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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 207/2000

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SECTION OFFICER (Judl.)

faah

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 207/2000 OF 199

Applicant(s) *Employees Provident Fund Staff Union.*

Respondent(s) *Union of India and ors.*

Advocate for Applicant(s) *Mr. J. L. Sarkar,
Mr. M. Chandra.*

Advocate for Respondent(s) *C. G. S.C.*

Notes of the Registry	Date	Order of the Tribunal
<p>1. Application No. 207/2000 of 1999 for the purpose of the C. F. of Rs. 5000 deposited vide IPO RD No. 492/36 Dated 14.6.2000</p> <p><i>By 9/6/00</i></p> <p><i>By 13/6/00</i></p> <p><i>Note: Requisite not filed.</i></p> <p><i>By 9/6/00</i></p> <p><i>Motion has not been submitted by the Advocate.</i></p>	12.6.00	<p>Present: Hon'ble Mr D.C. Verma, Judicial Member</p> <p>Learned counsel Mr J.L. Sarkar for the applicants. Mr B.C. Pathak, learned Addl. C.G.S.C. for the respondents.</p> <p>Heard the learned counsel for the parties. The application is admitted. Issue usual notices. Written statement within three weeks.</p> <p>Heard the learned counsel for the parties on the interim relief. Respondents to show cause why the interim order as prayed be not granted. Meanwhile the respondents are directed to keep in abeyance the orders dated 6.7.1999, Annexure F, 26.4.200, Annexure H and 8.5.2000, Annexure I till disposal of the show cause.</p> <p>List for orders on 5.7.00.</p>

nkm

Member(J)

16/6/00

Requints filed by the Advocate
Notice prepared and sent to
D/Sec for issuing the
respondents No 1 to 5 vide
D/No 1679 to 1683 dtd 20/6/00

16/6

Notice duly served on
respondents No 2, 4 & 5.

13/7/00

5.7.00

Present: Hon'ble Shri S. Biswas, Administrative
Member

Learned counsel Mr M. Chanda for the
applicant and Mr B.C. Pathak, learned Addl.
C.G.S.C. for the respondents.

At the request of the learned counsel
for the respondents the case is adjourned and
posted to 21.7.00 for written statement and
orders.

S. Biswas

Member(A)

nkm

21.7.00 NO Bench is available.
Adjourned to 8.8.00.

no
h

8.8.00 NO Bench is available.
Adjourned to 30.8.00.

no
h

30.8.00 NO Bench. Adjourned to 8.11.00.

no
h

27.10.2000

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

Post the O.A. for hearing on 19.12.00
alongwith the other connected cases.

D.N. Chowdhury

Vice-Chairman

nkm

21.12.00

Heard learned counsel for the
parties. Hearing concluded. Judgement
delivered in open court, kept in
separate sheets. The application is
disposed of. No order as to costs.

Member

Vice-Chairman

trd

25.9.2000

Written Statement
has been filed by
the respondents
No. 2-5.

Boro

11-12-2000

Respondor has been
filed by the
applicant Advocate.

Boro

24.1.2001

Copy of the Judgment
has been sent to the D/Sec.
for issuing the same to the
applicant as well as to the
Addl. C.S.C. for 15 Respondents.

trd

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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 207/2000 . . of

DATE OF DECISION 21.12.2000

The Employees Provident Fund Staff Union,
N.E. Region. PETITIONER(S)

Mr. J.L.Sarkar and Mr. M.Chanda.
..... ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors. RESPONDENT(S)

Mr. B.C. Pathak, 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, MEMBER (A).

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.207 of 2000

Date of decision: This the 21st day of December 2000

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

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

The Employees Prvodent Fund Staff Union,
North Eastern Region, Assam, Affiliated with
All India Employees', P.F. Staff Federation,
New Delhi and 2 others

.....Applicants

By Advocates Mr J.L. Sarkar and Mr M. Chanda.

- versus -

The Union of India and others

.....Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

This is an application by an Association of the employees serving as Group 'C' an 'D' employees under Regional Provident Funds Commissioner, claiming their entitlement for Special (Duty) Allowance (SDA for short). This matter is a checkered career.

2. The applicants herein were serving under the Regional Provident Funds Commissioner and they were earlier granted with the benefit of SDA in terms of the Government Notification dated 14.12.1983. According to the employees were paid SDA by the respondents with effect from 1.11.1983 and in the year 1986 the payment of SDA was stopped. The Union moved this Tribunal questioning the legality of the aforesaid action of the respondents and the Tribunal by its Judgment and Order dated 14.7.1987 in G.C.No.70 of 1987 rejected the application. The Union went upto the Supreme Court by way of SLP assailing the order of this Tribunal.

Notice was issued and the aforesaid SLP was numbered and registered as SLP No.13710/87 which was subsequently numbered as Civil Appeal 2497/89. According to the applicants they also simultaneously pursued the matter further with the authority of the department. The Central Board of Trustees (hereinafter mentioned as CBT) took up the matter and was seized with it. The question of granting SDA to the staff was discussed in the 10th Executive Committee Meeting of CBT on 23.3.1993 and according to the applicants the CBT took a favourable decision to pay SDA to the employees. In one of their correspondences dated 24.3.1993, the Regional Commissioner informed the General Secretary of the Association that the Additional C.P.F.C. intimated over phone on the very day that it was decided to release SDA for the staff members of E.P.F. Organisation posted in N.E. Region subject to the condition that the case relating to SDA pending before the Hon'ble Supreme Court was withdrawn first and report sent to the Central Office with documentary evidence. Another communication was sent to the Regional Provident Fund Commissioner by the Headquarters vide D.O.No.Adm(R-iii)8(4)92/NER/7487 dated 7.5.1993, which also mentioned that the matter regarding payment of SDA was placed before the 10th meeting of the Executive Committee held on 23.3.1993. The Committee was formally intimated that two conditions required to be fulfilled were that the SLP had to be withdrawn by the staff union and the backlog of work was cleared. Subsequently the SIP was withdrawn on the basis of the communication dated 24.3.1993 which is reflected in the order dated 26.10.1993 in IA No.1/1993 in Civil Appeal No.2497 of 1989 between the parties wherein the Supreme Court made the following order:

"The learned counsel for the appellants seeks leave to withdraw this appeal in view of the letter dated 24th March, 1993 addressed by the Regional Commissioner to the General Secretary of the petitioners-Union. The appeal will stand disposed of as withdrawn."

3. The applicants informed the respondents about the withdrawal of the case and submitted the copy of the order of the Supreme Court on 9.11.1993. The CBT decided to pay SDA to the members of the Group 'C' and 'D' employees of the Association with effect from 1.4.1993 and

the decision was implemented in November 1993. The arrears of payment was paid with effect from 1.4.1993. Meanwhile on this subject there was further correspondence between the Regional Office and the Head Office. By one such communication the Regional Office was cited with the communication of the Ministry of Labour dated 3.5.1999 on the subject and mentioned that the SDA could be paid only to such employees who not only carry All India Transfer liability but also got the posting to N.E. Region on transfer from outside the Region as per the Transfer Policy/administrative requirement. The staff who were recruited specifically for posting in N.E. Region and were serving in the N.E. Region were not entitled to payment of SDA. By another letter dated 26.4.2000, Annexure H, the Central Office informed the Regional Provident Fund Commissioner that the Government of India, Ministry of Labour had informed that as per the instructions dated 22.3.1999 of the Ministry of Finance, it was not possible to grant payment of SDA to non-entitled employees of EPF Organisations and that the Employees State Insurance Corporation had also stopped payment of SDA to its non-entitled staff posted in the N.E. Region. A consequential order was accordingly passed on 8.5.2000 by the Regional Office at Guwahati reiterating the decision of the Central Office, New Delhi and ordered that recovery of SDA would commence from the Pay Bill of May 2000. The applicants in this proceeding, assailing the aforesaid recovery order, submitted that the authority, namely the Board took a conscious decision to grant SDA to its employees despite the fact that these applicants were all recruited locally and did not have All India Transfer liability on the ground specified in the decision. Mr J.L. Sarkar, learned counsel for the applicants, in support of the contention also referred to one of the communication by the members of the Board.

4. The respondents submitted their written statement and did not dispute the decision taken by the Board, but they relied upon the direction given by the Ministry of Labour on the basis of the instructions issued by the Ministry of Finance dated 22.3.1999 by which the Ministry of Finance indicated that it was not possible to pay SDA to non-entitled

employees.....

employees of Employees Provident Fund Organisation. The Department of Expenditure, Ministry of Finance by its communication dated 22.3.1999 addressed to the Ministry of Labour referred to the O.M. dated 20.4.1987 that for the purpose of sanctioning SDA, the All India Transfer liability of any service/cadre or incumbents of any post/group of posts was to be determined based on the criterion of recruitment zone, promotion zone, etc. A mere clause in the appointment letter that the person concerned was liable to be transferred anywhere in India did not make him eligible for the grant of SDA. For that purpose, the communication also referred to the decision rendered by the Supreme Court in Civil Appeal No.3251 of 1993 on 20.9.1994, Union of India and others vs. S. Vijay Kumar and others, reported in (1994) 28 ATC 598, wherein it was held that the civilian employees who had All India Transfer liability posted in the North Eastern Region from the outside the region would be entitled to SDA. The communication also indicated about the instructions issued by the Ministry of Finance on 12.1.1996 in the line of the aforesaid judgment of the Supreme Court. By the communication, the Ministry of Finance accordingly advised the Labour Department to adhere to the conditions for grant of SDA and making FAs personally responsible for any irregularity. The communication further instructed that the irregular payments, if any, made on that account after 20.9.1994 was to be recovered without any delay. In terms of the communication dated 22.3.1999, the Labour Department indicated its inability for granting SDA to the employees under the respondents. The respondents accordingly issued necessary instructions to the concerned departments. The respondents stated that the above action was taken by the respondents on the basis of the instructions issued by the Central Government. The respondents also stated that the Central Government direction came in view of the Memorandum of Settlement arrived at between the Management of Employees' Provident Fund Organisation and its employees represented by Employees Provident Fund Staff Union. The settlement specifically spelt out its agreement in the terms of the settlement.

5. From the facts enumerated above, it thus emerges that the Board at one point of time took a decision to grant SDA. That decision was in 23.3.1993. Despite the aforesaid decision, in view of the subsequent developments a conciliation proceeding was held to resolve the dispute between the parties and during the said proceeding the parties arrived at a settlement under Section 12(3) of the Act that a decision of the Ministry of Finance to whom the matter relating to payment of SDA to the applicants was given, would finally be binding on both the parties. The aforesaid settlement was signed on 4.11.1999. Naturally, it pointed out about the decision that was to be given by the Ministry of Finance relating to payment of SDA to the employees of the North Eastern Region, that was sought to be referred by the Ministry of Labour. Mr B.C. Pathak, learned Addl. C.G.S.C. submitted that the subsequent decision that has been carried out by the Provident Fund Commissioner was consequent to the decision rendered by the Ministry of Finance.

6. It is not under dispute that a settlement during a conciliation proceeding under Section 12(3) is a settlement within the meaning of 2(P) of the Industrial Disputes Act read with Section 18(3) of the said Act. Such a settlement is binding on the parties. As per the settlement the parties would be bound by a decision that was to be taken by the Ministry of Finance specifically the matter relating to payment of SDA to the applicants. The decision of the Ministry of Finance was a decision rendered in general terms, that too, prior to the settlement to which the parties entered into on 4.11.1999. Mr Pathak also submitted that the direction given by the Central Government was of binding character and in view of Section 20 when such direction came from the Central Government a duty is cast on the Central Board to comply with such direction. Mr J. L.

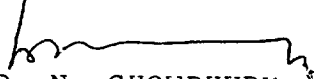
Sarkar submitted that such directions will be binding on the Central Board and the Central Board shall comply with such direction provided that such direction is given to the Central Government itself.

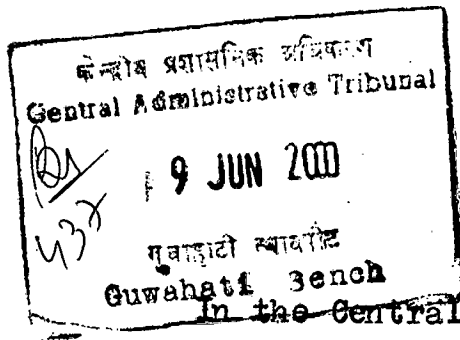
7. We are not inclined to go into the polemic the interpretation of Section 20, but the fact remains that the parties entered into a solemn agreement to get the matter resolved by the Ministry of Finance to whom the matter was referred to by the Ministry of Labour. The learned counsel for the respondents could not satisfy us that in fact, this matter was finally resolved by the Ministry of Finance independently on the basis of the agreement. In the circumstances it is difficult to hold that the impugned decision for holding up of SDA was rendered on the basis of a decision rendered by the Ministry of Finance as agreed upon.

8. For the aforesaid reasons the aforesaid communications cannot be held as lawful and accordingly those are set aside and the respondents are directed to take a decision as per the terms of the settlement. Till such a decision is taken the respondents shall have to comply with the second part of the settlement for payment of SDA, subject to the undertaking that it would be refunded by the employees as per direction of the Ministry of Finance. Till completion of the above exercise, the respondents shall not make any recovery of the SDA so far paid.

The application is accordingly disposed of. No order as to costs.


(M. P. SINGH)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN



Guwahati Bench ::: Guwahati.

This Application is
filed by the applicant -
through the Sujitkumar
Advocate

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

Title of the case : O.A. No. _____/2000

The Employees Provident -
Fund Staff Union Applicants.

-Vs- /

Union of India and others Respondents.

I N D E X

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Filed by

Sujitkumar

Advocate.

Sri Jogen Ch. Kumar

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In the Central Administrative Tribunal

Guwahati Bench ::: Guwahati.

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

Original Application _____/2000

BETWEEN

1. The Employees Provident Fund
 Staff Union, North Eastern Region,
 Assam, Affiliated with All India
 Employees', P.F. Staff Federation,
 New Delhi.

 (Registered Recognised)

 Regd. No. TU/CR/K-63/83

 P.O. Bhangagarh, G.S. Road,

 Guwahati-5.
2. Shri Narottam Medhi, UDC

 S/O late Bharat Medhi

 President E.P.F.S.U. N.E.R.

 Regional Office, Bhangagarh,

 G.S. Road, Guwahati-5.
3. Shri Jogen Ch. Kumar, UDC

 S/O late Lahamram Kumar

 General & Secretary,

 E.P.F.S.U. N.E.R.

 Regional Office,

 Bhangagarh,

 Guwahati-5.

..... Applicants.

Shri Jogen Ch. Kumar

- AND -

1. The Union of India
through the Secretary
Govt. of India, Ministry of Labour,
New Delhi.
2. The Central Board of Trustees, Employees
Provident Fund ~~Staff Union~~, *organisation*.
Bhavishya Nidhi Bhawan,
14 Bhikaji Complex,
New Delhi - 11 0066.
3. The Central Provident Fund Commissioner
E.P.F.O. Headquarter,
New Delhi - 110066.
4. Employees' Provident Fund Organisation
(Ministry of Labour)
Govt. of India,
Headquarters Bhavishya Nidhi Bhawan,
14 Bhikaji Complex,
New Delhi - 110066.
5. The Regional Provident Fund Commissioner
E.P.F.O. N. E. Region,
Regional Office, G.S. Road,
Bhangagarh, Guwahati.

..... Respondents.

Sri Jagan ch. Kumar

DETAILS OF APPLICATION.

1. Particulars of orders against which this application is made.

This application is made against the order of discontinuation of Special Duty Allowance by the impugned order dated 26.4.2000, 8.5.2000 and also praying for a direction upon the respondents to allow to continue to pay SDA to the members of the union of the Employees Provident Fund Staff Union posted in the North Eastern Region.

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

4. Facts of the case.

4.1. That the applicant no.1, Viz. Employees Provident Fund Staff Union North Eastern Region, is an union expounding the causes of the relating to service of group C & D Employees of the office of the Regional Provident Funds Commissioner. This association is herein after called an association, the union is a registered and recognised and is affiliated to the All India Employees Provident Fund Staff Federation,

Sri Jagann Ch. Kumar

the All India Employees Provident Fund Staff Federation, New Delhi. All the group 'C' & 'D' Employees under the Regional Provident Fund Commissioner and members of the Association, applicant No.2, is working as Upper Division Clerk (S.G.) in the O/O the R.P.F.C. Guwahati and he is also the President of the aforesaid Association. The applicant No.3, is working as Upper Division Clerk also in the O/O the R.P.F.C. Guwahati and he is the General - Secretary of the Association. The cause of action of the applicants is common and may ~~humbly~~ humbly pray for the permission of the Hon'ble Tribunal for filing this common application under rule 45(b) of the C.A.T. Procedure rules, 1987.

4.2. That the members of the Association are posted in the North Eastern Region and are subject to the hazards of the Region, Union of India is very much alive to the hazards high cost of living, and other inconveniences of the Region and as such have formulated schemes for conditions of service of the Employees posted in the N.E. Region. Apart from the policy decision of the union of India. the different departments officials have also formulated scheme and provided for relief oriented benefits to the staff. In the year 1983, the Union of India, under O.M. No. 20014/3/83] E.1V dated 14.12.83 formulated a scheme for giving Special Duty Allowance for short SDA to the employees posted in the N.E. Region having All India Transfer Liability. The Union of India had also granted other incentives to

Sri Jagann Ch. Kumar

the employees of the N.E. Region.

4.3. That the applicants beg to state that they were paid SDA w.e.f. 1.11.83 but in the year 1986 the payment of the said SDA was stopped with order of recovery of the amounts paid. Against the decisions the union filed application before this Hon'ble Tribunal which was numbered as G.C. No. 70/87 by Judgement and order dated 14-7-87 the Hon'ble Tribunal was pleased to dismissed the said application.

4.4. That the union preferred a Special leave petition before the Hon'ble Supreme Court against the Judgement of the Hon'ble Tribunal in the said G.C. No.70/87. The SLP no. 13710/87 was subsequently numbered as Civil appeal 2497/89.

✓

4.5. It is stated that in addition to contesting the case before the Hon'ble Supreme Court the applicants were also pursuing the matter of entitlement of some Special duty allowance with the Authority of the department. In this connection it is stated that the appropriate Authorities of the department could also frame scheme for of the grievances of the employees the applicants further states that the departmental Authorities took conciliatory views in the matter and the union and its members also reciprocated in healthy spirit.

Contd.....

Sri Jagannath Kumar

4.6. That the Central Board of trustees (in short CBT) in the Authority to determine the conditions of service and eligibility of the employees under their control. The CBT was seized with the matter of payment of SDA to the employees and also of the fact of the pendency of the appeal arising out of the judgement of the Hon'ble Tribunal on SDA in terms of office memorandum dated 14.12.83, this aspect of the entitlement of SDA to the staff was discussed in the 10th Executive Committee Meeting of CBT on 23.3.93 and the matter was taken as item No. 9 of the said meeting.

The CBT took a considered decision to pay SDA to the employees with prospective application.

4.7. That the Regional Provident Fund Commissioner, N.E. Region, by his letter No. RC/FA/Confidential/92-93 dated 24.3.93, communicated to the General Secretary of the applicant's union that it has been decided to pay SDA to the staff members of the EPF organisation posted in N.E. Region subject to the condition that the case relating to SDA pending before the Hon'ble Supreme Court is withdrawn first and the report sent to the central office with documentary evidence.

In this connection it is stated that the union and the members as also the respondent Authorities/ were acting in a healthy concialatory spirit and both sides were eager for over all progress of the works in all area of activity to minimise pendency of work.

Sri Jagannath Kumar

The Regional Commissioner in the said letter dated 24.3.93 as such mention of the same in the said letter.

Copy of the letter dated 24.3.93 is enclosed as Annexure - A.

4.8. That the Regional Commissioner Headquarter New Delhi under letter dated 7.5.93 inform the Regional Provident Fund Commissioner of the decision to pay Special Duty Allowance to the employees of the provident Fund organisation of N.E. Region subject to fulfilment of two conditions as under :

1. The SLP had to be withdrawn by the staff union.
2. All the backlog of work was cleared.

The Regional Commissioner N.E. Region was asked to obtain confirmation of the staff union about the withdrawal of the SLP and report on this two point was to be submitted to New Delhi (Hd. Qtr).

A copy of the letter dated 7.5.93 is enclosed as Annexure - B.

4.9. That the union assured the Regional Provident Fund Commissioner ~~xxxx~~ contents that the employees will work very hard and would intiate special drive to clear backlog of works in all front and had also confirmed that the SLP pending before the Hon'ble Supreme Court would also been withdrawn in view of the decision of Authorities to pay SDA to the employees of N.E. Region . The union was infact very happy

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with the welfare oriented approach of the Authorities and for the special dispensation for payment of a special duty allowance to the workers under the decision as a measure of this special dispensation the members of the union have been given the allowance prospectively . As the both sides viz. the Authorities and the union took the sanction as a special dispensation delinked from the earlier orders union also did not persue for payment of the allowance for earlier date.

The Regional P.F. Commissioner by his letter dated 12.9.93 to the central P.F. Commissioner, New Delhi, informed the decision of the union as explained above, He also recommended that the payment of SDA to group 'C' & 'D' employees stationed in N.E. Region should be made as earlier as possible.

A copy of the letter dated 12.9.93 is enclosed as Annexure -C.

4.10. That at the initiative of the union pursuant to the decision as explained above, the civil appeal no.2497/89 was listed before the Hon'ble Supreme Court and by an order dated 26.10.1993 the Hon'ble Supreme Court was pleased to dispose the appeal as withdrawn . The order read as under :

"

Order

The learned counsel for the appellant seeks leave to withdraw this appeal in view of the letter dated 24th March 1993 addressed by the Regional Commissioner to the General Secretary

Sd/- Jogen Ch. Kumar

of the petitioners union. The appeal will stand disposed of as withdrawn."

A copy of the order dated 26.10.93 of the Hon'ble Supreme Court is enclosed as Annexure-D.

4.11. That the General Secretary of the union by letter dated 9.11.93 addressed to the C.P.F.C. through the Regional P.F. Commissioner N. E. Region inform of the withdrawal of case in the Supreme Court and submitted a copy of the Hon'ble Supreme Court order.

Copy of the letter dated 9.11.93 is enclosed as Annexure - E.

4.12. That the CBT New Delhi decided to pay SDA to the members of the group 'C' & 'D' employees of the organisation w.e.f. 1.4.93, the decision was implemented in November, 1993. The arrears of payment was paid with effect from 1.4.93. The employees thus have been receiving SDA under A considered decision which has been taken by the Authorities in a very special and peculiar circumstances the union and the members of the union including the applicant no. 2 and 3 discharged all the obligations and assurances, to the Authorities in full legal and moral spirit and the Authorities have also been discharging their part of the decision . In this connection it is stated that the SDA, is given to the central Govt. employees posted in N.E. Region on different yard sticks. There are departments where SDA is given to the group 'A' officers irrespective of the place from which they have

Sri Jagann Ch. Kumar

recruited. There are also departments where group A and B officers are paid SDA irrespective of the place from where they have been paid. The applicants begs to apprise the Hon'ble Tribunal of the factual position ~~that~~ that there has not been any policy for uniform application of any standard for payment of SDA to the employees of the Central Govt. It is also stated that in R.P.F.C. office of N.E. Region also the Group 'A' & 'B' officials are being paid SDA. The decision of the authorities to pay SDA to the group 'C' AND 'D' employees stationed in N.E. Region brings the group A, B, C and D in equal standare and status as requiired payment of SDA and removes the discrimination.

