance (SDA for short) to the employees having All India Transfer liability. The original scheme was introduced by O.M.No.II.20014/3/83/E.IV dated 14.12.1983. The Government of India by letter No.II.11011/1/84-FP.IV dated 3.3.1986



clarified the Government policy and accordingly the Director General, Assam Rifles, was informed by the aforesaid letter that personnel in Battalions of Assam Rifles would not be entitled to the concessions envisaged in the Ministry of Finance (Department of Expenditure) O.M. NO.20014/3/83-E-IV dated 14.12.1983. It ^{was} also indicated that Assam Rifles personnel and civilian non-combatised officers/employees of Assam Rifles did not have All India Transfer liability and as such, the question of grant of SDA even in the case of civilian non-combatised officers/employees did not arise. It further mentioned that non-combatised civilian staff of Static formations such as officers of DG, IGP, DIGs and Range Headquarters of Assam Rifles would be allowed concessions as envisaged in the O.M. dated 14.12.1983 except SDA. The Government of India again had to deal with the matter pertaining to grant of SDA and Special Compensatory (Remote Locality) Allowance to the Assam Rifles personnel posted in the States and Union Territories of the North Eastern Region, Andaman and Nicobar Islands and Lakshadweep. Considering the subject the Government of India decided to sanction grant of certain allowances like SDA, Special Compensatory (Remote Locality) Allowance (SCA(RL) for short), etc. By order No.11011/1/84-FP.IV dated 2.2.1989, Annexure D, the sanction of the President granting the following allowances were indicated. The relevant part of the Notification is reproduced hereinbelow:

<u>Category of personnel entitled to allowance</u>	<u>Particulars of O.M.s regulating the allowance</u>
(1)	(2)
1) <u>Special (Duty) Allowance</u> i) Combatised personnel (including Cadre officer) in battalions of Assam Rifles and the combatised personnel (including Cadre officers) in static formations (such as officers of DG, IGP, DIGs, Range HQs, Training Centre etc.) and other units (Maintenance Groups, Workshops etc.) of Assam Rifles.	Item (iii) in para 1 of Ministry E.IV dated 14.12.83 as amended from time to time, read with their O.M.No.II.20014/3/83-E.IV dated 29.10.86 and their O.M. No.II.20014/3/83-E.IV dated 15.7.88 and Min. of Fin. O.M. No.F.20014/16/86.E.IV/E-II(B) dated 1.12.88. (This is in modification of sanction issued in MHA letter No.II.27012/31/85-FP.II dated 6.4.87).

(1)

ii) Non-combatised civilian personnel (including officers) in battalions of Assam Rifles and static formations (such as offices of DG, IGP, DIGs, Range HQrs., Training Centre etc.) and other Groups (Maintenance Groups, Workshops etc.) of Assam Rifles.

(2)

(3)"

Same as above. (This is in modification of the sanction issued vide item (3) of MHA letter No.11011/1/84-FP.IV dated 3.3.86).

The above communication also indicated that the above allowances were not applicable to Army Officers/personnel on deputation to Assam Rifles.

In pursuance to the aforesaid Government order the applicants were paid the SDA with effect from 7.11.1988. When the matter rested at this stage situation the Supreme Court rendered its decision in Civil Appeal No.3251 of 1993 alongwith analogous appeals on 20.9.1994, known as Union of India and others vs. S. Vijay Kumar and others reported in (1994) 28 ATC 598. In the said decision, the Supreme Court had the occasion to deal with the O.M.s dated 14.12.1983, 29.10.1986 and 20.4.1987 pertaining to grant of SDA to the Central Government employees working in the North Eastern Region having All India Transfer liability. The Supreme Court, in the aforesaid decision, held that the aforesaid three Notifications were applicable only to the persons specified therein, namely those persons who have All India Transfer liability on being posted to any station of the North Eastern Region from outside the region. Referring to the Notification dated 20.4.1987 the Supreme Court made the position clear that the allowance should not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. In the light of the above decision of the Supreme Court, the O.M.No.11(3)/95-E.II(B) dated 12.1.1996 clarified that the Central Government civilian employees who have All India Transfer Liability were entitled to SDA on being posted to any station in N.E. Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer liability. The aforesaid communication created some misgivings and in order to avoid the

misgivings.....

