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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order : This the 28th day of July, 1999.

Shri G.L.Sanglyine, Administrative Member.

Original Application No. 45 of 1998.

Shri Ajitangshu Deb and 16 others.

Original Application No. 90 of 1998.

Shri S.K.Benerjee and 4 others.

All the applicants are working under  
Commander, Base Hospital No.151, Guwahati . . . . . Applicants

- Versus -

1. Union of India  
through Secretary to the  
Government of India,  
Ministry of Defence,  
New Delhi.

2. Controller of Defence,  
Accounts Area,  
Accounts Officer,  
Shillong.

3. Commandar,  
Base Hospital No. 151,  
Govt. of India,  
Basistha, Guwahati.

. . . . . Respondents.

By Advocate Shri B.C.Pathak, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMN. MEMBER,

These two Original Applications involve similar facts and law and therefore they are disposed of by this common order for convenience.

2. Seventeen applicants in O.A.No.45/98 and five applicants in O.A.No.90/98 are Group 'C' and Group 'D' employees, as the case may be, in the Base Hospital No.151, Basistha, Guwahati. They were allowed to draw Special(Duty) Allowance (SDA for short) in terms of Office Memoranda issued from time to time with regard to payment of SDA. But from July 1996 the payment of SDA was stopped. Further recovery of SDA paid from 20.9.1994

to 30.6.1996 was ordered to be recovered in instalments with effect from the pay bill of February 1998 in terms of O.M.No. 11(3)/95-E-II(B) dated 12.1.1996 issued by the Ministry of Finance, Department of Expenditure and made applicable to the employees in the Ministry of Defence by Defence Directorate No. 4(19)/83-D(Civ-I) Vol.II dated 18.1.1996. Thereafter the applicants submitted the Original Applications disputing their recovery of the SDA paid. The respondents have submitted written statement.

3. Mr M.Chanda, the learned counsel for the applicants, submitted that consequent to the order of the Hon'ble Supreme Court dated 20.9.1994 in Civil Appeal No. 3251 of 1993 (Union of India & Ors. vs. S.Vijayakumar & Ors.) the Ministry of Finance, Department of Expenditure issued an Office Memorandum dated 12.1.1996 and para 7 of the O.M. is as below :

"In view of the above judgment of the Hon'ble Supreme Court, the matter has been examined in consultation with the Ministry of Law and the following decisions have been taken.

- i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived;
- ii) the amount paid on account of SDA to ineligible persons after 20/09/94 (which also include those cases in respect of which the allowance was pertaining to the period prior to 20/09/94, but payments were made after this date i.e. 20.9.94) will be recovered."

The respondents have purported to recover the amount of SDA paid to the applicants in terms of para 7(ii) above. The respondents had not however acted upon the office Memorandum or on the letter dated 18.1.1996. They continued to pay SDA to the applicants upto June 1996. Thereafter no action to recover the amount of SDA paid was taken till February 1998. It was not the fault of the applicants to receive the SDA as it was paid to them voluntarily by the respondents upto

June 1996. In fact by the action of the respondents the applicants were led to believe that they were entitled to receive the SDA. Relying on the decision of the Hon'ble Supreme Court in Shyam Babu Verma and others vs. Union of India and others reported in (1994) 27 ATC 121 he submitted that they had received the amount in such situation and the amount already paid to them should not be recovered. Suddenly and without giving the applicants any notice the respondents had effected recovery of the SDA received. He submitted that the recovery is therefore in violation of principle of natural justice. According to him the respondents had not acted fairly as the applicants were not informed of the action taken against them before the action was taken and therefore the respondents cannot in law make recovery of the amount of SDA already paid to the applicants. In this connection he places reliance on K.I. Sephard & Ors. vs. Union of India & Ors., reported in 1988(1) S.L.J. 105 and Bhagwan Shukla vs. Union of India & Ors. reported in (1994) 6 SCC 154. Mr Chanda further submitted that in the matter of recovery of SDA paid the underlying principle of the decision of the Supreme Court in S. Vijayakumar is that the amount of SDA paid needs not be recovered. He submitted that this is further reiterated by the Hon'ble Supreme Court in the order dated 7.9.1995 in Civil Appeal No. 8208-8213 of 1995 in Union of India & Ors. vs. Geological Survey of India Employees' Association & Ors. in which it was directed that the appellant will not be entitled to recover any part of payment of Special Duty Allowance already made to the concerned employees. This Tribunal also, he submitted, had held in the order dated 26.6.1998 in O.A.No. 97 of 1997 and series of O.As that amount of SDA already paid shall not be recovered. Mr B.C.Pathak, the learned Addl.C.G.S.C opposed the contention of Mr Chanda. According to him the applicants are

A) ineligible to receive SDA. It is a matter of policy to recover the amount of SDA paid to the ineligible persons. Therefore, there is no bar to recover the amount wrongly paid. He further submitted that payment of SDA is not a condition of service and therefore there is no violation of natural justice if recovery of amount wrongly paid is made without issuing notice. However, in the present case respondents had issued notice No.453/3/Civ Est/Coy/98 dated 13.2.1998 before recovery is made by endorsing copy to the General Secretary, N.E.Defence Workers Co-ordination Committee, Guwahati for his information and necessary action.

4. I have heard counsel of both sides. In both the O.A.S the applicants are local residents of North Eastern Region and recruited locally to work in the region. In such situation they are not eligible to benefit of SDA in view of the decision dated 20.9.1994 of the Hon'ble Supreme Court mentioned above. However, in these cases they continued to be paid SDA till it was stopped in July 1996. The decision to recover the amount paid after 20.9.1994 was taken by O.M. dated 12.1.1996 and adopted by the Ministry of Defence, respondent No.1 on 18.1.1996. Recovery was however made till February 1998. In February 1998 the recovery was initiated without giving any notice to the applicants regarding the action proposed to be taken against them by the respondents. The letter dated 13.2.1998 referred to by Mr Pathak is not addressed to any of the applicants and there is no indication that the contents of the above letter were brought to the notice of the applicants. The respondents had not therefore acted fairly and reasonably in making recovery of the amount of SDA paid to the applicants between 20.9.1994 and 30.6.1996. The recovery therefore is not sustainable in law. Moreover, in view of the facts and circumstances relating

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to the payment of SDA to the applicants as mentioned above for the period and the decisions relied on by the learned counsel for the applicants, I am of the view that the respondents should not recover the amount of SDA already paid to the applicants. Therefore, in the facts and circumstances of the case of the applicants, the action of the respondents to recover the amount of SDA paid to them for the period from 20.9.1994 to 30.6.1996 is quashed and set aside. The respondents are directed to refund the amount of SDA if any recovered from the applicants within a period of 2 months from the date of receipt of this order.

The applications are disposed of. No order as to costs.

Sd/ MEMBER (Adm)