4.13. That the employees provident Fund organisation New Delhi (~~Wxx~~ Head Office) addressed a letter dated 6.7.99 to the Regional Provident Fund Commissioner, N.E. Region informing interalia that SDA is to be paid to such employees who not only carry the all India Transfer Liability but also got the posting to N.E. Region on transfer from out side the Region. The staff who are recruited specifically for posting in N.E. Region and serving in N.E. - Region are not entitled to SDA. These instructions were issued on the basis of Ministry of Finance, Department of Expenditure O.M. dated 12.1.1996, it was also advised under the said letter to stop payment of SDA to all non-entitled employees.

Copies of the letter dated 6-7-99 and O.M. dated 12.1.96 are enclosed as annexure F and G respectively.

Sd/- Jagann Ch. Kumar

4.14. It is stated that the union was very much worried on the threat of stoppage of SDA started persuing with the HeadQuarter and made personal representation before the employees provident fund organisation New Delhi and also contacted the same members of the CBT . An application was also made before the Regional Labour Commissioner Guwahati against the stoppage of SDA. The matter of payment of SDA to the members of the union continued to be pending with the Authorities also paid SDA as per the decision already taken in persuance to the withdrawal of the case from the Hon'ble Supreme Court. The union was under firm belief and hope that before any order of dis-confirmation of the SDA, or reversal of the decision of the CBT for payment of SDA, they would be given a hearing in the matter. But most unfortunately the Regional Provident Fund Commissioner Central Office New Delhi under letter dated 26.4.2000 has advised R.P.F. Commissioner New Delhi informing the discontinuance of SDA to the non entitlement employees of N.E. Region. The A.P.F.C. (Admn) Guwahati has issued an order dated 8.5.2000 has circulated the contents of the letter dated 26.4.2000 stating that it is not possible to grant payment of SDA to non entitlement employes of EPFO posted in N.E. Region. It was also order that ~~the~~ recovery of SDA would be commenced. It is apparent from the above communication that there has not been any decision as regards the stopping of the SDA to the members of the union or the Group 'C' and

Sri Jogen Ch. Kumar

Group 'C' and 'D' employees of the organisation posted in N.E. Region as such. The said order are vague and cryptic and speaks of non payment of SDA to non entitlement employees. It is stated that the group 'C' & 'D' employees are getting SDA as per the decision of the CBT. The group A and B officials of the organisation are not covered by the decision of the CBT the applicants also states that the respondents have not made any effort to find out who are the non entitled officials as per the letter dated 6.7.99. It is reiterated that this standard is not applicable to the applicants.

Copies of the letter dated 26.4.2000 and office order dated 8.5.2000 are enclosed as Annexure -H & I respectively.

4.15. That in this connection the applicants beg to state that the letter dated 26.4.2000 and the office order dated 8.5.2000 are not relevant in the fact and circumstances of the payment of SDA to the group 'C' & 'D' employees of the N.E. Region. A close perusal of the correspondences will reveal that the non entitlement is based on the O.M. dated 12.1.96 of the department of expenditure Ministry of Finance and the said letter is the out come of result of some cases which have been decided by the Hon'ble Supreme Court. As already explained earlier the union of India ~~is~~ also has confined the application of the said O.M. in the specific cases and the standard and yard stick in that O.M. has not been

Dr Jagan Ch Kumar

-13-

deliberately not made applicable universally in all cases of employees and officers posted in N.E. Region SDA has been paid and is being paid to officials not confirming to the yard stick as laid down in O.M. dated 12.1.96.

4.16. That the members of the union viz. group 'C' and 'D' employees posted in N.E. Region are being paid SDA on the fulfilment of condition of withdrawal of the case from the Hon'ble Supreme Court. The payment of SDA, has been made after considered decision and cannot be withdrawn whimsically and arbitrarily. But most unfortunately the payment of SDA has not been changed in the salary bill for May 2000 most arbitrarily and this arbitrary action has given rise to the cause of action to the ~~pay~~ present application.

It is stated that the group 'C' and 'D' employees has not received the payment allowance for May 2000.

4.16. That the decision to pay SDA to the group 'C' and 'D' employees has become part of the order of the Hon'ble Supreme Court dated 26.10.93 and the same can not be taken away in the manner sought to be done by the respondents. It is unfair and violative of the judicial process.

4.17. That the CBT has taken the decision to pay SDA as already explained above after the order of the Hon'ble Supreme Court dated 26.10.94, the said decision of the CBT has not been cancelled or rescinded no negotiation

Sri Jagann Ch. Kumar

what-so-ever with the union has been made . No decision as to who are non entitled employees have been taken the CBT is also seized with the matter and CBT is very much alive to the fact that the case of the applicant stand on a different footing. The communication of Shri Allam-Pialli Venketram who is a member of the CBT dated 22.5.2000 to the Chairman, Executive Committee and letter dated 23.5.2000 to the R.P.F. commissioner, Guwahati speaks of the real position. The applicants beg to state that it is very much unfair and illegal on the part of the respondents to stop payment of SDA and order ~~of~~ recovery when there has not been any ~~specific~~ specific decision of non-entitlement of SDA by the group 'C' & 'D' employees posted in N.E. Region.

Copies of the letter dated 22.5.2000 and 23.5.2000 are enclosed as annexure - J & K respectively.

4.18. The applicant approached the Regional Labour Commission, Guwahati . An understanding was signed by the Authorities, the Union and the Labour Commissioner to abide by the decision of the Finance Ministry in the disputes. However, no decision has been taken by the Finance Ministry on the facts and circumstances of the case . However, the respondents have stated that the Regional Labour Commission has no jurisdiction in the matter.

See Jagan ch. Kumar

4.19. That this application is made bonafide and for the cause of justice.

5. Grounds for relief with legal provisions.

- 5.1 For that the SDA being paid cannot be stopped without following the principles of natural justice.
- 5.2. For that SDA has been sanctioned by decision in special circumstances.
- 5.3. For that SDA has been paid by decision of CBT by their executive power, and the same cannot be denied in a routine manner on analogy of other cases.
- 5.4. For that CBT has not decided to deny SDA in the circumstances of the case.
- 5.5. For that the Finance Ministry or any other department of the Union of India has not decided on the circumstances of the applicants to deny SDA and the circumstances under which SDA has been sanctioned and has not been considered before passing the order of stoppage of SDA/ stoppage of SDA .
- 5.6. For that the decision and order to pay SDA has merged in the order dated 26. 10.93 of the Hon'ble Supreme Court.
- 5.7. For that stoppage of SDA is arbitrary and whimsical and is violative of the articles 14, 16 and 21 of the Constitution of India.

Sri Jagannath Ch. Kumar

6. Details of remedies exhausted.

The applicant states that he has no other alternative or other efficacious remedy then to file this application before this Hon'ble Tribunal for protection of his valuable right.

7. Matters not previously filed or pending before any other Court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought for :

8.1. That the impugned order dated 6.7.99 (Annexure-F), 26.4.2000 (Annexure-H) and 8.5.2000 (Annexure-I) be set aside and quashed.

8.2. That the Hon'ble Tribunal be pleased to direct the respondents to continue to pay SDA to the members of the Union.

8.3. That the Hon'ble Tribunal be pleased to declare that the members of the Union are entitled to payment of SDA .

Sri Jagan Ch. Kumar

V E R I F I C A T I O N

I, Shri Jogen Chandra Kumar, Son of late Lahamram Kumar, aged about 42 years working as UDC and also the General Secretary of the Employees - Provident Fund Staff Union, Guwahati, I have been authorised to sign the verification on behalf of the Union and I do verify that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the
th day of June, 2000. at Guwahati.

Shri Jogen Ch. Kumar
Signature.

- 8.4. That no recovery an account of payment of SDA be made.
- 8.5. To pass any other order or orders as deem fit and ~~proper~~ proper.
- 8.6. Cost of the case.

9. Interim order prayed for :

During the pendency of the application the applicant pray following interim prayer.

- 9.1. That the Hon'ble Tribunal be pleased to stay the operation of the impugned order dated 8.7.99 (Annexure-F), 26.4.2000 (Annexure- H) and 8.5.2000 (Annexure - I) SDA to the Group 'C' & 'D' employees to be continued and no recovery be made.

10.

This application has been filed through advocate.

11. Particulars of I.P.O.

- | | | | |
|------|---------------|---|-------------------|
| i. | I.P.O. NO. | : | 06497316 |
| ii. | Date of Issue | : | I-6-2000 |
| iii. | Issued from | : | G.P.O., Guwahati. |
| iv. | Payable at | : | G.P.O., Guwahati. |

12. List of enclosures.

As stated in the Index.

..... Verification.

Annexure A

No. 20014/3/83-E.IV
GOVERNMENT OF INDIA
Ministry of Finance
Expenditure

New Delhi, the 14th December, 1983.

OFFICE MEMORANDUM

Subject:- Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region - Improvements thereof.

The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows:-

(1) Tenure of posting/deputation:-

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc. in excess of 15 days per year will be excluded in counting the tenure period of 2 / 3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training abroad and special mention in Confidential Records.

Satisfactory performance of duties for the

(4)

prescribed tenure in the North East shall be given due regard in the case of eligible officers in the matter of -

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North East.

A specific entry shall be made in the C.R. of all employees who rendered a full tenure of service in the North Eastern Region to that effect.

(iii) Special (Duty) Allowance:

Central Government civilian employees who have All-India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 per cent of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance :

1. Assam and Meghalaya

The rate of the allowance will be 5% of basic pay subject to a maximum of Rs. 50/- p.m. admissible to all employees without any pay limit. The above allowance will be admissible with effect from 1.7.1982 in the case of Assam.

2. Manipur

The rate of allowance will be as follows for the whole of Manipur :-

Pay upto Rs. 260/-

Rs. 40/- p.m.

✓ Pay above Rs. 260/-

15% of basic pay subject to a maximum of Rs. 150/- p.m.

3. Tripura

The rates of the allowance will be as follows:-

(3)

-3-

(a) Difficult Areas

25% of pay subject to a minimum of Rs. 50/- and a maximum of Rs. 150/- p.m.

(b) Other Areas

Pay upto Rs. 260/-

Rs. 40/- p.m.

Pay above Rs. 260/-

15% of basic pay subject to a maximum of Rs. 150/- p.m.

There will be no change in the existing rates of Special Compensatory Allowances admissible in Arunachal Pradesh, Nagaland and Mizoram and the existing rate of Disturbance Allowance admissible in specified areas of Mizoram.

(v) Travelling Allowance on first appointment :

In relaxation of the present rules (S.R. 105) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in case of journeys for taking up initial appointment to a post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 400 kms. for the Government servant himself and his family will be admissible.

(vi) Travelling Allowance for journey on transfer:

In relaxation of orders below S.R. 116, if on transfer to a station in the North-Eastern region, the family of the Government servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. In case the family accompanies the Government servant on transfer, the Government servant will be entitled to the existing admissible travelling allowance including the cost of transportation of the admissible weight of personal effects according to the grade to which the officer belongs, irrespective of the weight of the baggage actually carried. The above provisions will also apply for the return journey on transfer back from the North Eastern Region.

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(2

-4-

(vii) Road mileage for transportation of personal effects.

In relation of orders below S.R. 116, for transportation of personal effects on transfer between two different stations in the North-Eastern region, higher rate of allowance admissible for transportation in 'A' class cities subject to the actual expenditure incurred by the Government servant will be admissible.

(viii) Joining Time with leave.

In case of Government servants proceeding on leave from a place of posting in North-Eastern region, the period of travel in excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) Leave Travel Concession :

A Government servant who leaves his family behind at the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North East to his home town or place where the family is residing and in addition the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North Eastern Region. In case the option is for the latter alternative, the cost of travel for the initial distance (400 kms./160 kms.) will not be borne by the officer.

Officers drawing pay of Rs. 2250/- or above, and their families, i.e., spouse and two dependent children (up to 18 years for boys and 24 years for girls) will be allowed air-travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance/Hostel Subsidy :

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance up to class XII will be admissible in respect of

.....5/-

-5-

children studying at the last station of posting of the employee concerned or any other station where the children reside, without any restriction of any drawn by the Government servant. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

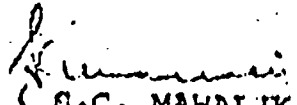
2. The above orders except in sub-para (iv) will also mutatis mutandis apply to Central Government employees posted to Andaman and Nicobar Islands.

3. These orders will take effect from 1st November, 1983 and will remain in force for a period of three years upto 31st October, 1986.

4. All existing special allowances, facilities and concessions extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North Eastern Region will be withdrawn from the date of effect of the orders contained in this office Memorandum.

5. Separate orders will be issued in respect of other recommendations of the Committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

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


(S.C. MAHALIK)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

To,

All Ministries/Departments of the Government of India,
etc. etc.

Copy (with spare copies) to C.& A.G., U.P.S.C. etc.

IAVISIYANIDHII, Guwahati

2344-1 : Telex 235 - 2510 - RPEC IN

☎ / Phone { 60958
62047

OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER

पूर्वांतर क्षेत्र, जी. एत. रोड, अंगानद.

गुवाहाटी-781005 (वसम)

N. E. REGION, G. S. ROAD, BHANGAGARH,
GUWAHATI, 781005

GUWAHATI-781005 (ASSAM)

दिनांक 24-3-93.

Date..... 24-3-93.

To,

The General Secretary,
E.P.F.S.U.,
N.E. Region, Guwahati-5.

Sub:-

Grant of S.D.A. - Withdrawal of Case - Regarding.

Sir,

The Addl. C.P.F.C. intimated over phone to-day the 24th March '93 that it has been decided to release Spl. Duty Allowance for the Staff Members of E.P.F.Orgn. posted in N.E. Region subject to the condition that the case relating to S.D.A. pending before the Hon'ble Supreme Court is withdrawn first and report sent to the Central Office with documentary evidence.

Further, C.P.F.C. has also desired to know the over-all progress achieved till in all aspects of activity during the month of March '93 and has instructed to make all out efforts to minimise the pendency before 31st March '93.

Yours faithfully,

(J.H. NARZARY)
REGIONAL COMMISSIONER.

★ ★ ★ ★ ★

24/12/20

D.O. No. Adm(R-111)8(4)92/NER/7487

From :

S.P.CHADHA
R.P.F.C. (Hqrs)

dt. 7.5.93

My Dear Narzary,

You are aware that the matter regarding payment of S.D.A. was placed before the 10th. meeting of Executive Committee held on 23rd. March, 1993. Before the decision of the Executive Committee is formally implemented the two condition required to be fulfilled are as under

1. The S.L.P. HAD TO BE WITHDRAWN BY THE STAFF UNION.
2. ALL THE BACKLOG OF WORK IS CLEARED.

A report on these two points may please be sent after getting a confirmation from the Staff Union about the withdrawal of the S.L.P.

Yours Sincerely,

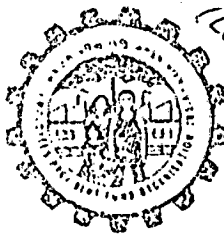
sd/-

(S.P.CHADHA)

Shri J.N.Narzary,

R.P.F.C.
NORTH EASTERN REGION
Guwahati

कृपया कोड संख्या, संदर्भ, दिनांक, एवं
विषय का उल्लेख करें।
Please quote Ref. No. Date.
Subject & Code No. if any.



टेलीकॉम / Telex 200

दूरभाष / Phone { 60958
62047

Guwahati

FC IN

कार्यालय क्षेत्रीय भविष्य निधि आयुक्त
OFFICE OF THE REGIONAL PROVIDENT-FUND COMMISSIONER

पूर्वोत्तर क्षेत्र, जी. एस. रोड, भंगागढ़

गुवाहाटी-781005 (असम)

N. E. REGION, G. S. ROAD, BHANGAGARH,

GUWAHATI-781005 (ASSAM)

SPEED POST

क्रमांक.....

Ref. No. Adm/AS/15/Vol.III/340-41/2

दिनांक.....

Date...12/5/93

To,

BY Name to
Sh. S.P. Chadha
R.P.C(HQ)

*The Central P.F. Commissioner
NEW DELHI-1

Sub :- Grant of SDA in respect of Gr. 'C' & 'D' employees
stationed in N.E. Region - proposal regarding.

Ref :- your D.O. letter No. Adm(R-III)8(4)92/NER/7487 dt. 7th
May '93 and of even number dt. 21st June '93.

Sir,

Kindly refer to your letters cited on the above
mentioned subject.

A confirmation from the Staff Union about the withdrawal of SLP has since been obtained. The General Secretary of the Staff union has informed that he is proceeding to New Delhi very shortly for withdrawal of the case pending before the Hon'ble Supreme Court and submit necessary papers/documents to the Central office directly. Regarding the clearance of the backlog of work it is submitted that we have initiated special drive to clear the backlog of work in all fronts. The progress made in this regard relating to the service to the subscribers may kindly be seen from the enclosed statement. It is further submitted that with the help of computers already installed in R.O. Guwahati & SRO Agartala, it will be possible to clear the backlog of accounts within a very short period.

In view of the circumstances as explained above, it is recommended that the payment of Special Duty Allowance to Gr. C & D employees stationed in N.E. Region may kindly be sanctioned and released as early as possible.

Yours faithfully

Encl : as above.

(J. N. NARZARY)
REGIONAL P.F. COMMISSIONER

Copy to :

By Name to
Sh. A.N. Roy
Adl. CPFC

*The Addl. C.P.F.C.
NEW DELHI.

J. N. Narzary
Regional Provident Fund
Commissioner
R.O. Guwahati

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EMPLOYEES' PROVIDENT FUND ORGANISATION,
(CENTRAL OFFICE)
9TH FLOOR, MAYUR BHAWAN, CONNAUGHT CIRCUS,
NEW DELHI.

38

2546

F.No. LC/2/137/23/NE

URGENT
SUPREME COURT MATTER

Dated :-

To

22 APR 1994

The Regional Provident Fund Commissioner,
NE R. (A88am).

Sub:-

Special Leave Petition/Writ Petition No. 13710/87
CA, 2497/89 before Hon'ble Supreme Court
in the matter of E.P.F. Staff Union & Anr
Vs. The Union of India & Ors.

Sir,

Please find enclosed herewith the Hon'ble Supreme
Court order dated 26.10.93 in the above matter for
your information and necessary action.

Yours faithfully,

Encl:- As above

(N.K. PRASAD)
REGIONAL PROVIDENT FUND COMMISSIONER (LEGAL)
for CENTRAL PROVIDENT FUND COMMISSIONER

Annexure - 2

29-28

Certified to be true copy
J. M. Sahel
Assistant Secretary
Supreme Court of India
240

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO. 1

IN

CIVIL APPEAL NO. 2497/89

475884

Emp. Provident Fund Staff Union & anr. ..Appellants
versus
The Union of India & Ors.Respondents

O R D E R

The learned counsel for the appellants
seek leave to withdraw this appeal in view
of the letter dated 24th March, 1993 addressed
by the Regional Commissioner to the General
Secretary of the petitioners Union. The appeal
will stand disposed of as withdrawn.

(A.M. Ahmed)

(R.M. Sahel)

New Delhi,
October 26, 1993.

ANNEXURE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION No. _____/1993

IN

CIVIL APPEAL No. 2497 of 1989

(Arising from Special Leave Petition (civil)

No. 13710 of 1987)

IN THE MATTER OF :EMPLOYEES' PROVIDENT FUND STAFF
UNION AND OTHERS

APPELLANTS

- Versus -

THE UNION OF INDIA AND OTHERS

RESPONDENTS

AND IN THE MATTER OF :

1. Employees' Provident Fund
Staff Union, North-Eastern
Region, Binovanagar,
GUWAHATI - 18.
2. Shri Bhringeswar Deka,
son of late Dharmeswar Deka,
Working as Upper Division Clerk,
Office of the Employees'
Provident Fund Commissioner,
Binovanagar,
GUWAHATI - 18.

General Secretary
Employees' Provident Fund
Staff Union, Binovanagar,
GUWAHATI - 18.

APPELLANTS

- Versus -

-30-
-37-

Annexure D

-2-

41

1. The Union of India,
represented by the Secretary,
Ministry of Labour,
NEW DELHI.
2. The Central Provident Fund Commissioner,
Office of the Central Provident Fund,
Commissioner, 9th Floor, Mayur Bhawan,
Cannought Circus,
NEW DELHI.
3. The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund,
Commissioner, Northern Eastern Region,
Binovanagar, GUWAHATI.

...Respondent

APPLICATION UNDER RULE 47 OF THE SUPREME
COURT RULES FOR ORDERS PERMITTING THE
APPELLANTS TO WITHDRAW THE CIVIL APPEAL.

To

Hon'ble
The Chief Justice of India and
his Hon'ble Companion Judges of
the Hon'ble Supreme Court.

The Humble petition of the
petitioner abovenamed.

MOST RESPECTFULLY SUBMITTED

1. This Hon'ble Court was pleased to grant Special
Leave in Special Leave Petition(C) Nos 13710 of 1987
filed by the Appellants praying for leave to Appeal
against the judgment and order dated 14th July, 1987
by the Guwahati Bench of the Central Administrative
Tribunal in G.C. No. 70 of 1987.

Annexure D (29/10)
3

2. THE issue raised in the Special Leave Petition was in regard to the grant of Special (duty) allowance at the rate of 25 per cent of basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern region. The Learned Central Administrative Tribunal, Guwahati Bench held that the employees of the office of the Regional Provident Fund Commissioner, Guwahati are not entitled to the grant of Special (duty) allowance as ordered by the Government of India. It may be submitted here that the Calcutta Bench of the Learned Tribunal took a different view and allowed a number of petitions in identical cases and the decision of the Calcutta Bench was upheld by the Full Bench of the Central Administrative Tribunal. Following the decision of the Full Bench, the Guwahati Bench itself allowed a number of applications in identical cases. The Union of India withdrew the Special Leave petitions filed in this Hon'ble Court against the said judgements. The review petitions filed by the Union of India against the judgements of the Central Administrative Tribunal allowing the claim of the employees to the grant of special (duty) allowance have also been dismissed.

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-32-
-33-

Annexure - D Encls.

4

3. THE Appellants submit that by Letter No. RC/4/ Confidential/9296 dated 24.3.1993, the Appellant-Union was informed that "it has been decided to release special (duty) allowance for the staff members of the E.P.F- Organisation posted in N.E. region subject to the condition that the case relating to S.D.A. pending before the Hon'ble Supreme Court is withdrawn first and the report sent to the Central office with documentary evidence". A copy of the same letter is annexed hereto and marked as ANNEXURE - A.

4. THE General Body of the Appellant-Union, in its meeting held on 24.3.1993, unanimously resolved for withdrawal of the Appeal pending in this Hon'ble Court and authorise the Executive Committee to initiate immediate necessary action to withdraw the case. A copy of the said Resolution is annexed hereto and marked as ANNEXURE - B. The Appellant No.2, who was the General Secretary of the Union, is a party to the above decision of the General Body meeting of the Appellant - Union.

5. THE Appellants respectfully submit that in view of the above circumstances, it is appropriate that this Hon'ble Court be pleased to permit the Appellants to withdraw the said appeal pending in this Hon'ble Court.

- 34-33 -
- 5 :-

Annexure D

(28)

P R A Y E R

IN the above premises, the Appellants most respectfully pray that this Hon'ble Court be pleased to permit the Appellants to withdraw the Civil Appeal No. 2497 of 1989 pending in this Hon'ble Court.

IT is further prayed that this Hon'ble Court be pleased to pass any other order considered appropriate and necessary in the facts of the case.

AND FOR THIS ACT OF KINDNESS THE APPELLANTS SHALL EVER REMAIN BOUND TO PRAY.

FILED BY

(M.M. KASHAP)
(ADVOCATE FOR THE APPELLANTS)

NEW DELHI,

Dated : 10-9-83

Drawn by :

(E.X. JOSEPH)
ADVOCATE

X/ True copy //

45
34-
35-
Annexure D
6

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
INTERLOCUTORY APPLICATION NO. 1/1993

IN

CIVIL APPEAL No. 2497 of 1989
(ARISING FROM SPECIAL LEAVE PETITION (C) No. 13710 of 198

IN THE MATTER OF :

Employees' Provident Fund Staff
Union and another ..