misgivings, the Director General, Assam Rifles, the respondent No.3 herein, issued the Memorandum dated 6.6.1998, Annexure E. By the aforementioned communication the Ministry of Home Affairs was informed that SDA was one of the ten concessions/facilities extended to the Central Government civilian employees serving in the N.E. Region with effect from 1.11.1983 sanctioned under Ministry of Finance O.M. dated 14.12.1983. Subsequently, consequent to Fourth Central Pay Commission recommendations, the above concessions/facilities were modified and two more concessions were given with effect from 1.12.1988. It also mentioned that the Assam Rifles projected to the Ministry of Home Affairs for extension of the above concessions/facilities including SDA to the combatant and civilian employees of Assam Rifles on the analogy that all those concessions including SDA were available to the employees of other CPOs like BSF, CRPF etc. similarly situated in the N.E. Region. While grant of the above concessions to the combatant employees were turned down, all the concessions except SDA were sanctioned for civilian employees of Assam Rifles posted in static formations like Directorate General, Assam Rifles, Inspector General, Assam Rifles (North), Range Headquarters and Assam Rifles Training Centre and School with effect from 3.3.1986 under Ministry of Home Affairs letter No.II.11011/1/84PP 4 dated 3.3.1986, copy of which was endorsed, alongwith others, to the Pay and Accounts Office, Assam Rifles, Shillong and Ministry of Finance, Department of Expenditure (E.IV). Subsequently, all these concessions except SDA were also extended to the combatant employees of Assam Rifles with effect from 1.11.1986 vide Ministry of Home Affairs letter dated 4.4.1987. The communication further mentioned that consequent to change over of pay structure of Assam Rifles personnel from Army pattern to CPO, pattern from 1.1.1986 following Fourth Central Pay Commission recommendations. SDA on the analogy of other CPOs like BSF, CRPF etc. was also extended to both combatant and civilian employees of Assam Rifles with effect from 7.11.1988, with categorical mention of the civilian staff and officers of all static formations of Assam Rifles including Directorate General, Assam Rifles, vide Ministry of Home Affairs letter dated 2.2.1989. Para 4 of the letter dated 2.2.1989 laid down that the sanction of SDA for

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the combatant and civilian employees of Assam Rifles was duly concurred by the concerned departments of the Ministry of Finance. The Pay and Accounts Officer, Assam Rifles, was passing the monthly bills of the civilian employees of Directorate General, Assam Rifles without any objection right from the time of sanction of SDA to Assam Rifles. However in the end of April 1998, the Pay and Accounts Officer, Assam Rifles, Shillong, intimated that SDA was not applicable to the civilian employees of DGAR, Shillong as per the Ministry of Finance O.M.No.11(3)95-E.II(B) dated 12.1.1996. The communication also clarified that the judgment of the Apex Court regarding non-entitlement of SDA to certain category of civilian employees was based on the general order sanctioning the ten concessions/facilities including SDA to civilians serving in the N.E. Region. SDA was sanctioned to the combatant and civilian employees of Assam Rifles on CPO analogy and that too, from a much later date, 7.11.1988, when the pay pattern of Assam Rifles personnel was made on the lines of CPO pattern after the Fourth Central Pay Commission recommendations. It was also mentioned in the communication dated 6.6.1998 that the Ministry of Home Affairs and the Ministry of Finance were fully aware of the general eligibility criteria for SDA, namely, the conditions of appointments, posting, transfer, retention, exigency of service etc. of the civilian employees of static formations of Assam Rifles like DGAR, IGAR, etc. Keeping all these aspects in view, a separate and exclusive sanction was accorded by the Ministry of Home Affairs for grant of SDA to the combatant and civilian employees of Assam Rifles as mentioned earlier. The Director General accordingly intimated the view about the eligibility of SDA to the civilian employees of the Directorate General, Assam Rifles.

3. The above communication was, however, turned down by the Ministry of Home Affairs, by its communication dated 9.7.1998. The Association represented the matter to the Home Ministry by representation dated 13.8.1998, but the Ministry turned down the same. The Directorate General, Assam Rifles, by its communication dated 18.8.1998 informed that the Pay and Accounts Officer, Assam Rifles, advised for discontinuance

of SDA from the pay of August 1998 in respect of all the civilian employees of DGAR and further advised that the SDA drawn from 20.9.1994 to till date was also to be recovered. Hence this application before this Tribunal challenging the legitimacy of the action taken by the respondents.