.. APPELLANTS

- Versus -

The Union of India and others ..

.. RESPONDENTS

A F F I D A V I T

I, Khagendra Nath Deka, son of late Kalicharan Deka, General Secretary of Employees' Provident Fund Staff Union, North Eastern Region, Assam do hereby solemnly state and affirm as under :

1. THAT I am the General Secretary of the Appellant No.1-Union and I am familiar with the facts of the case.

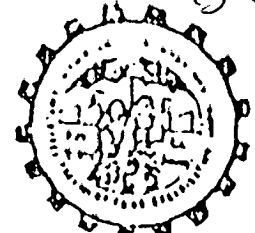
2. THAT I am competent to affirm this Affidavit. I have been authorised by the Appellant No.2 also to affirm this Affidavit on his behalf.

3. THAT the facts stated in the accompanying Application for permission to withdraw the Civil Appeal No. 2497/1989 pending in this Hon'ble Court are true and correct to my knowledge.

- 36-35 -

Amex... 1.48

महानि. महानि. निमित्त, पुन
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कार्यालय क्षेत्रीय मविच निधि आयोग
OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER

महानि. नि. नि. नि. नि. नि.
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Ref. No. RC/PA/Confidential/9256

Date 24-3-93

To,
The General Secretary,
E.P.F.S.U.,
N.E. Region, Guwahati-5.

Subj- Grant of S.D.A. - Withdrawal of Case - Regarding
Sir,

The Addl. C.P.F.C. intimated over phone today the 24th March '93 that it has been decided to release Spl. Duty Allowance for the Staff Members of E.P.F. Orgn. posted in N.E. Region subject to the condition that the case relating to S.D.A. pending before the Hon'ble Supreme Court is withdrawn first and report sent to the Central Office with documentary evidence.

Further, C.P.F.C. has also desired to know the over-all progress achieved till in all arrears of activity during the month of March '93 and has instructed to make all out efforts to minimise the pendency before 31st March '93.

Yours faithfully,

(J.H. BARBARY)
REGIONAL COMMISSIONER

Received on
4/3/93 at 3:15 PM
[Signature]

31-37

288

7 20

4. THAT the annexures annexed are true copies of their originals.

Khagendra Nath Deba

DEPONENT

VERIFICATION :

Verified at New Delhi on this 24th day of April, 1993
that the contents of the above Affidavit are true and correct to the best of my knowledge and that nothing material has been concealed therefrom.

Khagendra Nath Deba

DEPONENT

10/10/10
1/2/10

- 38-37 Ammen - E 48

EMPLOYEES' PROVIDENT FUND STAFF UNION

NORTH EASTERN REGION, ASSAM.

Affiliated With All India Employees' P. F. Staff Federation, New Delhi.

(Registered & Recognised)

Regd. No. : TU/CR/K-63/83

237

19

President

Vice President

Gen. Secretary

Asstt. Genl. Secy.

Treasurer

P.O. Bhangagarh

GUWAHATI-5

ASSAM

Phone No. : 60958, 62047

Ref. No. EPFSU/NER/21

Dated... 01.11.93..

To,

By name to :-

Sri A.N. Roy,
Add. C.P.F.C.,
New Delhi.

The Central P.F. Commissioner,
New Delhi.

Through the Regional P.F. Commissioner,
N.E. Region, Guwahati- 5.

Sub :-

Submission of Withdrawal Certificate in
connection with S.D.A. Case vide No. 2497 of
1989.

Sir,

Please refer of our letter No. E.P.F.S.U/NER/17, dated 28.09.93 on the above noted subject. In this connection, I am submitting herewith the certificate copy of Ho'ale Supreme Court's order vide No. 2497 of 1989, in regards to the withdrawal of S.D.A. Case for your necessary action please.

Yours faithfully,

(K. N. DEKA)
GENERAL SECRETARY.

39-38-
Annexure - 'F' *Recd Post*

कर्मचारी भविष्य निधि प्रा. सं.

Employees' Provident Fund *Organization*

Head Office
14, Market Street, New Delhi-110002
14, Gokulji Street, New Delhi-110002

P.V/50(1)/99/NER-Incentive/5585

Regional Provident Fund Commissioner,
North Eastern Region,
Guwahati

10-00
02-00

6 June 1999

6-7-1999

Subject: Grant of Special Duty Allowance in respect of employees of EPFO posted in North Eastern Region.

Reference: RPFC DO Letter No. Adm/AS/380/Part.II/057 dated 02.06.1999.

Sir,
A copy of the Ministry of Labour Letter No. Z-13018/2/99-Coord. dated 03.05.1999 on the subject with the annexures, is forwarded herewith. It may be seen there from that the special duty allowance is to be paid only to such employees who not only carry the 'All India transfer liability' but also got the posting to North Eastern Region on transfer from outside the Region as per the transfer policy/administrative requirement. The staff who are recruited specifically for posting in North Eastern Region and are serving in North Eastern Region are not entitled to payment of special duty allowance. The instructions of Ministry of Labour are based on the instructions issued by the Ministry of Finance, Department of Expenditure vide their O.M. No. 1(5)/95-F-II(B) dated 12.04.1996 (copy enclosed).

In view of the above, you are advised to stop the payment of special duty allowance to all non-entitled employees with immediate effect. *Forward compliance report -*

The instructions issued vide Head Office letter No. Adm.(R-II)/8(4)/92/NER/4018 dated 4th October 1993 as regards payment of SDA may be treated as suspended accordingly.

Pls. see with the approval of C.R.T.

Yours faithfully,

C. Bheemanna
(C. BHEEMANNA)

*certified the True copy of
Siddhesh
Advocate*

Annexure-2 (Extract)

F.No. 20014/16/86/E.IV/E.II (B)
Govt. of India, Ministry of Finance,
Department of Expenditure

New Delhi the 1 Dec 1988

OFFICE MEMORANDUM

Subject : Improvements and facilities for Civilian Employees of the Central Govt. serving in the States of North Eastern Region, Andaman Nicobar and Lakshadweep

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/83-E.IV dated 14th December, 1983 and 30th March, 1984 on the subject mentioned above and to say that the question of making suitable improvements in the allowances and facilities to Central Government employees posted in North Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been engaging the attention of the Government Accordingly the President is now pleased to decide as follows :

- 1) x x x x x x x
- ii) x x x x x x x
- iii) Special Duty Allowance.

The Central Govt. Civilian Employees who have All India Transfer Liability will be granted Special (Duty) Allowance at the rate of 12% of basic pay subject to ceiling of Rs. 1000/- per month on posting to any station in the North Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or deputation (duty) allowance already being drawn subject to the condition that the total of such allowance will not exceed Rs. 1000/- p.m. Special allowance like special compensatory (Remote locality) allowance, Construction Allowance and Project Allowance will be drawn separately.

The Central Govt. civilian employees who are members of Scheduled Tribes and are otherwise eligible for the grant of special (Duty) Allowance under this para and are exempted from payment of Income-Tax under the Income-Tax Act will also draw Special (Duty) Allowance.

x x x x x x x
xxxxxx:xxxxx

- 60 -

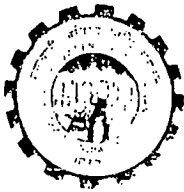
Annexure - H.

नाम "केन्द्रीय निधि" नई दिल्ली

Telegram: KENDRIYA NIDHI New Delhi

R. P. F. C. SECRETARIATE

Receipt Serial No. 249



कर्मचारी भविष्य निधि संगठन

EMPLOYEES' PROVIDENT FUND ORGANISATION

केन्द्रीय कार्यालय / CENTRAL OFFICE

हडको विशाला, 14 भीकजी कामा प्लेस, नई दिल्ली-110066

Hudco Vishala, 14 Bhikaji Cama Place, New Delhi-110066

संख्या

No. HRM-V/P-V/50(1)99/NER-Incentive

5795

26 सप्टे 2000

दिनांक

Date

To

*
BY NAME TO:-
Shri R. Goswami,
RPFC (Grade-I)

*
The Regional Provident Fund Commissioner,
North-Eastern Region,
Guwahati

Sub: Discontinuance of payment of Special Duty Allowance to the non-entitled employees working in North-Eastern Region.

Sir,

Please refer to this office letter no. P-V/50(1)99/NER/incentive/5598, dated the 5th October '99 on the above subject.

2. The Govt of India, Ministry of Labour has informed that as per the instructions dated 22nd March '99 of the Ministry of Finance, it is not possible to grant payment of Special Duty Allowance to non-entitled employees of Employees Provident Fund Organisation. The Employees State Insurance Corporation has also stopped payment of Special Duty Allowance to its non-entitled staff posted in the North-Eastern Region.

Yours faithfully,

(B.R. RATTAN)

REGIONAL PROVIDENT FUND COMMISSIONER (HRM)

communicate to
all SROs & take
further action after
the decision is taken
by the
authorities

AC (H.R.)

certified the True copy
Sri Singh
Advocate

तार : भविष्यनिधि, गुवाहाटी
Telegram : BHAVISHYANIDHI, Guwahati
फैक्स/फैक्स : 0361-562047



Annexure - 1
562047

दुर्भाष / Phone : 566265

560958

कर्मचारी भविष्य निधि संगठन

Employees' Provident Fund Organisation

श्रम मंत्रालय, भारत सरकार,

Ministry of Labour, Govt. of India

क्षेत्रीय कार्यालय, पूर्वोत्तर क्षेत्र, सी. एस. रोड,

REGIONAL OFFICE, N. E. REGION, C. S. ROAD,

भोमगढ़, गुवाहाटी - 781005 (असम)

BIHANGAGARH, GUWAHATI - 781 005 (ASSAM)

क्रमांक.....
Ref. No. Adm/Ag/ISO/Pat-11/576

दिनांक.....
Date 8/5/2000

OFFICE ORDER

Central Office vide their letter No. HRM-V/PV/50(1) 93/NER Incentive/5X95 dt. 26.4.2000 has informed that it is not possible to grant payment of SDA to non-entitled employees of E.P.F.O posted in N.E. Region. Hence, payment of SDA is stopped with immediate effect.

Recovery of SDA paid will commence from the pay Bill of May 2000 in accordance with the terms of settlement and undertaking submitted by the employees.

This Issues with the approval of RC-1.

(P. J. KAPAT)

AS ST. P.F. COMMISSIONER (ADM)

To,

1. Pay Bill.
2. PAC
3. Notice Board.

Copy to:-

1. O.L.O., S.R.O., Agt/Shg/Tsk. They are directed to take similar action. Copy of C.O. letter is enclosed.
2. G.S., EPFSSU, Ghy-5 for information. (Copy of C.O. letter is enclosed)

A.P.F. (ADM)

*certified the true copy of
Sivitghosh
Advocate*

Allampalli Venkatram

President, B.M.S. - Karnataka State

MEMBER:

Central Board of Trustees: Employee's Provident Fund

Regional Board: E.S.I.C., Karnataka

Minimum Wages Advisory Board, Karnataka

Annexure - J
BHARATIYA MAZDOOR SANGH

Subedar Chatram Road BANGALORE-009

☎ : 2871703

Ref. No. : 244/2000

Date : 22.05.2000

The Chairman - Executive Committee,
Secretary
Government of India,
Ministry of Labour,
Shram Shakti Bhawan,
Rafi Marg,
NEW DELHI - 110 001.

Dear Sir,

Sub : Continuation of the payment of Special
Duty Allowance to Group 'C' and 'D' em-
ployees of North East Region.

During the last week when I was on tour in North East Region for Building and Construction Sub-Committee Meeting and inspection of construction, I was given a copy of the Office order No.Adm/As/380/Part-II/582 dated 8.5.2000, where- in among other things, the Asst. PF Commissioner Adm. of North East Region, Guwahati has stated that it is not possible to grant payment of Special Duty Allowance to non entitled em- ployees of the EPFO posted in N.E. Region. Hence, payment of Special Duty Allowance is stopped and however ordering for recovery of SDA to commence from the month of May 2000 etc. I am enclosing a xerox copy of the said order for your kind and immediate reference.

Further, I am enclosing a xerox copy of the letter No. HRM-V/P-V/50(1)99/NER-Incentive/5195 dated 26th April 2000 addressed to the RPFC, North East Region by RPFC - HRM of Head Office, New Delhi. Both letters state it was not possible to grant the payment of SDA to non entitled employees of PF. According to them non-entitled employees are Group 'C' and 'D'. These employees are about 200. I request you to be kind enough to keep both the orders in abeyance and bring the subject before the Executive Committee for an appropriate action. After the Executive Committee's decision, whatever the Central Office feel may take appropriate action. The payment of Special Duty Allowance to Group 'C' and 'D' employees stationed at North East Region was considered in detail by the 10th Executive Committee of CBI in 93 and it was unanimously resolved to pay Group 'C' and 'D' employees that Special Duty Allowance. At that point of time or as a matter of fact, even now only Group 'A' and Group 'B' officers upto the level of EO and AAO who bear All India transfer liability only are given as per the 1993 Central Government Order No. 20014/3/84/E-14 dated 14.12.83.

.....2/-

*certified to true copy of
signature
Advocate*

The Provident Fund employees belonging to Group 'C' and 'D' have no All India Transfer liability and therefore they are not entitled, but, however, on the following specific conditions they were given. The conditions are :

- a) Clearance of the back-log and reducing the pendency level equivalent to not more than one month receipts..
- b) The SLP (Special Leave Petition) which had been filed before the Supreme Court was to be withdrawn by the Staff union.

Thus after these two conditions from the month of April 93, the Special Duty Allowance was given to the Group 'C' and 'D' employees of the PF. It has to be noted that these employees were given from the year 1993 and not from 1983 according to the date of original notification.

Many aspects of this matter was taken into consideration by the 10th Executive Committee of CBT and unanimously approved for granting the Special Duty Allowance to Group 'C' and 'D', even though they were not entitled to the same according to the Central Government Order of 1983. We have to remember in this regard also, while all the Group 'A' and 'B' officers bearing the All India Transfer liability were given from 1983 whereas from 1993 on two special conditions Group 'C' and 'D' employees, who were not bearing All India Transfer liability were given. Thus, the right to get Special Duty Allowance as far as Group 'C' and 'D' employees are concerned, flows from the order/approval of the Executive Committee of CBT.

Any reversal of this approval or order will have to be placed before the Executive Committee again for its consideration and unilaterally Special Duty Allowance cannot be withdrawn either by the Finance Ministry or by the Labour Ministry.

When the Executive Committee of CBT had unanimously resolved to pay this Special Duty Allowance, the same cannot be withdrawn unilaterally, as it would amount to insulting the decision of the Executive Committee.

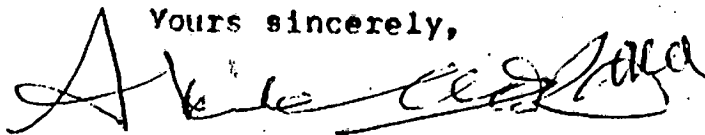
- 3 -

Therefore, I earnestly appeal to your goodself to kindly and immediately intervene in the matter and keep the withdrawal orders in abeyance and the matter is placed before the Executive Committee.

Kindly acknowledge the receipt of this letter.

Thanking you,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Allampalli Venkataram', written over a horizontal line.

(ALLAMPALLI VENKATARAM)
MEMBER-CBT

-45-
Allampalli Venkatram
President M.S. - Karnataka State

MEMBER:
Central Board of Trustees : Employee's Provident Fund
Regional Board : E.S.I.C., Karnataka
Minimum Wages Advisory Board, Karnataka

BHARATIYA MAZDOOR SANGH

Subedar Chatram Road BANGALORE -009

☎ : 2871703

Annexure - K⁵⁰

Ref. No. : 250/2000

Date : 23.05.2000

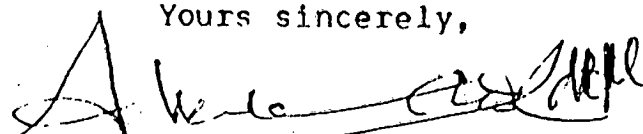
Dear Sri. Goswami,

I am enclosing a copy of my representation to the Chairman, Executive Committee of CBT regarding continuance of Special Duty Allowance to Group 'C' and 'D' employees of North East. Similar letters also have been addressed to CPFC, and Chairman of CBT, Dr. Sathyanarayan Jatiya, the Hon'ble Labour Minister. Kindly inform the union persons also so that smooth work is carried on looking after the interest of subscribers and this issue of Special Duty Allowance is being taken up at central level.

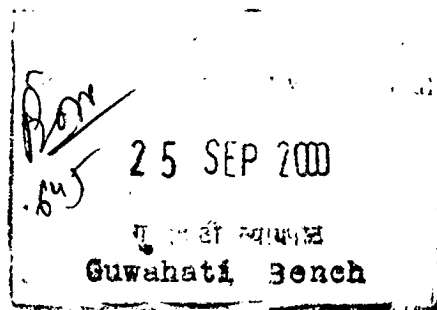
Kindly acknowledge the receipt of this letter.

Thanking you,

Yours sincerely,


(ALLAMPALLI VENKATARAM)
MEMBER-CBT

Sri. Rajat Goswami
Regional Provident Fund Commissioner (I)
Employees Provident Fund Organisation
G.S. Road, Bhangagarh,
GUWAHATI - 781 005 (Assam)



46
20/9/2000
Hd. 65257

In the Central Administrative Tribunal
Guwahati Bench at Guwahati.

Original Application No. 207/2000/

The Employees Provident Fund
Staff Union, N.E. Region.

..... Applicants.

- Versus -

Union of India and others.

..... Respondents.

(Written Statements filed by the Respondents
2 to 5).

The Written Statements of the aforesaid
respondents are as follows :-

1. That the abovementioned O.A. No. 207/2000
(referred to as "application") has been admitted by this
Hon'ble Tribunal Tribunal for hearing and the respondents
were directed to file the written statements in the case.
The answering respondents have received the copy of the
~~said~~ said application, gone through it and understood the
contents thereof. The interest of all the answering
respondents being common and similar, this common written
statements has been filed by all of them.

Contd...

2. That the statements made in the application, save and except those which are specifically admitted by the answering respondents, are hereby denied by the answering respondents.

3. That before traversing the various paragraphs of the application, the answering respondents give a brief history and facts of the case of ~~the case~~ as under :

The Government of India vide Ministry of Finance, Department of Expenditure, Office Memorandum No. 20014/3/83-E/IV dated 14.12.83, granted certain incentives to the Central Government Civilian employees posted in the North Eastern Region. Amongst other such facilities, provisions ~~was~~ ^{were} made to pay an allowance as "Special Duty Allowance (ⁱⁿ ~~as~~ short "SDA"). These facilities were extended only with the aim and objective for attracting and retaining the services of competent "Officers" for service in the region. This become effective w.e.f. 1.11.83 to 31.10.86. The answering respondents implemented the said incentives and extended the benefit to the officers only as indicative from the aim and objective of the office Memo itself, such officers were namely ; EOs, AAOs, PFIs (Grade-I), AAOs, APFCs and RPFCs. The incentives were implemented

Contd.....

vide letter No. Pers-I/Misc/84/11211 dated 20.6.84 and No. AS/108/Adm/Vol-I/630 dated 3.7.84. As the employees in Grade 'C' & 'D' were excluded from the benefits of these incentives, the Staff Union pursued the matter and demanded payment of SDA, the respondent No.5 forwarded such claim for consideration by the respondent No. 3 vide letter No. Adm/AS/380/1537 dated 9.12.86. The respondent No.1 rejected the claim on 9.12.86 and strictly adhered to the provisions of O.M. dated 14.12.83 and the "All India Transfer Liability" grounds and this was done vide Ministry of Labour letter No. A-27025/1/86-SS-III/8 dated 6.1.87. The Staff Union however continued their efforts and on retirement of the Permanent incumbent^{Regional Provident Fund Commissioner}, while the temporary incumbent as respondent No.5 was holding the charge, the Staff Union coerced the incharge officer and he had to pass order under duress on threat to life for making payment of SDA to the group 'C' & 'D' Staff; who are not entitled to such benefit. The illegal order was caused to be passed vide order No. Adm/AS/380 dated 3.3.87. Considering the ^{seriousness} ~~serviceness~~ and gravity of the act of the Staff Union, the authority took up the matter with the respondent No.3. The respondent No.3 then wrote to the Government of Assam, Department of Home for initiating

investigation and action against such members of Staff and also directed the respondent No.5 to recover the amount. In compliance with the said order communicated through telegram dated 9.3.87, the respondent No.5 issued the circular individually to all concern vide No. Adm/AS/380/788 dated 10.3.87 and directed to refund the A SDA so paid/drawn by them ; Against this circular order dated 10.3.87, ~~and~~ the Staff Union filed an application ⁱⁿ ~~and~~ the Central Administrative Tribunal at Guwahati vide G.C. No.70/87. This Hon'ble C.A.T, Guwahati was pleased to dismiss the said application vide judgement and order dated 14.7.87 alongwith some other cases of similar nature. This Hon'ble Tribunal discussed each and every aspects of the case in details and gave the verdict against the staff Union. On the meantime, the Govt. of India brought out another O.M. as O.M. No. 20014/3/83/F.IV dated 20.4.87 and thereby made it clear that mere clause of All India Transfer Liability laid down in the appointment letter as done ^{almost} ~~elurt~~ in all cases will not make an employee eligible for SDA. Being aggrieved by the judgement and order passed in G.C. No. 70/87, the Staff Union filed a Special Leave Petition (SLP) before the Hon'ble Supreme Court being SLP No. 13710/87 and subsequently registered as Civil Appeal No. 2497/89. However while the said C.A. No. 2497/89 was pending before the Hon'ble

Hon'ble Supreme Court the Staff Union got the Civil Appeal disposed of as withdrawn vide Hon'ble Supreme Court's order dated 26.10.93 passed in CA No. 2497/89. This withdrawal was made on the basis of the understanding between the respondents and the Staff Union that if that Civil Appeal was withdrawn and the pending works were cleared, the respondents would take up the matter of payment of SDA at the appropriate level. This undertaking was signed on 24.7.92. Accordingly a draft proposal was prepared for the 10th Executive Committee meeting as Item No. 9 and the same was placed before the Executive Committee held on 23.3.93 and said Executive Committee approved the aforesaid proposal with prospective effect.

In the meantime, in series of cases, registered as Civil Appeal No. 3251/93, the Hon'ble Supreme Court passed a Judgement/order on 20.9.94. By the said judgement the Hon'ble Supreme Court on the basis of the relevant aforesaid O.M.s held that the allowance in question was meant to attract persons from outside the N.E. Region to work in N.E. Region because of inaccessibility and difficult terrain. It was also made clear that Central Govt. employees having All India Transfer Liability shall be granted the allowance on posting to any station to

Contd,.....

to the North Eastern Region. Accordingly the C.A. 3251/93 was dismissed. In another order passed by the Hon'ble Supreme in C.A. No. 8208-8213 on 7.9.95, referring to the C.A. 3251/93 held that the employees in Group 'C' & 'D' whose transfer liability has been ~~made~~ regionalised (N.E. Region) and they being resident of N.E. Region, are not to be paid SDA. After the aforesaid two decisions passed by the Hon'ble Supreme Court, this Hon'ble C.A.T. Guwahati also passed order in the ~~same~~line in O.A. 75/96 on 4.1.99. The Govt. of India, Ministry of Finance, Deptt pf Expenditure, vide O.M. No. 11(3)/95-E.II(B) dated 12.1.96 re-iterated the Hon'ble Supreme Court's order and directed all the Ministries/Departments to recover the amount of SDA paid after 20.9.94.

On the other hand, the statutory Audit Conducted by the A.G. (Audit), Assam during the year 1997-98 pointed out that the payment of SDA was unauthorisedly made . This came to the notice of the Ministry of Finance ~~at~~ who directed the respondents to adhere to the conditions for grant of SDA. This was communicated vide ~~RRR~~ D.O. letter dated 22.3.99. Consequently the Ministry of Labour (Respondent No.1) issued order vide O.M. No. Z- 13018/2/99/Corr. dated 3.5.99 to all attach and subordinate offices including the autonomous bodies under the Administrative Control of that Ministry for strict compliance of the order of Govt. of India

reg regarding S.D.A.

In view of the above position, the answering respondents took steps and directed the respondents No.5 to stop payment of SDA to non entitled staff vide letter No. P-V/50(1)/99/NER/Incentive/5585 dated 6.7.99 and also instructed to treat the instructions issued vide H.Q. letter No. Adm/14/8/4/92/NER/4018 dated 4.10.93 granting SDA to Group 'C' & D Staff as suspended . The respondent No.5 in compliance also issued the office order vide No. Adm/AS/380/Part-II/2673 dated 16.7.99 for immediate stoppage of payment of SDA to non-entitled staff. At this stage, the staff union coerced the authorities and threatened the respondent No.5 in his office chamber on 23.9.99. The respondent had to agree to the demand of the staff union under duress but the payment was subject to execution of undertaking individually. The respondent No.5 also lodged complaint in the Dispur Police Station alleging the act of gross indiscipline and deliberality ~~alleging~~ confining him, by the Staff Union on 23.9.99 vide letter dated 25.9.99.

As an alternative resort, the Staff Union pursued the matter of payment of SDA and they again approached the Regional Labour Commissioner (Central) for his intervention under Industrial Disputes Act, 1947. A conciliation proceedings

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was held and an agreement was reached between the parties on 4.11.99. According to the said agreement both the parties agreed to abide by the decision to be passed by the Ministry of Finance, Govt. of India to whom the representation of the Staff Union was referred to. The respondent No.3 vide letter No. HRM-V/P-V/50(1)99/NER-Incentive/8195 dated 26.4.2000 informed the respondent No.5 that the Ministry of Finance has rejected the claim of the Staff Union and the same was communicated to the Ministry of Labour. Accordingly, the Ministry of Labour has communicated the respondent No.3 and also directed to stop payment of SDA with immediate effect. As follow up measure, the respondent No.5 issued the order vide No. ADM/AS/380/Part-II dated 8.5.2000 and directed for stoppage of payment of SDA to non-entitled staff with immediate effect. Hence the present application.

The copies of the above mentioned O.M. letter order judgement etc. dated 14.12.83, 20.6.84, 3.7.84, 9.12.86, 6.1.87, 3.3.87, 10.3.87, judgement dated 14.7.97, O.M. dated 20.4.87, order dated 26.10.93, 24.7.92, proposal for 10th Executive Meeting, Item No. 9 of Executive Meeting held on 23.3.93, judgement dated 20.9.94, 7.9.95, 4.1.99, letter dated 12.1.96, Audit objection, letter dated 22.3.99, 3.5.99, 6.7.99, 16.7.99, 23.9.99, 25.9.99, agreement dated

Contd.....

dated 4.11.99, 26.4.2000 (11.4.2000) and 8.5.2000
are annexed hereto as Annexure - R₁ to R 28
respectively.

4. That with regard to the statements made in para 1 of the application, the answering respondents state that as explained hereinabove, the respondents issued the impugned order dated 26.4.2000 and 8.5.2000 as the Group 'C' And 'D' staff are not entitled to SDA under the rules and the law laid down by the Hon'ble Supreme.

5. That the answering respondents have no comments with regard to the statements made in para 2, 3 and 4.1 of the application. But the respondents submit that all the applicants are residents of North Eastern Region and/or their conditions of service are regionalised.

6. That with regard to the statements made in para 4.2 of the application, the answering respondents state that the intention of the Govt. of India is very clear in the said O.M. dated 14.12.83. This O.M. as explained hereinabove, is intended for attracting and retaining the services of competent officers for service in the North-Eastern Region. This word "officers" does not include the group 'C' and 'D' staff. The Govt. servants who are exempted from payment of Income Tax are also not entitled to such SDA . Moreso, only these officers who are posted in the North Eastern Region from outside are only entitled to such benefit. the residents of North Eastern Region are not at all entitled

to such benefit. All this provision are clearly interpreted by the Hon'ble Supreme Court in a plethora of decisions. The respondents also humbly submits that the basic rule of interpretation is to explore the intention of the legislature through the words, the context which gives the colour, the context, the subject matter, the effects and consequences or the spirit and reasons of the law. The general words and collocation or ~~ph~~ phrases, howsoever wide or comprehensive in their literal sense are interpreted from the context and scheme underlying in the text of the Act. Hence from the general reading and also from the context of the O.M. and the decisions given by the Hon'ble Supreme ^{Court} in this regard, it is very clear that the Group 'C' & 'D' staff are not entitled to SDA.

In this regard, the respondents once again ~~re assert~~ re-assert that by the O.M. No. 20014/3/83.E.IV dated 20.4.87 (as stated hereinabove) the Govt. of India made it further clear that the main criteria on which the payment of SDA is considered is the "All India Transfer Liability". This all India Transfer Liability is further to be determined by applying the test of "Recruitment Zone, promotion Zone etc." i.e. whether the recruitment was made on all India selection basis and/or in case of promotion, whether the all India seniority is maintained or not. It was also made clear that mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc. to the effect) that the person concerned is liable to be transferred anywhere in

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in India, does not make him eligible for the grant of SDA. The respondents being statutory authorities, have their statutory rules regulating the conditions of service of Group 'C' & 'D' Staff.

So far as the recruitment Zone is concerned, the Group 'C' & 'D' are recruited by the Regional Provident Fund Commissioner within the (North Eastern) Region, it is not done on all India basis. The seniority for promotion of 'C' & 'D' Group staff is also maintained region wise. As per rules, the transfer liability is also limited to region only. In view of all these legal provisions, the applicants are not entitled to grant of SDA.

The answering respondents crave the leave of this Hon'ble Tribunal to allow them to rely upon and produce the copy of the Employees Provident Fund and Miscellaneous Provisions Act 1952 and the various rules framed thereunder at the time of hearing the case.

7. That with regard to the statements made in para 4.3 to 4.13 of the application, the answering respondents re-iterate and re-assert the statements made hereinabove in this written statements.

8. That with regard to the statements made in para 4.14 and 4.15 of the application, the answering respondents state that all the sequence leading to the stage of stoppage of payment of SDA has already been explained above in this written statements. However, the answering respondents would like to make it more clear that as per provisions laid down in the Employees Provident Fund and Miscellaneous Act, 1952

(referred to as the "Act") under Section 20, ^{the} The Central Government has the authority to give direction from time to time to the Central Board of Trustees and the Central Board ^{is} ~~is~~ bound to comply with such direction. The Section 5(D) (7)(a) of the said Act also provides that :

" The method of recruitment, salary and allowances, discipline and other conditions of services of the Additional Central Provident Fund Commission, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Govt. drawing corresponding scales of pay :

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Govt."

The Regulation 9(5) of the Employees Provident Fund (Staff and conditions of service) Regulation, 1962 (as amended) provides that :

"The employees will be entitled to such allowances including travelling allowance and concessions as may be admissible from time to time to corresponding categories of Central Govt. Servants."

In view of the above provision, the answering respondents had to follow the instructions of the Central Government regarding stoppage of SDA and to recover the amount paid to the ineligible employees after 20.9.94 as directed by the Govt. of India, Ministry of Finance, Department of Expenditure, vide O.M. No. 11(3)/95-E.II(B) dated 12.1.96. The respondent No.1 also took up the matter regarding payment of SDA with the Ministry of Finance seeking clarifications/ approval. But the Ministry of Finance, vide letter dated 22.3.99 made a reference to the said O.M. dated 12.1.99 and directed the respondent No.1 to remove the irregularities immediately. Then the respondent No.1 issued the letter No. Z-13018/2/99-Co-ord. dated 3.5.99 and instructed the answering respondents to adhere to these conditions as laid down in O.M. 12.1.99 and to recover the irregular payment after 20.9.94. Accordingly as stated below, the answering respondents took the steps through the impugned orders on 6.7.99, 26.4.2000 and 8.5.2000. As admitted by the applicants themselves, the said impugned orders were issued with due notice to them. As such there were no irregularity or illegality in issuing the said impugned orders.

9. That with regard to the statements made in para 4.16 (there are two paras marked as 4.16 in page 13 of the application) of the application, the answering respondents respectfully submit that the situation which led to the approval for granting SDA has already been explained hereinabove with documentary proof. It is also clear as to how the CBT had to

approve the grant of SDA under the mistaken belief regarding the transfer liability of 'C' & 'D' group staff and entitlement and grant of SDA by the sister organisations like ESIC etc. under the same Ministry of Labours. Subsequently, when the mistake came to the notice, the answering respondents had no alternative but to rectify the mistake. It is also explicit on record that when the SDA was first allowed to the Group 'A' & 'B' officer, the answering respondents kept the option open to examine the basis for entitlement of SDA to group 'C' & 'D' staff. As rules permits to go by the decisions/direction of the Central Govt. the applicants cannot find fault with the decision and action of the CBT. Hence there is nothing to show as arbitrary as alleged by the applicants. The order dated 26.10.93 passed by the Hon'ble Supreme allowing the withdrawal of C.A. No. 2497/89 is not a judgement deciding any point in issue hence any subsequent action by the either party to it would not amount to violation of any judicial process as alleged. Moreover a mistake cannot be allowed to continue. The law as held by Hon'ble Supreme is clear that the fact that in one case the appellant might have misconstrued the scope and effect of a Rule would not justify the claim by the respondent that the Rule should be similarly misconstrued in all cases thereafter. In another case, the said Hon'ble Court also held that the respondent has no right whatsoever and can not be given the relief, wrongly given to others. The respondents being statutory authorities borne on the statute and the rules framed thereunder, such statute and statutory rule permit them to exercise such power to grant and to withdraw

such pay and allowances in parity with the Central Govt. The applicants cannot get the benefit by mis-interpreting the laws. So far as the communication of the member of CBT is alleged, such member has nothing to do with outside the Board. They have a say/vote only in the Board.

10. That with regard to the statements made in para 4.18 of the application, the answering respondents state that the Finance Ministry had already taken a decision and instructed the Ministry of labour (Respondent No.1) on 22.3.99. Then the respondent No.1 immediately informed all its subordinate department/bodies on 3.5.99 and 11.4.2000 and then the answering respondents took steps on 6-7-99, 16.7.99, 26.4.2000 and 8.5.2000. All these steps and records are explained and annexed in this written statements.

11. That with regard to the statements made in para 4.19 of the application, the answering respondents state that the application has been filed malafide and for wrongful gain and as such the same is liable to be dismissed with cost.

12. That with regard to the statements made in para 5.1 to 5.7 of the application, the answering respondents re-asserts the statements already made in the foregoing paras of the written statements. The answering respondents also state that there was no violation of principles of natural justice as the applicants have admitted the fact that the order dated 8.5.2000 was circulated among all. Hence, there was nothing arbitrariness or illegality in

stoppage of SDA to the applicants by ~~issu~~ issuing the impugned orders. The grounds shown by the applicants are well answered by the answering respondents and such grounds can not sustain in law.

13. That with regard to the statements made in para 6 of the application, the answering respondents have no comments.

14. That the statements made in para 7 of the application are totally false and misleading . It is clear from their own averments that the applicant prior to this application, made another application in this Hon'ble Tribunal which was registered as G.C. No. 70/87 and the same was dismissed on 14.7.87 by a speaking judgement. Against that judgement the applicant had filed a Civil Appeal in the Hon'ble Supreme Court vide C.A. No. 2497/89 and the same was withdrawn on 26.10.93. Apart from this, the applicant approached the Regional Labour Commissioner (Central) and a conciliation proceedings was drawn where an agreement was reached and the applicants agreed to abide by the decision to be given by the Ministry of Finance, Govt. of India . In view of the above admitted facts, the statements are blatant lie and therefore the application is liable to be dismissed summarily on that ground alone.

15. That with regard to the reliefs sought for in para 8.1 to 8.5 and 9.1 the answering respondents state that in any view of the facts and circumstances of the case and the provisions of law, rules & etc., the applicants are not entitled

Contd.....

to any relief whatsoever and hence the application is liable to be dismissed with cost. Hence the interim order granted on 12.6.2000 may kindly be vacated/modified or altered.

In the premises aforesaid, it is therefore prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall further be pleased to dismiss the application with cost and vacate the stay order granted on 12.6.2000 in this case and/or pass such further or other order that Your Lordships may deem fit and proper.

Verification.....

V E R I F I C A T I O N

I, Shri Prabhat Chandra Patir, presently
working as Regional P.F. Commissioner-1, Guwahati
being competent and duly authorised to sign this verification,
do hereby solemnly affirm and state that the statements made
in para 1, 2, 4 to 15 are true to
my knowledge and belief, these made in para 3

being matter of records are true to my information
derived therefrom and the rest are my humble submission before
this Hon'ble Tribunal. I have not suppressed or ~~masked~~
concealed any material fact or information.

And I sign this verification on this 20 th day
of September, 2000 at Guwahati.

Prabhat Chandra Patir

Deponent.

R. C. Patir,
Regional P.F. Commissioner-1
M. A. R., Guwahati-781005.

R-11 19

Annexure-R1
75 64

No. 20014/1/03-E.IV
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 14th December 1983.

OFFICE MEMORANDUM

Subject: Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region - improvements thereof.

The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been attracting the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows:-

(i) Tenure of posting/deputation:

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training abroad and special mention in Confidential Records.

Satisfactory performance of duties for the

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See 11/11/83
179/11/83
Regd. Secy
M. E. & A. Secy
11/11/83

prescribed tenure in the North East shall be given due recognition in the case of eligible officers in the matter of -

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) measures of training abroad.

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North East.

A special entry shall be made in the C.R. of all employees who render a full tenure of service in the North Eastern Region to that effect.

(iii) Special (Duty) Allowance

Central Government civilian employees who have all India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 per cent of basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/deputation (Duty) Allowance will not exceed Rs.400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance

1. Assam and Meghalaya

The rate of the allowance will be 7% of basic pay subject to a maximum of Rs.50/- p.m. admissible to all employees without any pay limit. The above allowance will be admissible with effect from 1.7.1982 in the case of Assam.

2. Manipur

The rate of allowance will be as follows for the whole of Manipur :-

Pay upto Rs.810/-
Pay above Rs.260/-

Rs.40/- p.m.

15% of basic pay subject to a maximum of Rs.150/- p.m.

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3. Tripura

The rates of the allowances will be as follows:-

(a) Difficult Area 25% of pay subject to a minimum of Rs. 50/- and a maximum of Rs. 150/- p.m.

(b) Other Area

Pay upto Rs. 260/- Rs. 40/- p.m.

Pay above Rs. 260/- 15% of basic pay subject to a maximum of Rs. 150/- p.m.

There will be no change in the existing rates of Special Compensatory Allowances admissible in Arunachal Pradesh, Nagaland and Mizoram and the existing rate of Disturbance allowance admissible in specified areas of Mizoram.

(v) Travelling Allowance on first appointment :

In relaxation of the present rules (U.R.185) that travelling allowance is not admissible for journeys undertaken in connection with the initial appointment, in case of journeys for taking up initial appointment to a post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 400 kms. for the Government servant himself and his family will be admissible.

(vi) Travelling Allowance for journey on transfer :

In relaxation of orders below U.R.116, if on transfer to a station in the North-Eastern region, the family of the Government servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. In case the family accompanies the Government servant on transfer, the Government servant will be entitled to the existing admissible travelling allowance including the cost of transportation of the admissible weight of personal effects according to the grade to which the officer belongs, irrespective of the weight of the baggage actually carried. The above provisions will also apply for the return journey on transfer back from the North Eastern region.

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Deepatir
Regional P. Commissioner-1
N.E. R., Guwahati-781003.

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(vii) Road mileage for transportation of personal effect on transfer:

In relaxation of orders below S.R. 116, for transportation of personal effects on transfer between two different stations in the North-Eastern region, higher rate of allowance admissible for transportation in 'A' class cities subject to the actual expenditure incurred by the Government servant will be admissible.

(viii) Joining Time with leave :

In case of Government servants proceeding on leave from a place of posting in North-Eastern Region, the period of travel in excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) Leave Travel Concession :

A Government servant who leaves his family behind at the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North East to his home town or place where the family is residing and in addition the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North Eastern Region. In case the option is for the latter alternative, the cost of travel for the initial distance (400 kms./160 kms.) will not be borne by the officer.

Officers drawing pay of Rs.2250/- or above, and their families, i.e., spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air-travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance / Hostel Subsidy:

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto class XII will be admissible in respect of children studying at the last station of posting of the employee concerned or any other station where the children reside, without any restriction of pay drawn by the Government servant. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

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15/9/2000

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2. The above orders except in sub-para (1v) will also mutatis mutandis apply to Central Government employees posted to Andaman and Nicobar Islands.

3. These orders will take effect from 1st November, 1983 and will remain in force for a period of three years upto 31st October, 1986.

4. All existing special allowances, facilities and concessions extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North-Eastern region will be withdrawn from the date of effect of the orders contained in this Office Memorandum.

5. Separate orders will be issued in respect of other recommendations of the Committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

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

sd/-

(S.O. MAHALIK)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

To,

All Ministries/Departments of the Government of India, etc. etc.

Copy (with special copies) to C.&A.O., U.P.S.C. etc.

RECEIVED
GOVERNMENT OF INDIA
SECRETARY TO THE GOVERNMENT

See
15/9/2000
F.C. Patil,
Joint Secretary-1
Ministry of Labour & Employment

Annex ~~88~~

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Confidential

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Annexure - R2

OFFICE OF THE CENTRAL PROVIDENT FUND COMMISSIONER,
9TH FLOOR, MAJUR BHAWAN, CONNAUGHT CIRCUS,
NEW DELHI-1.

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No. pay-71 Misc 84/11121

Dated the

20 JUN 1984

To

The Regional Provident Fund Commissioner,
North Eastern Region,
Gauhati.

Subj

Allowances facilities for civilian employees
of the Central Government serving in the States
and Union Territories of North-Eastern Region-
improvements thereof.

Sir,

I am directed to forward herewith a copy of Ministry
of Finance, Department of Expenditure O.M.No.20014/3/83-E.IV/
dated 12.12.1983 on the subject noted above for favour of your
information and taking necessary action in the matter.

Since we have been following the pattern of pay
and allowances of being paid by Central Government Offices
in respect of our officers and staff members, you may extend
special benefits indicated in the aforesaid circular subject
to fulfilling its conditions to the officers and employees
working in North Eastern Region subject to the condition that
the payment of special duty allowance may initially be
restricted to officers serving in the cadre of Enforcement Officers/
Assistant Accounts Officer/P.F.I.(Gr.I)/Accounts Officer/A.P.F.C.
(Gr.I)/R.P.F.C. As regards its entitlement in respect of
staff members serving upto the grade of head-clerk who too
carry the transfer liability with their appointment but are
not subjected to regular periodical transfer, you may please
ascertain the position from the other Central Government
Offices like Income-Tax, Accountant General, Life Insurance
Corporation etc. as to how they have been regulating its
payment to their office employees of similar nature. On
hearing from you in this matter, further action, if any
required, will be taken considered and intimated to you in
due course.

Please acknowledge receipt.

Yours faithfully,

(A.H. ROY)

REGIONAL PROVIDENT FUND COMMISSIONER (R.P.F.C.)
FOR CENTRAL PROVIDENT FUND COMMISSIONER.

Recd
P.F.C. Gauhati
Regional P.F. Commissioner-1
N.E.R. Gauhati-781005.

of the Regional Provident Fund Commissioner
NORTH EASTERN REGION
P. O. Binoivanagar, GAUTAHATI-781018.

10/Adm/Vol-I/11/3

Date 2.7.84

C I R C U L A R

Sub :- Allowances and facilities for civil-
lian Employees of Central Govt.
serving in the States and Union
Territories of N.E. Region - improve-
ment thereof.

Ref :- G.I.'s O.M. No. 20014/3/83-I.V
dated 14-12-83 issued by the Minis-
try of Finance Deptt. of Expenditure,
NEW DELHI.

Special (Duty) Allowance may be paid to
Officers serving in the cadre of E.O/A.A.O./P.F.I-Gr.1/
A.O./APFC/R.P.F.C. subject to the fulfilment of the
conditions mentioned in O.M. referred to above.

(Authority : C.P.E.C.'s letter No. Para-I/
Misc./84/11211 dt. 20-6-84)

(T. GOMER)
REGIONAL P.F. COMMISSIONER.

To,

1. Pay Bill Seat.
2. Pre-audit Cell.
3. S.R.O./Agartala & Shillong.
4. All E.Os / AAOs/AOs/APFC Hqrs.

*PPRC
02784

1) Inspectors are
responsible on all
intra level.
Approved & copied
2) Promotion
all levels

Annex - IV

ANNEXURE VI.

OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER

NORTH EASTERN REGION

P.O. BINOVANAGAN,

GUWAHATI - 781018.

No. Adm/AS/380/

1537.

Date 8.12.86.

To

9.12.86

Name to :

Sri B.K. Bhattacharya,
P.A.S.* The Central P.F. Commissioner,
New Delhi - 1.

Subject :- Allowances and facilities for civilian employees of Central Govt. Serving in the States and Union Territories of North-Eastern Region - Improvement thereof as per Govt. of India Memorandum of Finance Deptt. of Exp. O.M. No. 20014/3/83-E dated 14.12.1983.

Sir,

As per para 10 sub-clause III this orders have taken effect from 1.11.83 and would remain in-force for a period of 3 years upto 31.10.86.

The Govt. of India as per O.M. dated 29.10.86 has extended the above facilities for a period of 6 months from 1.11.86 (copy of the Memorandum enclosed).

This facilities and allowances were extended to all officials of this office except Special Duty Allowance of 25% of Basic Pay which was extended only upto the Cadre of E.O. /A.A.O. This was not extended

Engineers Officer to the.....

A3372 Asstt Secy

for
P.S. Ratir.
Regional P.F. Commissioner-1
N.E. R. Guwahati-781005.
11.12.86

to the Lower Cadre such as Head Clerk, U.D.C., L.D.C. etc. on the plea that these official are not transferable any where in India. the matter had been taken up with you several times. No final decision has been taken so far to extend the facilities to such employees.

Now that the Employees Provident Fund (Staff & Condition of Service) Regulation, 1962 has been amended whereby all employees of the Organisation are liable for transfer anywhere in India. all the employees of the Organisation working in the North Eastern Region is entitled to avail the 25% Spi. (Duty Allowance) from the date of amendment.

I, therefore, request you to kindly pass early orders allowing the Staff members to draw the Spi. Duty Allowance @ 25% from the date on which Staff Regulation is amended.

Yours faithfully,

84/A T. COMR

NATIONAL COMMISSIONER

See
P.C. 1962
Commissioner-1
in the 1-1005

No.A.27025/1/86-SS.III
Government of India
Ministry of Labour

Annex-V

DATED the 5th January 1987.

To

The Central Provident Fund Commissioner
NEW DELHI

SUBJECT:- Extension of Special Duty Allowance to the
Staff/Officers working in the North Eastern
Region.