4. The respondents submitted their written statement and in their written statement, the respondents have not disputed about the Presidential order granting SDA with effect from 7.11.1988. It was also stated that in the written statement that the employees of the Central Government having All India Transfer liability serving in the States and Union Territories of the N.E. Region were granted SDA from 1983 onwards vide Government of India O.M. dated 14.12.1983. The orders of the President granting SDA to Assam Rifles with effect from 7.11.1988 was a distinct and a special order for Assam Rifles which was issued after a lapse of almost five years and after considering all the pros and cons of the eligibility criteria. The respondents further stated that the civilian employees of Assam Rifles were granted SCA from 1988 through a special order vide Government of India, Ministry of Home Affairs letter No.11011/1/84-FP.IV dated 2.2.1989. The O.M. dated 12.1.1996 was made operative till July 1988 and pay bill were duly passed by the Audit authorities, namely Pay and Accounts Office, Assam Rifles, Ministry of Home Affairs. In August 1998, the Pay and Accounts Oficer, Assam Rifles intimated that SDA was not applicable to the civilian employees of the Directorate General, Assam Rifles as per Ministry of Finance O.M. dated 12.1.1996. The respondents also stated that the O.M. dated 12.1.1996 was applicable to civilian employees of Assam Rifles as per Ministry of Home Affairs letter dated 9.7.1998.

5. From the facts enumerated above it thus emerges that the Assam Rifles personnel were not covered by the O.M. dated 14.12.1983 and the subsequent O.M.s dated 29.10.1986 and 20.4.1987. By communication dated 3.3.1986 the Ministry of Home Affairs in clear terms stated that

Assam Rifles personnel and civilian non-combatised officers of Assam Rifles did not have All India Transfer liability and as such question of grant of SDA even in the case of civilian non-combatised officers/employees did not arise. The aforesaid communication was considered by the Ministry while taking a decision for grant of SDA, SCA(RL) to the Assam Rifles personnel posted in the States and Union Territories of N.E. Region, Andaman and Nicobar Islands and Lakshadweep. Conveying the sanction of the President for grant of the allowances to the personnel of Assam Rifles with effect from 7.11.1988, the Ministry took note of the earlier O.M.s dated 14.12.1983, 29.10.1986 and 1.12.1988. The O.M. dated 1.12.1988 was made in modification of the sanction issued by MHA letter No.II.27012/31/85-FP.II dated 6.4.1987. It thus appears that while granting SDA to the non-combatised civilian staff of the static formation of the Assam Rifles, the Ministry took note of its earlier O.M.s. The orders of the President granting SDA to Assam Rifles with effect from 7.11.1988 was mentioned as a distinct order. A ^{conscious decision} consensus was taken by the respondents by considering the service conditions of the personnel serving in the Assam Rifles. This order granting SDA is not relatable to the O.M.s dated 14.12.1983, 29.10.1986 and 20.4.87. The competent authority felt it appropriate for granting SDA knowing it that such civilian non-combatised officers and personnel of the Assam Rifles did not have All India Transfer liability, notwithstanding, the Government thought it wise to grant the same. The aforesaid direction of the authority has been passed in absolute terms and in the absence of any modification of the said order the respondents were not justified to refuse the benefit of the order dated 2.2.1989. The order dated 2.2.1989 was not the subject matter of the decision rendered by the Supreme Court in Vijay Kumar (Supra). In the circumstances, we do not find any justification on the part of the respondents for refusing to grant SDA to the applicants which was earlier granted. Accordingly all such actions of the respondents refusing SDA to the applicants are quashed and set aside. In view of our decision we hold that the steps for recovery are also unjustified.

29

6. The application is accordingly allowed. If any recovery has already been made by virtue of the earlier action, the respondents are directed to refund the same forthwith to the applicants after examining the records.

No order as to costs.

MPS
(M. P. SINGH)
ADMINISTRATIVE MEMBER

DNC
(D. N. CHOWDHURY)
VICE-CHAIRMAN

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