Dy No. 5
11-1-87
Sir,

I am directed to refer to your letter No.Pers.I/
Minc./84/2791 dated the 10th July, 1986 on the subject
mentioned above and to say that the matter has been
examined in consultation with the Ministry of Finance.
The Ministry of Finance (Department of Expenditure) has
given the following advice/clarification:

The condition of 'All-India transfer liability'
for grant of Special (Duty) Allowance to Central
Government Employees posted in North Eastern Region
in terms of para 1(iii) of this Ministry's OM dated
14.12.83 as amended has to be necessarily fulfilled
before allowing Special (Duty) Allowance to any
category of employees. The All-India transfer
liability of the members of any service/cadre or
incumbent of any posts/Group of posts has to be
determined by applying test of recruitment zone,
promotion zone etc., i.e. whether recruitment to
the Service/Cadre/posts has been made on All-India
basis and whether promotion is also done on the
common seniority for the service/cadre/posts as a
whole. Mere Clause in the appointment order (as is
done in the case of almost all posts in the Central
Secretariat etc.) to the effect that the person
concerned is liable to be transferred anywhere in
India does not take him eligible for grant of
Special (Duty) Allowance in terms of this Ministry's
OM dated 14.12.83 which has since been extended for
further period vide this Ministry's OM dated 29.10.86.

2. Central Provident Fund Commissioner is requested
to take further necessary action in the matter in the light
of the aforesaid advice/clarification of the Ministry of
Finance.

Yours faithfully,

(I R KHURANA)

LABOUR AND EMPLOYMENT ADVISER.

15.1.87
P.D. Pathi
Regional P.F. Commissioner-I
N. K. Chhabra - 781000

OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER
NORTH EASTERN REGION::: KAILIPARA
GAULATI 4-19.

No. Adm./As/380/

Date _____

Office Order No. _____ of 1987.

Subject :- Allowances and Facilities for civilian employees of Central Govt. serving in States and Union Territories of N.E. Region.

Special Duty Allowances may be paid to

Group C & D employees' w.e.f. 1.1.1983 subject to fulfilment of condition mentioned in G.O. NO. 20014/3/83-S.

IV dated 14.12.83. Further the amount may be disbursed after obtaining undertaking from each employees.

(3d/-)

3.3.87.

B.B. MURMU
REGIONAL COMMISSIONER (I/C)

To

- (1) Pay Bill Sectt.
 - (2) Pay Audit Cell,
 - (3) A.P.F.C., S.R. O, Agartala
 - (4) A.P.F.C. S.R.O., Shillong
 - (5) All A.O./AAO.
- for information and necessary action.

24/2

Post audited
pre-audited. - as per order was issued.
There was no refund P.F.C.

dec
P.C. Patta
Regional P.F. Commissioner
1-781095.

Office of the Regional Provident Fund Commissioner
North Eastern Region, Guwahati-18.

No. Adm/As/380/788 Dt. 10.3.87

C I R C U L A R

As per telegram dt. 9.3.87 from General P.F.
Commissioner you are hereby asked to refund the amount
which was drawn as 25% Special Duty allowance within
48 hours from the time of receipt of this circular
failing which disciplinary action will be taken against
you.

Sd/- Illegible

10.3.87

for Regional Commissioner

To

Shri _____

A. K. B. Bha. MacLayce.

dec
15/9/87
P.C. Patil
Commissioner-1

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

87

1. GUWAHATI CASE NO. 319 of 1986.

Kuldip Kumar Vaid.	....	Applicant.
Vs.		
Secretary, Ministry of Home Affairs & another.	....	Respondents.
For the applicant	....	Appears in person.
For the respondents.	....	Shri S. Ali, Central Govt. Standing Counsel.

2. GUWAHATI CASE NO. 395 of 1986.

Govt. Medical Store Depot Employees Union Class III & IV, Guwahati.	...	Applicants.
Vs.		
Union of India & Others.	...	Respondents.

For the applicants	...	Shri B.K. Sharma, Shri G. Das, Advocates.
For the respondents.	...	Shri A.K. Choudhury, Addl. C.G.S.C.

3. GUWAHATI CASE NO. 70 of 1987.
CAVEAT NO. 1 of 1987.

Employees Provident Fund Staff Union & Anothers.	...	Applicants.
Vs.		
Union of India & Others.	...	Respondents.
For the applicants	...	Shri B.K. Sharma, Shri P.K. Goswami, Advocates. Mr. S. Ali, CGSC.
For the respondents.	....	Shri J. Singh, Shri K.P. Sharma, For Caveator respondent No. 3.

4. GUWAHATI CASE NO. 145 of 1986.

All India Radio, Co-ordination Committee, Chandmari, Guwahati.	...	Applicants.
Vs.		
Union of India & Others.	...	Respondents.
For the applicant	...	Dr. M.K. Sharma, Advocate.

See
15/9/87
Regional P. P. Commissioner
N. E. R., Guwahati-781 005

5. GUWAHATI CASE NO. 382 of 1986.

Sri Parimal Kanti Majumder & another.

... Applicants.

Vs.

Union of India & Ors.

... Respondents.

For the applicants.

... Mr. P.C. Goswami, Advocate.

For the respondents.

... Shri S. Ali, Central Govt. Standing Counsel.

6. GUWAHATI CASE NO. 3 of 1986.

Sri Nil Kanta Nath & another.

... Applicants.

Vs.

Union of India & Others.

... Respondents.

For the applicants

... Shri B.C. Das, Shri N.C. Paul, Shri S.R. Dutta, Shri S. Chakraborty, Shri A. Bhattacharjee. Advocates.

For the respondents.

... Shri S. Ali, Central Govt. Standing Counsel.

7. GUWAHATI CASE NO. 156 of 1986.
CIVIL RULE NO. 289 of 1984.

N.F. Railway Employees Union & Ors...

Applicants.

Vs.

The Chairman, Railway Board & Ors.

... Respondents.

For the applicant.

... Shri P.K. Goswami, Shri A.C. Borbora, Advocates.

For the respondents.

... Shri A.R. Barooah, Rly. Advocates.

15/9/2000

.....p.37

P.C. Pati,
Regional P...
N.E. ...

GUWAHATI CASE NO. 154 of 1986
CIVIL RULE NO. 230 of 1984.

N.F. Railway Class II Officers' Association & Ors. ... Applicants.

Vs.

The Chairman, Railway Board & Ors. ... Respondents.

For the applicants ... Shri J.P. Bhattacharjee.
Shri P.K. Goswami,
Shri A.C. Borbora.
Advocates.

For the respondents. ... Shri A.P. Borboah,
S.R. Adv. Advocates.

9. GUWAHATI CASE NO. 23 of 1987.

Amarendra Nath Bhattacharjee. ... Applicant.

Vs.

Union of India & Others. ... Respondents.

For the applicant ... Shri S.K. Hom-Choudhury.
Shri S. Dutta,
Advocates.

For the respondents. ... Shri G. Sharma,
Addl. Central Govt.
Standing Counsel.

.....

PRESENT

Hon'ble Justice Shri D. Pathak, Vice-Chairman.

Hon'ble Shri S.P. Hazarika, Member.

JUDGMENT : (Per S P Hazarika) Dated, the 14-7-1987.

These 9 applications raise a common grievance of the non payment of a Special (Duty) Allowance sanctioned by the Ministry of Finance, Department of Expenditure in an Office Memorandum issued in December 1983, for the Central Government employees serving in the North Eastern Region.

1. C. Patra / 1001
Regional P. F. Commissioner
Guwahati - 781005
N

Some of the applications are from Associations of Central Government employees and the others are also representative in character filed on behalf of all the members of the Association or all the members of the Cadre as the case may be. Two of the applications are writ applications filed before the Gauhati High Court under Article 226 of the Constitution. One of these is filed by the N.F. Railway Employees' Union and an individual and the other is filed by the N.F. Railway Class II Officers' Association and an individual. These two applications are almost identically worded and they have stood transferred to this Tribunal by the operation of Section 29 of the Administrative Tribunals Act, 1985. These two transfer applications make a further grievance of the withdrawal of certain existing facilities like extra casual leave, privilege passes, additional leave and out of turn promotion for the railway servants serving in the region.

2. Some special allowances, facilities and concessions are extended from time to time by the Ministries/Departments of the Central Government to their own employees serving in the North Eastern Region. The afore-said office memorandum of December, 1983 which has sought to improve these facilities and allowances has replaced the existing ones. There is a background for this office memorandum for improvement of the existing facilities.

3. The personnel management authorities of the Central Government in the various Ministries/Departments had been, as the December 1983 Office Memorandum indicates, facing problems in the matter of placement of suitable officers for service in the North Eastern Region as well as for the retention therein of the officers transferred and posted in that region. The preamble to the office memorandum states that the need for officers and retaining the services of competent officers for service in the North Eastern Region had been engaging the attention of the Government for some time and

In the process the Government had appointed a committee under the Chairmanship of the Secretary Department of Personnel and Administrative Reforms to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in the North Eastern Region comprising the States of Assam, Meghalaya, Manipur, Tripura and Nagaland and the then Union Territories of Mizoram & Arunachal Pradesh. The objective of the committee apparently was to make recommendations for a general improvement of the existing allowances and facilities and at the same time to suggest others which may be an allurements to attract competent officers for services in the North Eastern Region as well as for the retention of such officers posted therein. The Committee accordingly made several recommendations and on the basis of the recommendations the aforesaid office memorandum dated 14.12.1983 containing 10 broad items of special allowances, facilities and concessions has been issued. The present applications relate primarily to one of those items namely item 2(iii) about the Special (Duty) Allowance of 25% of the basic pay subject to a ceiling of Rs. 400/- per month. This item is applicable only to those employees who have the all India transfer liability. The applicants are denied this allowance on the ground that they do not have all India transfer liability. But their contention is that they have this liability and are therefore entitled to the allowance. The Railway Employees in the two writ applications further contend that the withdrawal of their existing facilities like extra leave and casual leave is arbitrary and it was done without allowing any notice or opportunities to the employees.

4. The main point for determination involved in this applications turns upon the meaning to be attached to the words 'all India transfer liability'. A further point for determination in the two writ applications of the Railway Employees is whether there has been in fact shrinkage of the facilities for the continuance of which they have a right and whether the impugned order causing the shrinkage is tenable.

Dep. C. Patil,
Regional P. & A. Commissioner-1
N. E. R., Guwahati-781 005

92 5. The first of these applications to be heard in the Tribunal was case No. G.C. 319 of 1986 which was heard on 12.12.1986. By then some of the other applications became ready for hearing for which it was not considered proper to dispose of the application already heard as the issue involved is the same and the grounds taken appear to have a mutual bearing. Soon after the other cases were heard intermittently and it was observed that the varying grounds taken in the applications as well as the grounds taken by the respondents do have mutual hearings which would facilitate as well as justify the taking up of all the applications together for disposal by a common judgment. And hence this common judgment to cover all the cases.

6. In some of the applications discriminations have been alleged on the ground that within the same department of the Government, there has been a differentiation made between one group and another group of employees and in some cases the employees of other departments working side by side at the same place and doing the same nature of work are being given this allowance whereas the applicants have been denied the same. As a discriminatory prima facie appears to have prevailed within the same department or in the different departments in deciding the admissibility of the Special (Duty) Allowances, it was at the stage raised by the Tribunal to the Central Government Standing Counsel as to whether the Ministry of Finance, Department of Expenditure, should file a counter affidavit covering all the applications. At least in one case, namely G.C. No. 319 of 1986, the Ministry of Finance was specially allowed to be impleaded as a party respondents. Several adjournments were also granted to enable the Central Govt. to file such a common counter affidavit to cover all the cases, but the learned counsel expressed his failure to get a response from the Ministry.

7. Two other cases had previously come before the Tribunal on the same subject. One of that namely G.C. No. 1 of 1986 was allowed to be withdrawn as the application became

later withdrawn was again restored after the filing of the application before the Tribunal. The grievance in that case was that allowance which was previously being given to the applicants holding the posts of Sub Inspectors to Constables in the S.S.B. organisation under the Cabinet Secretariat was being withdrawn by the impugned order. When the application was admitted by the Tribunal the impugned order was revoked and the allowance that was previously given was restored to the applicants. The revocation order contained in the Cabinet Secretariat U.O. No. 7/47/84-EA dated 2.12.1985 clarified that the group 'C' employees of the battalions /Group Centres of the SSB recruited locally in the North Eastern Region but liable to serve any where will be eligible for the Special(Duty) Allowance although they may not have been transferred outside that region since their joining the service due to administrative reasons.

The other case G.C. No. 3 /86 which was a writ application registered in Gauhati High Court as C.R. 779 of 1985 was filed by the Civil Aviation Department Employees' Union, Gauhati. It was disposed of on 4-6-1986 with an observation that the representation filed by the applicant Union, which was still pending before the competent authority should be properly examined and disposed of taking also into account as to how the allowance is being allowed to the similar categories of employees of the Meteorological Department working in the same Aerodrome. We refer to these two cases in the context of the discrimination alleged and the apparent confusions prevailing in some of the offices/departments about the admissibility of the Special (Duty) Allowance.

8. In the course of the hearing of the case No. GC No. 23/86, it was observed that a senior officer of the Indian Audit and Accounts Service was present during the hearing on 24-6-1987 to assist the learned counsel for the Union of India, the Addl. Central Government Standing Counsel and the Tribunal

P. C. Patir,
Regional Police Commissioner-1
N. E. R., Guwahati 781005

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the Central Government about the manner in which the admissibility of Special (Duty) Allowance is examined in audit. Some of the instructions issued by the Directorate General and the Central Government Departments from time to time giving guidelines on the admissibility of the allowances were then placed before the Tribunal. These include copies of letter No. 1/5/83-SC-VI(Cord) dated 12. 4. 1984 from the Directorate General of Works, U.O. No. 7/47/84-EA I dated 28.4.1984 of the Cabinet Secretariat and copy of U.O. of even No. dated 17.7.1985 clarifying the earlier U.O. dated 28.4.1984 which we shall shortly see.

9. Before proceeding to examine the main issue/ issues let there be a brief statement of the more important facts on which the contentious claims of the different applicants rest.

10. The applicants of G.C. No. 319 of 1986 are two Deputy Commandants in the 1st Assam Rifles who have been denied the Special (Duty) Allowance on the ground that the civilian non-combatant officers/employees of the Assam Rifles do not have all India transfer liability and that the Battalion personnel who move in organised groups and have back up support are ineligible for the Special (Duty) Allowance. The applicants contend that though the Assam Rifles organisation is primarily intended for service within a specific region which includes North Eastern region mentioned in the U.M. in question, it is also being employed to serve in the other parts of the country. Although it was originally raised as a State force in 1947, 1962 by an Act of Parliament, its scope was extended to the whole of the Union of India. The operation of the organisation may be primarily confined to the N.E. Region including the State of Sikkim and a portion of North Bengal, but there are occasions for the force of its civilian members to be posted at times out of this region. It is a distinct condition of their letter of appointment that they are liable to serve anywhere in the country and even outside the country. Their recruitment

was made on an all India basis and their seniority is maintained and promotions decided on that basis. The applicants make a specific reference to the officers the Central Health Department who are being allowed the Special (Duty) Allowance when posted to the Assam Rifles Battalions. They also want to draw an analogy with All India Services Officers who are allowed the Special (Duty) Allowance .

11. The applicant of G.C. No. 395 of 1986 is the Union of Class III and Class IV staff of the Government Medical Stores Depot , Gauhati numbering 135. On the all India transfer liability of this class III and class IV (group C and group D) staff, the applicant relies on a condition in their letter of appointment which states that the appointment carries with it the liability to serve in any part of India. There are altogether 7 Government Medical Stores Depot all over India namely Bombay, Madras, Calcutta, Hyderabad , Kerala, Guwahati and New Delhi. The applicant has annexed with the application, the copy of one transfer/being Depot Order Part II No. 77-536185 dated 8-5-1985 (Annexure 9) by which the Government Medical Store Depot Karnal has transferred 13 group 'C' and group 'D' officials to the Sub Depot at New Delhi on a regular basis with effect from 25.2.1985. It however appears that this is an order by which some staff are transferred to a Sub Depot of the same Depot. There is also no indication whether this was a routine transfer order or an order made either at the request of the incumbents or on account of some specific exigencies taking place. In any case this particular order does not prove that the group 'C' or group 'D' staff of the Govt. Medical Stores Depot are liable to be transferred to any place within the Union, that is from one Depot to any of the other six Depot and that inter-Depot transfer of such staff regularly takes place. The applicant also contends that the Special (Duty) Allowance is allowed to similar staff in the other Departments like Director Central Ground Water Board, Ministry of Irrigat-

order

the

P. C. Patir,
Regional P. F. Commissioner-1
N. E. R., Guwahati 781015

Office of the Dy. Director for Scheduled Caste and Scheduled Tribes, Guwahati. Office of the Superintending Engineer, C.P.W.D. Guwahati.

The respondents did not file any counter-affidavit but their contention is clear that the incumbents of the posts of Deputy Assistant Director General and the Depot Manager only have all India transfer liability and all others including the applicant group C and group D staff do not have that liability.

12. In G.C. No. 70 of 1987 one of the applicants is the employees Provident Fund Staff Union, North Eastern Region representing the group C and group D employees of the office of the Regional Provident Fund Commissioner, Guwahati (for short R.P.E.C.). In this case the staff has been called upon in the impugned letter No. Adm/AG/380/916 dated 13.3.1987 to refund the 25% Special (Duty) Allowance that was granted to and received by the employees covered by the applicant Union. Their contention is that except for the State of Jammu & Kashmir, all the other States of the Union are having the offices of the R.P.E.F. and for the North Eastern Region this office is at Guwahati. There are 2 Sub-Regional offices for this region, one at Shillong and ^{the} other at Agartala, together with one Enforcement officer's office at Tinsukia. The employees are transferred from one Regional office to another within the North Eastern Region on a term that "the place of duty will be at Guwahati/Shillong/Agartala/Tinsukia, but the appointment carries with it the liability to serve in any part of Indian Union where the Employees' Provident Fund Organisation has or may have an office. A clause also exists to this effect in the Employees' Provident Fund Service Manual, Rule 80A of the E.P.F. (Staff & Conditions of Service) Regulations, 1962 inserted by an amendment published vide notification dated 22.8.1986 states that the employees carry with their services the all India service liability.

8A reads as

" Liability to serve anywhere in India:-

Every employee of the Organisation shall be liable to serve anywhere in India in any office of the Organisation and also to proceed on tour to any place in India as may be directed in the interest of work " .

The respondents in their letter No. ES/10/Admn/Vol-1/630 dated 3.7.84 directed that the Special (Duty) Allowance be allowed only to the incumbents of the Posts of Enforcement officer/ Assistant Accounts officer /P.F.I. (Group I) / Accounts officer, APFC/RPFC. But the CPFC letter No. PERS-1/Mis/84-11211 dated 20.6.84 stated that the Special (Duty) Allowance may be admissible to the applicants too as they carry the transfer liability but as this staff is not subjected to regular periodical transfer, it was necessary to ascertain whether such staff was being allowed the benefit in the other Central Government offices of the region like Income Tax, Accountant General or the Life Insurance Corporation. After prolonged representation the respondents in their order dated 3.3.87 granted the Special (Duty) Allowance, and on that authority they also received the allowance as sanctioned. In the impugned circular dated 10.3.1987 the respondents demanded the refund of the Special (Duty) allowances within 48 hours under the threat of disciplinary action. The respondents in their counter affidavit have stated that the all India transfer liability of a member of any service/cadre or incumbent of any posts/Group of posts has to be determined by applying the test of recruitment zone, promotion zone etc. i.e. whether recruitment to the service/cadre /posts has been made on All India basis and whether promotion is also done on the common seniority for the service/cadre /posts as a whole. Were clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere

P. C. Hatir,
Regional P. F. Commissioner-1
N. E. R., Guwahati-781005

Allowance in terms of this Ministry's OM dated 14.12.83 which has since been extended for further period vide this Ministry's OM dated 29.10.86. This actually is the clarification given by the Ministry of Finance, Department of Expenditure and on the basis of this the Special (Duty) Allowances that was allowed in the office was withdrawn by the impugned order. About the actual payment, the respondents explain at paragraph '6' of their counter affidavit that after the retirement of ^{the} Commissioner with effect from 31.12.1986 an Assistant Commissioner was temporarily allowed to take over the charge and he was pressurised by the employees belonging to group C & D to make the payment of Special (Duty) Allowance. The employees also served a notice on 2.3.87 threatening to start agitation with effect from 9.3.87 to 20.3.87 for non payment of Special (Duty) Allowance. The Junior officer in temporary charge, succumbed in the circumstances to the pressure of the Union and passed an order for payment of the allowance on the agitational notice itself on the condition of obtaining an undertaking of the individual members of the staff that in case they are not eligible to get the allowance they shall refund the amount. The applicant however denies in reply that the payment was extracted under pressure.

13. The main applicant of G.C. No. 145 of 1986 is the All India Radio Co-ordination Committee, Chandmari. It is a Union of Non Gazetted staff serving in the Gauhati All India Radio and it represents eight Associations namely (1) Association of Radio and Television Engineering Employees, Gauhati Unit of All India Radio. (2) All India Radio Staff Artist Association, Gauhati Unit, Akashbani. (3) Lower Grade Class-IV staff Association, (4) All India Radio stenographers Association, Gauhati Unit, (5) Librarian Association Class III, (6) Motor Drivers Association, (7) Class-

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The Non-Gazetted staff belonging to Class III & Class IV numbering about 250, serving in the Gauhati Station of all India Radio. It is claimed in the application that the Special (Duty) Allowance is admissible to all these 250 employees as their service condition under the respondents include a term that they will be liable to be posted any where in India for which all of them have an all India transfer liability. They have also annexed to the application, copies of the agreement of some of the Staff Artists and other non-gazetted staff wherein one term is distinctly shown to be that the appointee may be posted and transferred anywhere in India. They also contend that the employee from class IV to I of some other departments the same Information and Broadcasting Ministry to which they belong, the Directorate of Audio & Visual Publicity, Payobhara (Yojana), Songs and Drama Division at Gauhati along with other Central Govt. departments have been paid the said Special (Duty) Allowance but no ground is shown by the authority as to why in the case All India Radio, Gauhati Station, only the Gazetted officers have been given the aforesaid benefits inspite of the fact that neither the Finance Ministry O.M. dated 14.12.1983 nor the order of the Director General dated 23.1.1984 forwarding the O.M. differentiates between the staff on the basis of being gazetted or Non-Gazetted. In support of their contention they have also produced 5 letters bearing the numbers ;

- " 1. Letter No. B-11C 15/1/84-Admn III dated 10th May 1984 from the Deputy Development Commissioner, Handlooms under the Ministry of Industries.
2. Letter No. 5766/102/CGWB/MER/EA/83 of 4.2.87 issued by the Assistant Administrative officer.
3. Letter No. GHT/RO/MISC 2/86-87/554 of 6.2.87 issued by the Joint Director Incharge under the Ministry of Information and Broadcasting.
4. Letter No. G-14020/1/85-S&D (G)/1477 of 5.2.87 issued from the Regional Deputy Director under the Ministry of Information and Broadcasting.
5. Letter No. G-7(2) dated 10.2.87 issued by the Contro-

t. C. Patir,
Regional P. A. Commissioner-1
N. E. R., Gauhati 781005

to establish that the respondents have not been given the Special (Duty) Allowance in the offices some of which are under the same Ministry to which the applicants belong as well as to establish that in other Central Govt. offices similar staff is enjoying the Special (Duty) Allowance.

The respondents in their counter affidavit dated 19.7.1986 have stated that some of these employees have all India transfer liability for which the special Duty Allowance is not admissible to them. The applicants filed a rejoinder to the counter affidavit wherein they have, in refuting the respondents' contention of the employees not having transfer liability, stated that many of the employees involved who are Staff Artists of Gauhati Station of All India Radio have been transferred from Gauhati to New Delhi vide order No. 4/88/72-S VII dated 19.11.1980. They have also cited some other instances where the staff artists (News Reader) have been transferred to Gauhati from New Delhi. They have further given a list of persons of the Engineering Assistt. Cadre as well as the Ministerial cadre who have been transferred from outside the North Eastern Region to the Gauhati Station of all India Radio. Similarly they have given some instances where Senior Engineering Assistants were transferred from Gauhati Station to Stations in the Northern and the Southern States. They have also cited the case of one Class IV employee, a Mali, who has been transferred from Gauhati to Darbhanga, Bihar.

The respondents filed a second counter affidavit on 8.9.1986 in reply the aforesaid rejoinder submitted by the applicants. In this counter affidavit the respondents admit the fact of the transfers as mentioned by the applicants but still they contend that because of these transfers, it is not established that the services of the applicants are transferable and that they have all India transfer liability.

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Applicants have also filed a copy of letter No. B-11015/1/84-
III dated 18.5.84 from the Dy. Development Commissioner
Handlooms addressed to their Pay and Accounts officer, wherein
it has been stated that

- all the officers and staff working in the Weavers' Service Centre, and Indian Institute of Handlooms Technology, Gauhati under this organisation other than those who have come on deputation from other departments/offices are liable to be transferred to any place in India. In fact such a condition is included in the offer of appointment issued to them. In view of this position you are requested to pass the bill presented by Weavers' Service Centre, and Indian Institute of Handlooms Technology, Gauhati for the grant of Special (Duty) Allowance. "

It is however not known whether these bills have actually been passed and the payment of the Special (Duty) Allowance made.

The Central Ground Water Board however has informed the Station Director AIR Gauhati that the employees of his department have all India transfer liability as per the terms and condition of the service as indicated in the offer of appointment. Hence all the employees of the Department (Central Ground Water Board) working in any station of N.E.R. states are entitled to 25% Special (Duty) Allowance and accordingly all the employees including the locally recruited staff have been paid the Special (Duty) Allowance. A similar letter from the Regional Deputy Director of Song & Drama Division has also been produced to show that on the strength of the condition of appointment the Special (Duty) Allowance has been allowed to all the staff under the Regional Deputy Director. As against these letters, the respondents explain by yet another counter affidavit filed on 11.3.1987 that the officers In-charge of those offices of which the cases have been mentioned by the applicants have allowed, this Special (Duty) Allowance of their own without reference of the matter to the appropriate authorities. The local authorities

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The local authorities of the All India Radio, Gauhati referred the matter to the higher authorities and on the basis of instructions received from the competent authorities the Special (Duty) Allowance has been denied on the ground that the applicant staff does not have all India transfer liability.

14. The applicant in G.C. No. 382 of 1986 are Superintendents of Customs & Central Excise, Shillong, and they are the General Secretary and the President respectively of the Customs and Central Excise Group B Superintendents' Association, Shillong. The application is directed against the orders by which the Special (Duty) Allowances was refused to the applicants and their colleagues in the promotion cadre of the Superintendent of Customs and Central Excise Group B Collectorate of Customs and Central Excise. The Superintendents Group 'B' were being transferred all over India as a matter of routine up to 1970 but since that year transfers outside the Collectorate do not appear to have taken place. In the year 1979 an element of direct recruitment to this cadre has also been brought in. Previously the cadre was manned by persons promoted from the cadre of Inspectors of Customs and Central Excise. In the appointment order of the direct recruits, Superintendent Group B, it is specifically provided that "he is liable to be transferred to any equivalent or higher posts any where in India under the Control of the Central Board of Excise and Customs. He will be liable for permanent posting any where in India if considered necessary in public interest". It is on the basis of this condition in the appointment letter of the direct recruits to the cadre of Superintendent Group 'B' that the applicants primarily rely to establish their all India transfer liability. The respondents have however explained in their counter affidavit that the Superintendent of Central Excise group B are borne on individual collectorate (s) cadre. Only one in 1979-80 some candidates possessing qualifications in Engineering Technology were recruited direct to the grade B Superintendent. The Superintendent grade B belonging to the Collectorate of

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Central Excise, Shillong are not liable to be posted outside the region and they do not have all India transfer liability for which they have not been ~~been~~ allowed the Special (Duty) Allowance. About the transfers cited by the applicants the respondents state that prior to 1968 Central Excise Collectorates in India were divided into four Zones and the Eastern Zone comprised the present collectorates, Calcutta-I, Calcutta-II, Bolpur, Bhubaneswar & Shillong. The Superintendents of Central Excise were liable to transfer within their respective zone. Therefore the Superintendent of Central Excise of Shillong Collectorate were liable to transfer to and posting in any of this Collectorate constituting the Eastern Zone. The position however has been changed in the letter No. 4/51/68-CERC (Adm Cell) dated 4.12.1968 wherein it was decided that:

(i) Promotions in future to the grade of Superintendent of Central Excise-II will be made at Collectorate basis except in regard to the Collectorates of Kanpur, Allahabad, West Bengal where statusquo ante will continue.

(ii) Transfers in futures of Superintendent Class II will be restricted except on administrative grounds within the collectorate only.

In view of the above position the respondents contend that the present applicants belonging to the Shillong Collectorate do not have all India transfer liability. The * applicants have however, by an affidavit filed on 29.6.1977 averred that in view of * item (ii) of the above letter which was also not known to them earlier, the all India transfer liability of the applicants still remains.

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15. The applicant of G.C. No. 3 of 1987 are Senior Field Assistant (Medic), and a Group 'D' staff under the SSB in the office of the Area Organiser SSB Tripura . The applicant No. 1 joined the organisation as a temporary SSB personnel and he was promoted as Head Constable (Medic) which was later redesignated as S.F.A. (Medic) . The appointment letter of both the applicants has a condition that the appointment carries with it the liability to serve in any part of India. Their main contention is that other employees of their categories have been allowed to draw the allowance in the SSB itself. In fact they were also allowed the Special (Duty) Allowance upto August 1986 but it was suddenly withdrawn from September 1986 ~~xx~~ on the ground that they have no all India transfer liability. The respondents in their counter affidavit states that the applicant No. 1 was appointed in the temporary capacity in the year 1966 when there was no service rule. The service rules have since been framed in 1977 which do not make any provision regarding all India transfer liability of the SSB (Para Medical) Staff to which the applicant No. 1 belongs and hence he is not entitled to the Special (Duty) Allowance. As regards the applicant No. 2 it is stated that he is locally appointed and not transferred anywhere since his appointment. Recruitment rules 1980 which governs applicant No. 2 provides that the posts mentioned in the schedule to the rules will be located in the SSB and the Directorate of Accounts, Cabinet Secretariat. The holder of these posts will be liable to serve against the post in any of the said to the organisation . It has been clarified in U.O. No. 7/47/84-EA-I dated 28.9.1984 issued in consultation with the Ministry of Finance that the Group D employees such as Malis, Chowkidars, Sataiwala Cocks who are locally recruited in the North Eastern Region and have been employed in that region only will not be eligible for the Special (Duty) Allowance. The applicant No. 2 belongs to that for which he is not entitled to the Special (Duty)

For the Railway servants in the applications C. No. 156 / 1986 and 154 / 1986 the Railway Board has issued a comprehensive circular No. E(C) 483 AL 12-8 dated 6-2-1984 specifying the revised allowances facilities, and concessions in the light of the Finance Ministry's O.M. dated 14-12-1983. The circular has been further amended/clarified by the Railway Board in their letter No. E(G)83 AL 12-8 dated 20.2.1984 and G.M.'s Note bearing No. E/34 /Con/I Pt. II dated 16-2-1984. Under these circulars the Special (Duty) Allowance has been made admissible only to the group A officers of the N.F. Railway and it is averred that the existing facilities admissible to all employees regarding joining time with leave as well as the Special Compensatory allowance have been substantially changed to the disadvantage of the Railway employees for which all these circulars have been challenged. The applicants primarily rely on rule 146 of the Indian Railway Establishment Code Vol. I to establish that they (group 'B' ,group 'C' group D staff) have all India transfer liability. This rule provides that in the exigencies of service, it is open to the President to transfer the Railway servant to any other department or Railway establishment including project in or out of India. To reinforce the point the applicants also refers to Gauhati High Court judgment in C.R. No. 408/71 decided on 21.11.72 in which the Respondents Railways themselves pleaded that the employees of the N.F. Railway have all India transfer liability. This pleading was upheld by the Hon'ble High Court as following from the provisions of the aforesaid rule 146. Apart from making a general averment of the transfer of both Gazetted and Non-Gazetted Railway staff taking place from time to time from and to the N.F. Railway to and from the N.F. Railway, the applicants also cite some specific instances of such transfers. As regards the reduction in the other existing facilities like joining time , casual leave etc. their contention is that the same cannot be withdrawn without allowing an opportunity to the applicants to show cause against any such

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17. The applicant of G.O. No. 23/87 is an Accounts Officer who is also the Secretary of North Eastern Region Unit of the All India Association of Accounts and Audit officers of Indian Audit and Accounts Department. The claim in this application is that the Accounts officer in the office of the Accountant General are liable to be transferred all over India. A common service pool is also maintained for the Accounts officers on an all India basis. As regards the transfer liability the applicant primarily relies on paragraph 163 of the Comptroller & Auditor General Manual of Standing Orders (Administrative) Vol. I which has the force of a statutory rule in the absence of any rule framed under article 148(5) of the Constitution of India. To further strengthen their case the applicants also refer to a judgment of the Gauhati High Court in C.R. No. 213 of 1978 wherein by an interpretation of the aforesaid paragraph 163 of the Manual Standing Orders it has been held that the Accounts Officers of the A.G.'s office have an all India transfer liability. They further contend that the local Administration has agreed that the Special (Duty) Allowance is admissible to the Accounts officers serving in the N.E. Region but the respondent No. 2 has still given a contrary decision in the impugned order of November 1986. Besides, the Audit Officers (Commercial) are being allowed the Special (Duty) Allowance for which its denial to the applicants similarly placed has been discriminatory.

18. From the above narration of the facts and pleadings in the different applications, it is noticed that the applicants in the matter of establishing their all India transfer liability generally rely either on the specific condition to that effect in the appointment letters or on the general provision in the rules governing the service conditions which enables the Government to transfer a Government servant to any place or

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within the country and in some cases even outside.' About the particular provision on all India transfer liability in the rules like 146 of I.R.E.M. Vol. I or paragraph 163 of the Manual of Standing Orders of the Comptroller and Auditor General, we notice that these provisions are pari materia with the provision in F.R. 15 (a) which reads as :

- " F.R. 15 (a) The President may transfer a Government servant from one post to another ; provided that except-
- 1) on account of inefficiency or misbehaviour , or
 - 2) on his written request ,
- a Government servant shall not be transferred substantively to , or , except in a case covered by Rule 49 , appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien , or would hold a lien had his lien not been suspended under Rule 14 . "

This provision of the Fundamental Rules or the other provisions of the rules and orders aforesaid put a statutory obligation on all the government servants to proceed anywhere within the Union of India on being transferred on duty if the exigencies of public service so require . And these provisions of the rules and orders apply even though the offer of appointment may not include it as a condition of service . But in interpreting the words ' all India transfer liability ' in the office memorandum dated 14.12.1983 the matter has to be considered in the context in which these words have been specially used to condition the admissibility of the special duty allowance . The words and phrases take their meaning from the context . Had the aforesaid provision of FR 15 and the analogous rule or order which applies to all the Government servants been the sole and sufficient determinant of the all India transferability , it was redundant to specify in the office memorandum the appellation 'all India transfer liability' to make the Special (Duty) Allowance admissible to a Government servant.

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19. For the context we first come to the background of the O.M. dated 14.12.1983. The terms of reference for the Committee under the Chairmanship of the Secretary Personnel are not before the Tribunal. The full text of the report and the recommendations of the Committee have not also been produced in the Tribunal but in one of the cases (G.C. 145/86) we notice a letter from the Secretary Personnel etc. to the Secretary , Ministry and Broad Casting which throws sufficient light on the problems of the Ministries /Departments which led to the setting up of the Committee. The text of this letter is reproduced below:

" During his visit to the North-Eastern Region and also the Tribal Areas in the various parts of the country, the Prime Minister has found that bright and motivated officers are rarely posted to those areas. Officers are not quite anxious to serve in such remote areas because of the hardships they have generally to undergo there. As a result development programme in such areas are affected adversely.

2. After examining the various aspects connected with the problem incentives are now being provided to attract efficient officers to serve in such areas. In the Ministry of Finance (Department of Expenditure) O.M. No. 20014/3/83-E.IV . dated the 14th December, 1983 certain improved facilities had been provided for the civilian employed of the central government serving in the State and Union Territories in the North-Eastern Regions also in the Andaman & Nicobar Islands. In that O.M. it is enter alia provided that on completion of the tenure of service in those areas, the officers may be considered for posting to a station of their choice as far as possible. However, it has been brought to our notice that this incentive is not being implemented in practice in some cases.

3. In this connection the Prime Minister has observed as under :

" After serving a full tenure in the tribal areas, the officer should have a choice of posting thereafter ".

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4. I shall be grateful if you will kindly look into the matter and ensure that in respect of the Services and Cadres which are being controlled and administered by your Ministry/ Department, the officers are given a choice of posting after they have served a full tenure in the North-Eastern Region or the Tribal Areas in the various parts of the country . "

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20. Looked at the O.M. in its totality it is noticed that out of the ten different items of allowances, facilities and concessions, some are admissible to all the Central Government employees posted in the N.E. Region irrespective of group or grade. The more important one is the Special Compensatory Allowance given at different rates for Assam and Meghalaya, Manipur and Tripura but making no change in the existing rates for Arunachal Pradesh, Mizoram and Nagaland. Most of the other items on facilities and concessions are connected with the transfers on duty with no restriction on the basis of the territorial limits within which the transfer of the employees may be confined. The crucial item of Special(Duty) Allowance is, however, restricted to only those employees whose services are transferable without territorial limitation, that is transferable on an all-India basis. It is this category of employees who appear to express a general willingness to be posted anywhere else in the country except the N.E. Region, creating thereby a problem for the administration.

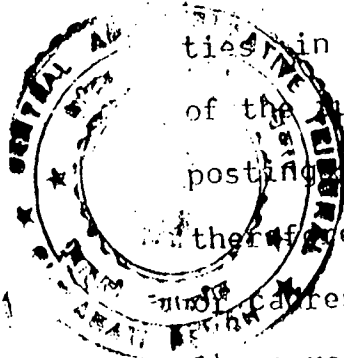


The personnel management problem of appropriate placement of officers mentioned in the above quoted letter of the Secretary, Personnel etc. itself suggests that there is a difference between the transfer liability contained in the offer of appointment or in F.R. 15 (a) or the rules and orders mentioned earlier and the transfer liability involved in the routine transfers in the transferable services. Notwithstanding these rules and orders some services are known as not transferable and the others as transferable. For the transferable services, the different departments, having regard to their peculiar requirement,

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lay down their own transfer policies or guide lines of transfer. There are however some basic principles of transfer such as executive personnel should not, as far as possible, be posted too near their homes or too long in the same place to avoid the growth of vested interests. Political and all other kinds of lobbying to secure advantageous postings or to avoid postings of personal inconvenience is a common feature of present day administration. Conscientious and honest officials being harmed by interested political leaders and superior officers by effecting untimely transfers or transferring to a place known to be of personal disadvantage or interfering with their due and regular transfers is also a common allegation. The transfer policies and guide lines are intended to take care of these complaints and allegations also. Again, to ensure a proper implementation of these principles or guide lines adequate device is made by the respective transferring authorities in the form of index cards or otherwise showing the date of the running posting as well as the details of all previous postings of each member of the transferable services. It follows therefore that one characteristic of transferable services is the fixity of tenure which ordinarily is about three years. After the tenure the incumbents are transferred normally to some other post involving a change of Head quarter. The posts of the cadre are geographically distributed to all the places where the service or the cadre has its functions and the members of the cadre are subjected to transfer periodically as a matter of routine. Most of the items of facilities and concessions in the O.M. are meant, as already observed, for the members of such transferable services or cadres who are posted to the N.E. Region. For the crucial item of Special (Duty) Allowance transferability alone is however not enough. Also as already observed ^{the transferability} must not be confined to any territorial limit or zone but must be on an all India basis and for that purpose the posts of the cadre distributed and located on an all India basis.



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The respondents have mentioned some yardsticks and tests for the determination of all India transfer liability.

In the letter No. 1/5/83-SC-IV (Coörd) dated 12.4.1984 circulated by the Director General of Works, it has been clarified in consultation with the Ministry of Finance as :

" All India transfer liability of the members of an service/cadre or incumbents of any posts/ group of posts has to be determined by applying tests of recruitment zone , the promotion zone, etc. i.e. whether recruitment to the service cadre/posts has been made on all India basis and whether promotion is also done on common seniority for the service cadre/posts as a whole. Mere clause in the appointment letter (as is done in the case of almost all posts in the Central Secretariat, etc.) to the effect that the person concerned is liable to be transferred any where in India does not make him eligible for the grant of Special (Duty) Allowance in terms of their O.M. dated 14.12.83 . "

In the letter No. 7/47/84 EA 1 dated 28.9.84 circulated from the Cabinet Secretariat also with the concurrence of the Ministry of Finance, it is clarified that

" (1) Group 'D' employees such as Malis, Chowkidars, Saffiwalas, Cooks, etc., who are locally recruited in the North-Eastern region and have been employed in that region only, will not be eligible for the special duty allowance.

(2) Group 'C' employees recruited locally in the North-Eastern Region and who have not been transferred outside that region since their joining the service, will not be eligible for special duty allowance.

(3) Deputationists from the North-Eastern Region who were taken on deputation only to serve in the same region will not be eligible for special duty allowance. In each such case of deputation, it will be specified that the officer is being taken on deputation for the North Eastern region only.



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(4) Personnel upto the rank of Sub-Inspector of SSB Battalions /Group centres which were raised in the North-Eastern region for that particular region will not be eligible for the special duty allowance. However, individual personnel of the Battalion/ Group Centre transferred from ~~an~~ other region and posted to the North-Eastern Region will be eligible for the Special duty allowance. "

A further clarifications given by the Cabinet Secretariat on 17.7.1985 to the above letter dated 28.9.1984 states that

" Group 'C' employees recruited locally in the North East region, but who are liable to serve anywhere , will be eligible for special duty allowance although they may not have transferred outside that region since their joining the service due to administrative reason. "

23. Before we apply the above characteristics of transferability and the yardstick or test for determining all India transfer liability to the individual applications we determine the other common ground of discrimination taken in the applications.

Almost all the applicants refer to discriminatory treatments in the matter of granting the Special (Duty) Allowance. While the case of the All India Services have been specifically mentioned in some of the applications it was generally argued in all the cases during the hearing that if the All India Services Officers who belong to the cadres or joint cadres of the North Eastern Region are allowed the Special (Duty) Allowance then there is no justification to disallow it to the other employees serving in the N.E. Region. It is contended that the cadres of the All India Services are all State Cadres or Joint Cadres for groups of States and the transfers of the members are controlled by the States or the Joint Cadre authorities as the case may be and are

confined to the states or the group of states concerned. The question of the members of A.I.S. belonging to the different cadres of the North Eastern Region being reluctant to be posted in the parent cadres should not therefore arise but still they are being allowed to Special Duty allowance. It is also submitted that a substantial number of the members of the All India Services cadres constituting the promotees from the State services are hardly posted outside their parent state but are still allowed the special duty allowance. Same is the case with the Accounts Officers of the Indian Audit and Account Department promoted to the I.A. and A.S. who retires from the place from where they are promoted to the I.A. & A.S. but still get the Special duty allowance after the promotion to the I.A. & A.S. which they had not been getting in their previous service as Accounts officer at the same place. On this submission of the applicants we however note that 40% of the senior duty posts in a State cadre or joint cadre of the All India Services constitutes a Central deputation reserve and this number of members of the All India Services, with occasional variation in the number either way due to administrative exigencies, remain under deputation to the Central Govt. all the time. The Central deputation has its tenure and therefore the incumbents go on changing. When one is repatriated to the state another goes to the Central Govt. in his place almost as a routine. While in Central deputation, the incumbents do obviously have all India transfer liability as they are liable to be posted in connection with the affairs of the union of India in any part of the Union. In the process if any one of them is appointed to the N.E. Region, he gets the special duty allowance although he may be a member of the cadres of the N.E. Region. Thus a member of the All India Services while posted to the N.E. Region would acquire a

reasonable claim to the special duty allowance on the analogy of the authority of the O.M. and get it but the other members of the same cadre who continue to be engaged in the affairs of the state would not get, might appear to be discriminatory and may be for that reason the allowance is made admissible to the All India Services officers.' The submission about the promoted officer of the A.I.S. being not transferred outside the state has no force at all.' They have the same liability for the Central deputation as any other officer of their cadres.' Be that as it may, the service conditions of the All India Services are governed by a special set of rules framed under sub section (1) of Section 3 of the All India Services Act, 1951. Therefore, an allowance cannot be claimed as a matter of right on the ground that the same allowance has been granted to the members of the All India Services.'

Similar discriminations within the same department as well as within the employees of different departments doing identical works and situated identically have also been mentioned in some of the applications and affidavits as well as during the hearing generally.' We are inclined to agree that what has been cited on this score appears to be prima facie discriminatory but when the persons who are being allowed to draw the Special (Duty) Allowance are not before us as respondents it shall not be fit or proper for us to give any verdict about the admissibility of the allowance to them.' We have already noted that there have been cases where the allowance once allowed was subsequently

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withdrawn as inadmissible . It may not be surprising if in the instances of discrimination referred to in the applications or during the hearing similar decisions are taken if not already done , to withdraw the allowance as well as to secure refund of the amount that was already drawn and disbursed . We have also noticed that inspite of the Union of India being made a respondent in all these applications the instances of alleged discrimination had not been adequately explained in the counter affidavits . Where-as one particular department / office may not be posted with the information as to what is going in any other office or department , the Union of India should not and cannot plead ignorance or unawareness of such instances . Appropriate explanation of these instances would have facilitated a decision in these application but as already observed the Union of India represented by the Ministry of Finance department of Expenditure seems to have considered it fit to keep itself away without giving their counter affidavits specifying the type of cases where it is intended to be admissible and the type of cases where it should not be admissible .

26. Another common question raised on behalf of some of the applicants is about the Constitutional validity of the Office Memorandum . An argument has been strenuously advanced that the Constitutionality of the O.M. can be saved only by giving a liberal interpretation to the transferability and the all India character of the transfer in the words ' all India transfer liability ' . It is submitted that a Railway servant on promotion from Group 'B' to Group 'A' gets the

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Special (Duty) Allowance although the promotee continues to work at the same place and in the identical conditions as before. Similarly an Accounts officer in the A.G.'s office on promotion to the I.A & A.S. continues to work at the same place in the same conditions and gets the allowance till his retirement from that place itself although as an Accounts officer he did not get it. We are afraid there is no force in this argument. The allowance is not compensatory in character, it is a duty allowance. With the promotions to group A posts from Group B posts the duties and responsibilities of the persons increase and the status and the character of the service also changes giving him a scope for representing for posting outside the N.F. Railway if for any reason he finds the posting less advantageous for him. Therefore it can not be said that there is discrimination in allowing the Special (Duty) Allowance or for that matter any other special allowance to the Group A officers who on promotion from group B undisputedly carry with them the all India transfer liability which they did not carry before their promotion. We are also unable to agree that the classification of the Government employees on the basis of their all India transfer liability is an unreasonable classification. When the problems faced by the administration relates only to that group of employees who have all India transfer liability, that is, it is this group who are more often found to have expressed their unwillingness to be posted in the N.E. Region and when transferred they represent for posting anywhere else, the extra allowance to that group as an incentive to go to the region and stay there achieves an objective for the public good.

27. Reverting to F.R. 15 (a), rule 146 I.R.E.C.-I and para 163 of the C.A.G. Manual, we notice the latter two also in full as the applicants have referred to only those portions which tend to support their contentions. But the

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other portions are no less relevant for the issue at hand. They read as

" Transfers.- Ordinarily, railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or railway establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to non-gazetted railway servants, the power of the President under this rule, in respect of transfer within India, may be exercised by an Agent or by a lower authority to whom the Agent may re-delegate his power.

Railway Board's orders.- Requests from non-gazetted railway servants for transfer from one railway to another on grounds of special cases of hardships may be considered favourably by railway administrations. Such non-gazetted staff transferred at their own request from one railway to another shall be placed below all existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment irrespective of date of confirmation or length of officiating service of the transferred employees."

"Postings and Transfers.

163. The Accounts/Audit Officers in offices and posts under the Accountants General, Director of Audit, Defence Services, the Chairman Audit Board and Ex-Officio Addl. Deputy Comptroller and Auditor General (C) and Chief Auditors of Railways are liable for service anywhere in India in any of the offices or posts under the control of the respective authorities. They are, also liable, like all other Central Government servants, to be transferred

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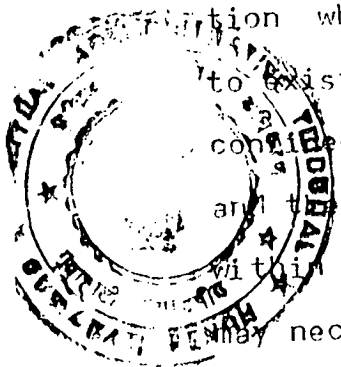
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from one office to another subject to the provisions of F.R. 15. The Comptroller and Auditor General may, transfer an officer to any post or office within the Indian Audit and Accounts Department. He may also transfer any officer to any post under the Government or on foreign service to a public sector Undertaking or an autonomous or Semi-Government organisations as may be determined by him in each case and subject to rules and orders made by the Government of India in this respect from time to time. "

The Principles underlying the above rule and order are also applicable to the employees of other Ministries/Departments/Offices who are locally recruited. In the case of the transferable services where the recruitment is locally made the usual transfers are confined to the territorial jurisdiction of the local authority making the transfer.

28. In going to apply the above principles to the Deputy Commandants of the Assam Rifles in G.C. No. 319 of 1986, it is observed that the problem faced by the administration which resulted in the issue of the O.M. does not appear to exist in the Assam Rifles of which the operation area is confined to a limited area including the North Eastern Region and the Headquarter of the organization is also located within that region. At times the operational recruitments may necessitate the movement of the applicants with the battalional personnel with the necessary back up support to any place outside this region, and the place may be anywhere in India, but no transfer of the Deputy Commandants or any member of their cadres is done as a matter of routine to places outside their normal area of operation. It has not also been brought to our notice that the posts of such Deputy Commandants had been created specially for any place outside the region. Although the recruitment of the applicants was made on all India basis, and their seniority is maintained on that basis and the promotions are also done accordingly, we are of the view that for the purpose of the



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O.M. they do not have the all India transfer liability. The problem before the administration should never be one of posting the Deputy Commandants to the N.E. Region as they are recruited essentially for service in that region. The problem instead may be one of posting any of them to a place outside the region as and when it becomes necessary to so post an officer. We had already observed that the cases of the Health Department officials serving on deputation in the Assam Rifles is, entirely different. That is a service which is transferable all over the union. Post for such officers exist in different parts of the country and the item 2 (iv) of the O.M. is undoubtedly admissible to them. The Special (Duty) Allowance can not be claimed by the applicants on their analogy. In the result the application must fail.

29. In the case the Class III and Class IV employees of the Medical Stores Depot in case No. 395 of 1986 it is absolutely clear that this staff is not subjected to regular transfers and even when it is occasionally ^{done} it is not required to be transferred outside the Depot and therefore this staff does not have an all India transfer liability as referred to in the office memorandum. The example of transfer cited in the application does not lend any support to their contention. With regard to the transfer to the N.E. Region or the retention there in of this staff, the administration does not apparently face any problem. The cause for this item of the O.M. is non-existent in the case of this staff. In view of this the application is liable to be dismissed.

30. The staff of the employees Provident Fund in the case No. 70/87 is also not required to be transferred outside the N.E. Region. They are appointed for the region and the question of providing for any special allurements for their

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retention therein does not arise. They are entitled to only the general items of facilities, allowances and concessions given by the O.M. and not the S.D.A. which is available only where the staff is subjected to the usual transfer from and to the N.E. Region to and from any other place in the Union. The staff does not have all India Transfer liability for which the Special (Duty) Allowance is inadmissible to them. The application is therefore liable to be dismissed and the stay order against recovery of the allowance already drawn is also to be vacated.

31. The Superintendents 'B' of the Customs and Central Excise Collectorate, Shillong are not required to go on transfer outside the collectorate. Whatever might be the position prior to 1968, it is clear that though the posts of Superintendents 'B' are transferable the transfers are all confined to the Collectorate only. They also do not have all India transfer liability for which the Special (Duty) Allowance is inadmissible to them and the application is therefore liable to be dismissed.

32. The Senior Field Assistants (Medic) and the group 'D' staff of the Area Organiser SSB Tripura of G.C. No. 3/1987 are also not required to be transferred outside the area for which they are locally recruited. Although some of the Sub Inspectors and Constables of the organisation are being allowed the Special (Duty) Allowance, we do not have anything before us to reject the respondent's contention that those who are being allowed the allowance are liable to be transferred anywhere in India as a matter of routine though some of these staff might not have been transferred since their appointment. In view of the distinctive transfer liability of the battalion personnel of group C the applicants cannot claim the S.D.A. on their analogy. This application has also no force and therefore it is liable to be dismissed.

33. Coming to the applicants of case No. 23 of 1987 it is seen that in the case of the Accounts officers of the A.G.'s office, the standing order at paragraph 163 makes it abundantly clear that their routine transfers do not extend beyond the jurisdiction of the concerned Accountants General. With the reorganisation of the states under the provisions of the North Eastern Areas (Re-organisation) Act 1971 the A.G.'s office had to be re-organised and some new offices of A.G. created for the States and the Union Territories set up under the said Act. The process of re-organisation of the A.G.'s office had entailed transfers of the Accounts officers to some of the offices of the newly created , Accountants General. This transitional arrangement does not bring to the Accounts officers the liability of transfer outside the region as a matter of routine. The judgment of the High Court in Case No. CR 213 of 1978 does not go anywhere beyond establishing that the Accounts officers have a statutory obligation to go anywhere in the country ~~in the country~~ of the C.A.G. so desires in the exigencies of Public service. The paragraph 163 of the Manual speaks of an enabling power only and it does not say that the usual and routine transfers of the Accounts officers may also be made by the A.G. to any place in the Union of India . It is submitted that a combined seniority list of the Accounts officer under the C.A.G. is maintained. In conceding this averment it is submitted that it is only for the limited purpose of promotion to the I.A. & A.S. and not for the purpose of transfers outside the jurisdiction of the respective Accountants General. For reasons already stated we would not enter into the comparability of the case of the Accounts officers with that of the Audit Officers (Commercial). In the circumstances the all India transfer liability envisaged in the O.M. is not seen in the case of Accounts officers of the A.G.'s office for which the application is liable to be dismissed.

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Regional Commissioner,
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34. In the Case of the Railway employees coming under G.C. No. 156 / 1986 and 154 / 1986, the Rule 146 of the I.R.E.C. Vol. I is clear on the point that none of the Railway servants appointed in the N.F. Railway is ~~xxx~~ subjected to any routine transfers outside this railway. In fact a large number of the Railway servants covered by the two applications have much smaller areas within which they may be transferred and their seniority Units are also much smaller. It is also clear that in the I.R.E.C. any transfer outside ones cadre ~~xxx~~ ordinarily entails forfeiture of the seniority. This provision is a definite pointer to the fact that the staff are not required as a matter of routine to be transferred and posted outside their territorial limits or units within which their cadres functions far less outside the N.F. Railway system. Also the problem before the Railway Administration is not one of transferring any member of the applicant's Union to the ^{of} N.E. region. They being all the N.F. Railway itself and 62% of the N.F. Railway fall within the N.E. region there can be no question of any problem about posting there N.F. Railway employees within the N.E. Region. On this ground alone the principle is apparently inapplicable to them. The principle underlined by the High Court judgment relied upon by the applicants is identical with the principle stated in the paragraph above. In any case, when it is clear that none of the staff is subjected to routine transfers outside the N.F. Railway the application is liable to be dismissed to the extent of the admissibility of the Special (Duty) Allowance.

35. These applicants of the N.F. Railway have another grievance that some of the existing facilities about extra casual leave, privilege passes, additional leave etc. as prescribed under the Railway Boards letter No. E(G)58.AL(i)-I dated 15.2.1958 has been replaced to their disadvantage by impugned circular issued by the Railway Board vide letter No. E(G)83 A AL 12-8 dated 6.2.1984 read with letter of even No. ~~12-8~~ and the General Manager N.F. Railway's Note No.

P. C. Patil
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E/84/Con/I/Pt.II dated 16.2.1984. These concessions and facilities were allowed in consideration of the communication and other difficulties prevailing then in the year 1958. There has been a substantial improvement of the position since then and the railway administration has thought it fit to accept what has been decided in the O.M. after a thorough study of the whole subject by a high level committee which apparently considered that there is no reason to make any special case for the Railway servants by giving them these facilities of casual leave etc. at a higher rate than the other Central Govt. employees posted in the region. We had an occasion to see that the withdrawal of some other facilities like retention of residential telephone connection at the previous station after transfer to N.E. Region had also taken place in falling in line with this O.M. The kind of facilities which are compensatory in character are correlated to the conditions prevailing at the relevant time. The administration has therefore the authority to review these allowances and facilities from time to time having regard to the prevailing conditions and make changes as and when felt necessary. The employees do not have a right to the continued enjoyment of these concessions and facilities at the same rate. No provision of the rules has been shown that such reviews or revisions of the rates of the facilities of the concessions can not be done without giving any formal notice, to the employees. We do not find any merit in the grievance also. In the result the two applications in G.C. No. 156 of 1986 and 154 of 1986 are liable to be dismissed.

36. In the case of the non gazetted staff of the All India Radio belonging to group B to group D serving in the Gauhati Station of the All India Radio covered by G.C. No. 145 of 1986 it is undisputed that the non gazetted staff is broadly divided into four categories namely ;

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- a) Staff Artist/ Artists.
- b) Engineering Staff .
- c) Ministerial staff and other programme staff . &
- d) Class IV (group D) staff.

The statement of the respondents that the Senior Engineering Assistants and other Engineering staff mentioned at para 4 of their counter affidavit is transferable either on promotion or in the same capacity only within the East Zone comprising the states of the N.E. Region , West Bengal , Orissa and Bihar . is disputed by the applicants . Similarly the applicants dispute the respondents' statement that the Transmission Executive and allied category as well as Class IV (grade D) staff are transferable within the region only . About the transferability of the staff artists / artists categories the respondents go a step further to state that they are not even transferred to other states of the Zone outside their state of appointment as their contracts of services are based on linguistics of the particular states . This statement is also strongly refuted by the respondents by citing specific examples . The respondents have also placed before us their file No. 5/21/83-ANG, Vol. I. to lend to their submissions the support of records.

In refuting the contentions made in paragraph 4 of the counter affidavit the applicants have given large number of instances of transfers to prove the incorrectness

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of the averements made by the respondents . As a rejoinder to this the respondents have filed another counter affidavit on 8.9.86 wherein they have reiterated that the reply earlier given that the transferability of the entire staff is confined to the zone only . But at the same time they have admitted all the cases of the transfers outside the region ^{Zone} that have been cited by the applicants. We have carefully gone through the counter affidavit of the respondents. We have also looked at the materials in the file from which the affidavits have been prepared. We are of the view that so far as the group D staff and the Ministerial staff and the other Programme staff , whose transfer is confined only to the N.E. Region and not even to the entire East Zone there is no transfer liability outside the North Eastern Region . The solitary case of Shri Debangshu Deb Roy clerk grade II transferred from Gauhati to Delhi in 1984 does not prove the transferability of the clerical staff as a matter of routine . Such an isolated transfer may be allowed at ones request with perhaps loss of seniority and it may also be done in the public interest under F.R. 15 (a) . But it does not prove by itself that the entire clerical staff is similarly transferable to Delhi and other places outside the East Zone . The group 'D' staff and the clerical staff is therefore not entitled to the S.D.A.

With regard to the Staff Artists/ Artists and the Senior Engineering Assistants however the position appears to be somewhat different . The

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Regional P. F. Commissioner
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The illustrations cited by the applicant cannot but be taken as transfers made in the ordinary course of usual administrative business. The respondents in admitting these considerable number of transfers do not contend that they are special transfers.

With regard to the instrumentalists amongst Staff Artists, it is admitted by the respondents that they do have all India transfer liability and they may be posted in any of the stations of the A.I.R. Senior Engineering Assistants are also being transferred from places like Trichanapalli Bangalore and New Delhi to Gauhati and Vice-versa and these transfers are done from the level of Director General. Whereas the transfers of the 4 Senior Engineering Assistants ^{and one} Engineering Assistant, cited at paragraph 4 of the applicants rejoinder are all transfers made in 1985 and 1986 within the East Zone, the transfer orders at annexure XV issued in 1978 shows that the Senior Engineering Assistants are transferable all over the Union. The respondents do not say that there has been any change in the position since then. The general statement of the respondents that Senior Engineering Assistants are transferable within the East Zone is disproved by this long transfer order issued from the Directorate General extending to different ² zones. From the records before us we are satisfied that the Senior Engineering Assistants fulfill the requirements of all India transfer liability as envisaged in the O.M.

The non gazetted Engineering staff however includes a number of other categories like Engineering Assistants, Senior Technician, Technician, Diesel Technician and Diesel Engine Driver. We are unable to hold on the basis of the records before us that any of these staff also have the same all India transfer liability which the Senior Engineering Assistants have. We are therefore would propose to leave their case open for further examination by the department.

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Regional P. P. Commissioner-1
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37. Looking at the case of the Staff Artists/Artists again we find that they include as many as 8 different groups of employees. They are (a) Sr. Producers/Producers, (b) Announcers (Sr. & Jr. Grade), (c) Assistant Editors, (d) Music Composers, (e) Instrumentalists, (f) Drama Voice, (g) Production Assistant, (h) General Assistant. Out of these groups, the instrumentalists as already observed, have been admitted to have all India transfer liability. With regard to the News Readers when the fact of their transfer from Delhi to Gauhati in the ordinary course of administrative business has not been denied by the respondents atleast the group to which they belong has to be held as having the all India transfer liability. Neither party has placed before us the cadre composition of the Organisation. If the instrumentalists and News Readers constitute different cadres there should be no difficulty in allowing the Special (Duty) Allowance to the two cadres. But if they constitute only a section of some cadres and share the prospects of promotion etc. with other sections of the cadre there may be a case for examination by the department, if the Special (Duty) Allowance is to be made admissible to such other sections of the cadre. We would accordingly leave their case for further examination by the Department. In view of this we hold that the Special (Duty) Allowance envisaged to the O.M. should be admissible to the News Readers and the Instrumentalists amongst the Staff Artists/Artists.

38. In the result the application in case No. G.C. 145/1986 is partially allowed in respect of the Senior Engineering Assistant, the News Readers and the Instrumentalists and a direction given to the respondents to reexamine the cases of the other non-gazetted Engineering staff and other Staff Artists/Artists in the light of the views and observations made in this judgment within a

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Regional P. C. Patil
12/11/86

The application in respect of the other staff is dismissed.

39. In view of the discussions above the application in G.C. No. 319/1986 ; 395/1986 ; 70/1987 ; 382/1986 ; 3 of 1987 ; 156/1986 ; 154/1986 and 23/1987 are all dismissed. The stay order granted in Case 70/1987 is vacated. The application in G.C. No. 155 of 1986 is partly allowed.

The parties shall bear their own costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)

Certified to be true Copy
प्रमाणित प्रतिलिपि

Section Officer (J)

आवृत्त अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati-8
गुवाहाटी - गारोड, गुवाहाटी-8

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Copy of O.M. No. 20014/3/83.E.IV dated 20th April, 1907 from Ministry of Finance:-

Subject: Allowance and Facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region and A. & N. Islands and Lakshadweep - Improvement thereof

.....

The undersigned is directed to refer to para 1(III) of Ministry of Finance, Department of Expenditure O.M. No. 20014/3/83.E.IV dated 14th December, 1903 as amended vide Office Memorandum of even number dated 29.10.1906 on the above subject, which is reproduced below:-

1(III) "Special (Duty) Allowance".

"Central Government civilian employees who have India transferability will be granted a special allowance at the rate of 25% of basic pay subject to a ceiling of Rs.400/- per month on posting to any post in the North Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or other (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance and special pay/Deputation (Duty) Allowance will not exceed Rs.400/- p.m. Special Allowance likely special compensation (remote locality) allowance, constitution allowance and Project Allowance will be drawn separately."

Instances have been brought to the notice of this Ministry where special (duty) Allowance has been allowed to Central Government employees serving in North East Region without India transferability. In the spirit of orders on the subject. For the purpose of sanctioning special (duty) allowance, the all India transferability of employees should be determined by applying the recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/post has been made on all-India basis and whether promotion is also done on the basis of the all-India zone of promotion based on common scale for the service/cadre/post as a whole. More plain in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc. to the effect) that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of special (duty) allowance.

3. Financial Advisers of the administrative Ministry/Departments are requested to review all such cases where special (duty) allowance has been sanctioned to the Central Government employees serving in the various offices including those of autonomous organisations located in the North East Region which are under direct control of these Ministry/Departments.

Sd/-
(A. P. SHINHA)
SECRETARY
D.O. 2011/19

Attested
P. C. Patir,
Regional P. F. Commissioner-1
N. E. R., Guwahati-781005.

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F.No.20014/16/86/E.IV/E.II(D)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 1 December, 1988

OFFICE MEMORANDUM

Subject:- Improvement in facilities for Civilian employees of the Central Govt. serving in the States of North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep.

The undersigned is directed to refer to this Ministry's O.N. No. 20014/3/83-E.IV dt. 14th December, 1983 and 30th March, 1984 on the subject mentioned above and to say that the question of making suitable improvements in the allowances and facilities to Central Govt. employees posted in North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been engaging the attention of the Govt. Accordingly the President is now pleased to decide as follows:-

(i) Tenure of posting/deputation

The existing provisions as contained in this Ministry's P.M. dated 14.12.83 will continue.

(ii) Weightage for Central deputation and training abroad:

Special Allowance in confidential records:-
The existing provisions as contained in this Ministry's P.M. dated 14.12.83 will continue. Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion to the cadre posts, deputation to Central tenure post and courses of training abroad.

(iii) Special (Duty) Allowance:-

Civilian employees who have All India Seniority Liability will be granted Special (Duty) Allowance at the rate of 10% of basic pay subject to a ceiling of Rs 1000/- per month on posting to any station in the North-Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or deputation (duty) allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus Special pay/Deputation (Duty) Allowance will not exceed Rs 1000/- p.m. Special allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

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Annex - X 75/10/1993
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Annexature-R10

R10

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

L.A. NO. 1

IN

CIVIL APPEAL NO. 2497/89

474505

Emp. Provident Fund Staff Union & anr.

..Appellants

versus

The Union of India & Ors.

..Respondents

O R D E R

The learned counsel for the appellants seeks leave to withdraw this appeal in view of the letter dated 24th March, 1993 addressed by the Regional Commissioner to the General Secretary of the petitioners-Union. The appeal will stand disposed of as withdrawn.

Sd/-
(A.M. Ahmadi)

Sd/-
(R.M. Sahai)

New Delhi,
October 26, 1993.

Abbas Chandel
ap on relevant file

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dec
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P. C. Patil,
Regional P. E. Commissioner-1
N. B. R., Cuvahat-781003.

CPFC (Adm), APFC (Enf) were also present and the following points were discussed with the Executive body of the CPFC, N.E. Region, Guwahati.

Annex - XH

Annexure - R11

(1) Office building and staff quarters :

In the matter, the CPFC opined that it would be difficult to purchase land for the office building and staff quarters in a centrally located place of Guwahati city. It would be easier if readymade building can be made available by the State Govt. Department Development Authority such as Assam Housing Board, Hudeo etc. as was done in Siliguri for the building of SRO, Siliguri procured from Jalpaiguri Development Authority or a plot of Govt. land available in a centrally located place at Guwahati. Accordingly Central/Regional administration as well as the Union had agreed upon to explore the procurement of Building/Govt. land for office in a central place at Guwahati city as early as possible preferably within 2 months time by 10.6.92. However, the staff quarters may be constructed at Beltala where the land has since been purchased.

(2) Fixation of Seniority :

The CPFC advised the RPFC to prepare the seniority from 1.1.85 of the staff in accordance with the judgement of the Hon'ble Supreme Court and to get the same cleared from the central office and in this connection one or two officials from Adm. Section be deputed to the central office.

(3) Filling up of vacant posts :

Regarding filling up of vacant posts, the CPFC informed that the matter has been taken up with the Staff Selection Commission for immediate posting of staff to the office of the RPFC, Guwahati on priority basis.

(4) Sanction of S.D.A. :

The CPFC advised that all out efforts should be made at all levels to reduce the pondancy in Annual Statement of Accounts/Settlement of claims etc. so that overall productivity can be increased by March '92 in order to take up the matter with higher authority for consideration of SDA to Gr.C & D employees.

GENERAL SECRETARY

CPFC/RPFC

Regional P. P. Commissioner
N. E. R., Guwahati-28

ANNEXURE XIII

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10th Executive Committee Meeting

Item No.9 : Payment of Special Duty Allowance to group 'C' and group 'D' employees stationed in N.E. Region - proposal regarding.

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The Govt. of India, Ministry of Finance, Deptt. of Expenditure vide their O.M. No. 20014/3/84/E.IV dated 14.12.83 had granted various concessions to the employees serving in N.E. Region in consideration of difficult situation under which the employees posted in N.E. Region are required to work (copy of the O.M. may be seen annexed marked annexure 'A'). Item (iii) of the said O.M. contained provision for payment of Special Duty Allowance as under:-

Central Govt. civilian employees who have all India transfer liability will be granted a Special (Duty) Allowance at the rate of 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North-Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance will not exceed Rs. 400/- per month. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately."

2. On examination of the matter in the Central Office initially in the year 1984, it was implemented allowing the benefit to group 'A' and group 'B' Officers upto the level of E.O./AAO who bear all India transfer liability and are regularly subjected to shift from one office to another involving

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inter-State transfer. In regard to group 'C' and group 'D' employees it was felt then that they are recruited locally and normally not shifted out and required to go outside the region, so they were not considered eligible and made entitled for the benefit. Eversince these employees of the Regional Office, N.E. Region in general and the staff union in particular have been representing/agitating on this point vehemently. However, their request has not been acceded to and on their taking up litigation against recovery of erroneous payment made to them earlier by the office, they had lost the case.

3. Regional Provident Fund Commissioner, N.E. Region and the Staff union of that Region have taken up the issue from time to time afresh and Regional Provident Fund Commissioner N.E.R. has recently informed this office that pursuant to decision given by Central Administrative Tribunal, Gauhati Bench on litigation taken by the employees of the ESIC, Gauhati Office, the payment of Special Duty Allowance has been allowed to group 'C' and group 'D' employees by the E.S.I.C. It has also been intimated by him that most of the Central Govt. offices and organisations operating in N.E. region have since extended this benefit to their group 'C' and 'D' employees and as such he has requested the Central Office to review the matter and allow it appropriately to group 'C' and group 'D' employees working in N.E. Region on line it has been allowed by E.S.I.C. and other Central Govt. offices/organisations operating in N.E. Region. In support of his recommendation R.P.F.C., N.E. Region has sent a copy of the judgement given by C.A.T., Gauhati Bench and similar decision pronounced by the Industrial Tribunal.

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Regional Commissioner-1
N.E. Region

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Assam and Dibrugarh on a reference made in respect of employees working in C.S.I.R. Laboratories in N.E. Region under the department of Science and Technology, Govt. of India. A copy of the said judgement may be seen enclosed marked annexure 'B'

4. The proposal of Regional Commissioner, N.E. Region has been re-examined. On verification made from E.S.I.C. and few Central Govt. offices like Assam Rifles, Comptroller General of Defence Accounts, Anthropological Survey of India etc. have confirmed the position about their extending the benefit of Special Duty Allowance to the group 'C' and group 'D' employees working in N.E. Region. A copy of the confirmation letter obtained from E.S.I.C. may be seen annexed in Annexure 'C'.
5. It is felt that once the payment of S.D.A. to group 'C' and group 'D' employees has been extended by our sister organisation namely, E.S.I.C. on the basis of judicial pronouncement and also some other Central Govt. offices working with similar conditions through administrative decisions it will be appropriate if we fall in line and extend this benefit to our employees belonging to group 'C' and 'D' employees. In our Organisation also Section Supervisor are sent on rotational transfer between the R.O. & S.R.O. as also U.D.C. & even some group 'D' have also been transferred from one office in a State to another in another state in public interest. Further, although N.E.R. is one region but it encompasses 7 States in that area. Hence the staff of the NER are having inter-state transfer liability & thus have a case for grant of S.D.A. as the

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Regional P. F. Commissioner-1
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staff has inter-state liability of transfer. The F.A. & C.A.O. of the Organisation has also agreed to the proposal subject to approval of the Executive Committee. The proposal is accordingly submitted for consideration of the Executive Committee of the C.B.T. for their kind consideration and approval please.

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Regional P. P. Commissioner-1
N. E. R., Cuttack-751003.

R17

Item No. 8 : General Advancement of Group "C" & "D" employees of the I.P.S. Organisation.

The Committee approved the proposal as contained in the memorandum.

Item No. 9 : Payment of BDA to the employees working in North Eastern Region.

The Committee approved the proposal as contained in the memorandum for prospective application.

Item No. 10 : Guest House Allotment Rules - Amendment of.

The Committee approved the proposal as contained in the memorandum.

Item No. 11 : Construction of Additional staff quarters at Vishakhapatnam.

The Committee approved the proposal as contained in the memorandum.

Item No. 12 : Construction of staff quarters and Office Building for Sub-Regional Office, Jabalpur.

The Committee approved the proposal as contained in the memorandum.

Item No. 13 : Construction of staff quarters and office building for Sub Regional Office, Nashik.

The Committee approved the proposal as contained in the memorandum.

Item No. 14 : Construction of Office Building for Sub-Regional Office, Aurangabad.

Vishakhapatnam.

15/9/2000

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In the Supreme Court of India
CIVIL APPELLATE JURISDICTION
Civil Appeal No. 3251 of 1993

Union of India and Others

Appellants

Versus

S. Vijayakumar and Others

Respondents

[with Civil Appeal Nos. 6163-81 of 1994 (arising out of SLP(C) Nos. 18794/91, 10078-79/93, 10090-93/93, 18461/93, 9248/94)]

J U D G M E N T

HANSARIA, J.

The point for determination in this appeal and in the special leave petitions (which have our leave) is whether the respondents are entitled to special duty allowance (herein after referred to as 'the allowance'), even though they are residents of North-Eastern Region merely because of the posts to which they were appointed were of "All India Transfer Liability". The Tribunal has answered the question in affirmative. Those appeals have been preferred by the Union of India.

2. The Tribunal took the aforesaid view because the Office Memorandum dated 14.12.1983 which is on the subject of "Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of the North-Eastern Region - improvement thereof" had stated that allowance shall be payable if the posts be those which have "All India Transfer Liability". The stand of the Union of India, however, is that this Office Memorandum, if it is read along with what was stated subsequently in Office Memorandum dated 20.4.1987, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the aforesaid service condition and not to those who were residents of this Region. The Office Memorandum of 1987 has clearly stated that the allowance would not become payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India.

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3. Dr. Ghosh appearing for the Respondents contends that the Office Memorandum of 1983 having not stated what is contained in the Memorandum of 1987, rider cannot be added to the former that the allowance could be payable only to those who had been given posting in the North-Eastern Region, and not to those who were residents of this Region. It is also contended that denial of the allowance to the residents, while permitting the same to the non-residents, would be violative of doctrine of equal pay for equal work and as such of *Articles 14 and 16 of the Constitution*.

4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri. Tulsī, for two reasons. The first is that a close perusal of the two aforesaid Memoranda, along with what was stated in the Memorandum dated 29.10.1986 which has been quoted in the Memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1983 Memorandum starts by saying that the need for the allowance was felt for attracting and retaining the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and, therefore, the Memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 Memorandum makes this position clear by stating that Central Government Civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North Eastern Region". This aspect is made clear beyond doubt by the 1987 Memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the Office Memorandum of 1983 the subject was mentioned as quoted above is not enough to concede to the submission of Dr. Ghosh.

5. The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in *Reserve Bank of India Vs. Reserve Bank of India Staff Officers Association and others*, 1991 to which our attention has been invited by the learned Additional Solicitor General,

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in which grant of Special Compensatory Allowance or Remote Locality Allowance only to the officers' transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of *Article 14 of the Constitution*

6. In view of the above, we hold that the Respondents were not entitled to the allowance and the impugned judgements of the Tribunal are, therefore, set aside. Even so, in view of the fair stand taken by the Additional Solicitor General we state that whatever amount has been paid to the Respondents or, for that matter to other similarly situated employees, would not be recovered from them in so far as the allowance is concerned. The Appeals are allowed accordingly. There will be no order as to costs.

New Delhi.

September 20, 1994.

Sd/- KULDIP SINGH.

Sd/- B. L. HANSARIA.

15/9/2000
P. C. Patir,
Regional P. F. Commissioner-I
N. E. R., Gauhati-781003.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8208 - 8213

(Arising out of SLP Nos.12450 - 55/92)

Union of India & Others

- Appellants

- versus -

Geological Survey of India
Employees' Association & Others.

- Respondants

ORDER

Delay condoned

Leave granted

Mr. P. K. Goswami, Learned Senior Counsel appears for Geological Survey of India Employees' Association and Mr. S. K. Nandy, Advocate, appears for the other respondents in all the matters.

Heard learned counsels for the parties. It appears to us that although the employees of the Geological Survey of India were initially appointed with an All India Transfer liability, subsequently Government of India framed a policy that Class C and D employees should not be transferred outside the Region in which they are employed. Hence, All India Transfer liability no longer continues in respect of Group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having All India Transfer liability is not to be paid to such Group C and Group D employees of Geological Survey of India who are residents of the region in which they are posted. We may also indicate that such question has been considered by this Court in Union of India & others Vs. S. Vijay Kumar & others (1994) (3) SCC 649.

Accordingly, the impugned order is set aside. We however direct that the appellant will not be entitled to recover any part of payment of Special Duty Allowance already made to the concerned employees. Appeals are accordingly disposed of.

New Delhi

September 7, 1995.

Sd/- G.N.Ray,

Sd/- S.B.Majumdar

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.75 of 1996

Date of decision: This the 4th day of January, 1999

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

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. Shri Hari Ram
2. Shri Sunil Ghosh ✓
3. Shri Gopala Kr Nair
4. Shri Ashoke Kr Das
5. Mrs Reena Ghosh
6. Shri Dilip Kr Sarkehi
7. Shri Radheshyam Ram
8. Shri Rajendra Prasad Singh
9. Shri Manindra Chandra Das

All are Group 'C' and 'D' employees of Geological Survey of India serving in the States of North Eastern Region.

.....Applicants

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

- versus -

1. The Union of India, through the Secretary, Ministry of Steel & Mines, Government of India, New Delhi.
2. The Director General, Geological Survey of India, Calcutta.
3. The Deputy Director General, Geological Survey of India, North Eastern Region, Shillong.

.....Respondents

By Advocate Mr G. Sarma, Addl. C.G.S.C.

ORDER

BARUAH, J. (V.C.)

In this application the applicants have challenged the Annexure 6 order dated 29.12.1995 issued by the Deputy Director General, Geological Survey of India, North Eastern Region, Shillong- respondent No.3.

2. The applicants as per the provisions of Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1997 prayed for an order allowing

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Registrar & Commissioner-1
N.E.R. Guwahati-781005

them to pursue the case by a single application. This Tribunal by order dated 24.5.1996 allowed the applicants to proceed with the case by this single application.

3. The contention of the applicants is that they are from various parts of the country posted in the North Eastern Region and they are not residents of the North Eastern Region. The applicant No.1 was appointed in Nagpur and transferred to various places of the country. Ultimately he was transferred to the North Eastern Region on 12.8.1980 and since then he has been posted in the North Eastern Region. The applicant No.2 was appointed in Calcutta and he was transferred to the North Eastern Region in June 1977 and since then he has been serving in the North Eastern Region. The applicant No.9 was initially appointed at Bangalore and he was transferred to the North Eastern Region on 1.7.1977 and since then he has been serving in the North Eastern Region. The other applicants were appointed in the North Eastern Region though they are not permanent residents of the North Eastern Region. These applicants, namely, applicant Nos.3 to 8 were appointed on the basis of All India Recruitment and posted in the North Eastern Region. According to them they are not permanent residents of the North Eastern Region.

4. On 14.12.1983 the Government of India, Ministry of Finance issued Annexure 1A Office Memorandum granting certain allowances and facilities to the employees working in the North Eastern Region including Special (Duty) Allowance (SDA for short). The said office memorandum was issued with the sole idea of attracting and retaining employees from outside the region because there was dearth of local employees and employees from outside the North Eastern Region were unwilling to come to.....

for P. C. Patil
Regional P. S. Commissioner-1
N. E. R., Guwahati-781005

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to this region. A fixed amount of SDA is paid to the employees. This office memorandum was later on modified by Annexure 1B Office Memorandum dated 20.4.1987. The applicant No.1, though he was transferred before the introduction of the scheme by Annexure 1A Office Memorandum, he was not given the SDA. Therefore, he filed an Original Application No.37(G)/89 before this Tribunal. This original application was disposed of by order dated 29.6.1990 by directing the respondents to pay the SDA to him. No appeal was filed against the said order. Another application was filed by the Employees Association of Geological Survey of India and others before this Tribunal against the denial of payment of SDA to the members of the association. The said application was registered and numbered as Original Application No.183/1990. This Tribunal by order dated 12.9.1991 gave direction to the respondents to pay SDA to the members of the association. In the said Original Application No.183/90 the present applicant No.2 was one of the members of the association at the time of filing of the application. Against the order of the Tribunal an SLP was filed before the Supreme Court (C.A.No.0208-8213 of 1995 arising out of SLP Nos.1245-55/92) by the Union of India. The Supreme Court disposed of the said SLP by order dated 7.9.1995. In the said order the Supreme Court observed thus:

".....It appears to us that although the employees of the Geological Survey of India were initially appointed with an all India transfer liability, subsequently Government of India framed a policy that Class C and class D employees should not be transferred outside the region in which they are employed. Hence, all India transfer liability

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no longer continues in respect of group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having all India transfer liability is not to be paid to such group C and D employees of Geological Survey of India who are residents of the region in which they are posted." (emphasis added).

5. After the Annexure 5 judgment of the Supreme Court dated 7.9.1995, respondent No.3 issued Annexure 6 office order dated 29.12.1995. By the said order it was directed as follows:

".....In compliance of the order of the Hon'ble Supreme Court, Special Duty Allowance currently being paid to Group 'C' and 'D' employees of Geological Survey of India shall not be paid w.e.f. 01.01.1996."

Being aggrieved by the above order the applicants have filed the present application.

6. In due course the respondents have entered appearance and have filed written statement. The contention of the respondents as it appears from the written statement is that in view of the regionalisation the SDA should not be paid to the Group 'C' and 'D' employees working in the North Eastern Region.

7. We have heard Mr B.K. Sharma, learned counsel for the applicants and Mr B.G. Pathak, learned Addl. C.G.S.C. Mr Sharma submits that this Tribunal gave a final order on the basis of the original application No.37(G)/89 filed by the applicant No.1, holding that the applicant No.1 was entitled to SDA. No appeal

was filed against that judgment. According to Mr Sharma the said judgment of the Tribunal reached its finality so far as applicant No.1 is concerned. The applicant No.2 was a party to the original application No.183/90 and the Tribunal in this case also directed payment of SDA to the members of the association in

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which the applicant No.2 was also a member. On appeal, the Supreme Court passed the Annexure 5 order dated 7.9.1995, portion of which have already been quoted. Besides, Mr Sharma submits that the applicant Nos.1, 2 and 9 were appointed outside the North Eastern Region prior to 1980 and the authority had transferred them to the North Eastern Region between 1977 and 1980. In respect of the other applicants Mr Sharma has very strenuously argued that, no doubt, these applicants were recruited in the North Eastern Region, but they were appointed on the basis of All India Recruitment and they do not belong to the North Eastern Region. Therefore, in spite of the Annexure 5 judgment of the Supreme Court, these applicants are also entitled to get SDA. Mr B.C. Pathak learned Addl. C.G.S.C., on the other hand, submits that the present applicants are not entitled to get the SDA as per the spirit of the Annexure 1A Office Memorandum dated 14.12.1983 and in the light of the observations made by the Supreme Court in the case of Chief General Manager (Telecom), N.E. Telecom Circle -vs- Rajendra Ch Bhattacharjee reported in (1995) AIR 813.

B. On hearing the learned counsel for the parties we are of the opinion that the Annexure 5 judgment dated 7.9.1995 of the Supreme Court has clearly mentioned that the SDA is not payable to those employees who are residents of the North Eastern Region. It is not possible for this Tribunal to come to a definite conclusion in the absence of necessary facts as to whether the present applicants are residents of the North Eastern Region or not. The Annexure 6 order dated 29.12.1995 also does not indicate that this was issued after taking into consideration of the fact that the.....

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N.E. Region

the applicant Nos.1, 2 and 9 were transferred from outside to the North Eastern Region. Therefore, we feel it will be apposite if the matter is sent to the respondent No.3 to consider the following:

- A) Whether the applicant No.1, in whose favour this Tribunal gave direction by order dated 29.6.1990 passed in original application No.37(G)/89 to pay the SDA and there being no appeal against that order, is entitled to get the SDA even after the Annexure 5 judgment dated 7.9.1995 of the Supreme Court.
- B) Whether the applicant Nos.1, 2 and 9 who were transferred to the North Eastern Region from outside prior to the Annexure 3 regionalisation which came into effect from 1.8.1984, are entitled to get SDA even after the Annexure 5 judgment dated 7.9.1995 of the Supreme Court.
- C) The respondent No.3 shall further consider whether the applicant Nos.3 to 8 are residents of the North Eastern Region and not entitled to SDA as indicated in the Annexure 5 judgment dated 7.9.1995 of the Supreme Court.

The respondent No.3 shall decide these points after taking into consideration of the relevant rules and law and dispose of the matter as early as possible at any rate within a period of three months from the date of receipt of this order. As prayed by the learned counsel for the applicants, before a decision is taken by respondent No.3 a personal hearing may be given to the applicants or their representative.

9. The application is accordingly disposed of. No order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMIN)

Regional P.O. Commissioner
N.E.R., Guwahati-781005.

No. 11131/95-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

Sub: Special Duty Allowance for civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region-regarding.

The undersigned is directed to refer to this Department's OM No. 20014/13-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20014/16/BS-E.IV/E.II(B) dt. 1.12.88 on the subject mentioned above.

2. The Government of India vide the abovementioned OM dt. 14.12.83 granted certain incentives to the Central Government civilian employees posted to the NE Region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have 'All India Transfer Liability'.

3. It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the 'All India Transfer Liability' of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e., whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

4. Some employees working in the NE Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment letters carried the clause of All India Transfer Liability and, accordingly, directed payment of SDA to them.

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministers/Departments against the Orders of the CAT.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.75 of 1996

Date of decision: This the 4th day of January 1999

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

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. Shri Hari Ram
2. Shri Sanil Ghosh ✓
3. Shri Gopala Kr Nair
4. Shri Ashoke Kr Das
5. Mrs Reena Ghosh
6. Shri Dilip Kr Sarkehi
7. Shri Radheshyam Ram
8. Shri Rajendra Prasad Singh
9. Shri Manindra Chandra Das

All are Group 'C' and 'D' employees of Geological Survey of India serving in the States of North Eastern Region.

....Applicants

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

- VERSUS -

1. The Union of India, through the Secretary, Ministry of Steel & Mines, Government of India, New Delhi.
2. The Director General, Geological Survey of India, Calcutta.
3. The Deputy Director General, Geological Survey of India, North Eastern Region, Shillong.

.....Respondents

By Advocate Mr G. Sarma, Addl. C.G.S.C.

.....

O R D E R

BARUAH.J. (V.C.)

In this application the applicants have challenged the Annexure 6 order dated 29.12.1995 issued by the Deputy Director General, Geological Survey of India, North Eastern Region, Shillong- respondent No.3.

2. The Applicants to be allowed to

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Regional Commissioner-1
N.E. Region - Shillong - 810/5.

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them to pursue the case by a single application. This Tribunal by order dated 24.5.1996 allowed the applicants to proceed with the case by this single application.

3. The contention of the applicants is that they are from various parts of the country posted in the North Eastern Region and they are not residents of the North Eastern Region. The applicant No.1 was appointed in Nagpur and transferred to various places of the country. Ultimately he was transferred to the North Eastern Region on 12.8.1980 and since then he has been posted in the North Eastern Region. The applicant No.2 was appointed in Calcutta and he was transferred to the North Eastern Region in June 1977 and since then he has been serving in the North Eastern Region. The applicant No.9 was initially appointed at Bangalore and he was transferred to the North Eastern Region on 1.7.1977 and since then he has been serving in the North Eastern Region. The other applicants were appointed in the North Eastern Region though they are not permanent residents of the North Eastern Region. These applicants, namely, applicant Nos.3 to 8 were appointed on the basis of All India Recruitment and posted in the North Eastern Region. According to them they are not permanent residents of the North Eastern Region.

4. On 14.12.1983 the Government of India, Ministry of Finance issued Annexure 1A Office Memorandum granting certain allowances and facilities to the employees working in the North Eastern Region including Special (Duty) Allowance (SDA for short). The said office memorandum was issued with the sole idea of attracting and retaining employees from outside the region because of shortage of local employees and employees from

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to this region. A fixed amount of SDA is paid to the employees. This office memorandum was later on modified by Annexure 1B Office Memorandum dated 20.4.1987. The applicant No.1, though he was transferred before the introduction of the scheme by Annexure 1A Office Memorandum, he was not given the SDA. Therefore, he filed an Original Application No.37(G)/89 before this Tribunal. This original application was disposed of by order dated 29.6.1990 by directing the respondents to pay the SDA to him. No appeal was filed against the said order. Another application was filed by the Employees Association of Geological Survey of India and others before this Tribunal against the denial of payment of SDA to the members of the association. The said application was registered and numbered as Original Application No.183/1990. This Tribunal by order dated 12.9.1991 gave direction to the respondents to pay SDA to the members of the association. In the said Original Application No.183/90 the present applicant No.2 was one of the members of the association at the time of filing of the application. Against the order of the Tribunal an SLP was filed before the Supreme Court (C.A.No.8208-8213 of 1995 arising out of SLP Nos.1245-55/92) by the Union of India. The Supreme Court disposed of the said SLP by order dated 7.9.1995. In the said order the Supreme Court observed thus:

"...It appears to us that although the employees of the Geological Survey of India were initially appointed with an all India transfer liability, subsequently Government of India framed a policy that Class C and Class D employees should not be transferred outside the region in which they are employed.

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Regional P. S. Commissioner-1
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no longer continues in respect of group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having all India transfer liability is not to be paid to such group C and D employees of Geological Survey of India who are residents of the region in which they are posted." (emphasis added).

5. After the Annexure 5 judgment of the Supreme Court dated 7.9.1995, respondent No.3 issued Annexure 6 office order dated 29.12.1995. By the said order it was directed as follows:

".....In compliance of the order of the Hon'ble Supreme Court, Special Duty Allowance currently being paid to Group 'C' and 'D' employees of Geological Survey of India shall not be paid w.e.f. 01.01.1996."

Being aggrieved by the above order the applicants have filed the present application.

6. In due course the respondents have entered appearance and have filed written statement. The contention of the respondents as it appears from the written statement is that in view of the regionalisation the SDA should not be paid to the Group 'C' and 'D' employees working in the North Eastern Region.

7. We have heard Mr B.K. Sharma, learned counsel for the applicants and Mr B.C. Pathak, learned Addl. C.G.S.C. Mr Sharma submits that this Tribunal gave a final order on the basis of the original application No.37(C)/85 filed by the applicant No.1, holding that the applicant No.1 was entitled to SDA. No appeal was filed against that judgment. According to Mr Sharma the said judgment of the Tribunal reached its finality so far as applicant No.1 is concerned. The applicant No.2 was a party to the original application

and the Tribunal in this case also directed

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Regional P.F. Commissioner-1
N. E. R., Guwahati-781005.

which the applicant No.2 was also a member. On appeal, the Supreme Court passed the Annexure 5 order dated 7.9.1995, portion of which have already been quoted. Besides, Mr Sharma submits that the applicant Nos.1, 2 and 9 were appointed outside the North Eastern Region prior to 1980 and the authority had transferred them to the North Eastern Region between 1977 and 1980. In respect of the other applicants Mr Sharma has very strenuously argued that, no doubt, these applicants were recruited in the North Eastern Region, but they were appointed on the basis of All India Recruitment and they do not belong to the North Eastern Region. Therefore, in spite of the Annexure 5 judgment of the Supreme Court, these applicants are also entitled to get SDA. Mr B.C. Pathak learned Addl. C.G.S.C., on the other hand, submits that the present applicants are not entitled to get the SDA as per the spirit of the Annexure 1A Office Memorandum dated 14.12.1983 and in the light of the observations made by the Supreme Court in the case of Chief General Manager (Telecom), N.E. Telecom Circle -vs- Rajendra Ch Bhattacharjee reported in (1995) AIR 813.

8. On hearing the learned counsel for the parties we are of the opinion that the Annexure 5 judgment dated 7.9.1995 of the Supreme Court has clearly mentioned that the SDA is not payable to those employees who are residents of the North Eastern Region. It is not possible for this Tribunal to come to a definite conclusion in the absence of necessary facts as to whether the present applicants are residents of the North Eastern Region or not. The Annexure 6 order dated 29.12.1995 also does not indicate that this was issued after taking into consideration of the fact that

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Regional P. C. Patil
N. E. R. Guwahati-781005

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the applicant Nos.1, 2 and 9 were transferred from outside to the North Eastern Region. Therefore, we feel it will be apposite if the matter is sent to the respondent No.3 to consider the following:

- A) Whether the applicant No.1, in whose favour this Tribunal gave direction by order dated 29.6.1990 passed in original application No.37(G)/89 to pay the SDA and there being no appeal against that order, is entitled to get the SDA even after the Annexure 5 judgment dated 7.9.1995 of the Supreme Court.
- B) Whether the applicant Nos.1, 2 and 9 who were transferred to the North Eastern Region from outside prior to the Annexure 3 regionalisation which came into effect from 1.8.1984, are entitled to get SDA even after the Annexure 5 judgment dated 7.9.1995 of the Supreme Court.
- C) The respondent No.3 shall further consider whether the applicant Nos.3 to 8 are residents of the North Eastern Region and not entitled to SDA as indicated in the Annexure 5 judgment dated 7.9.1995 of the Supreme Court.

The respondent No.3 shall decide these points after taking into consideration of the relevant rules and law and dispose of the matter as early as possible at any rate within a period of three months from the date of receipt of this order. As prayed by the learned counsel for the applicants, before a decision is taken by respondent No.3 a personal hearing may be given to the applicants or their representative.

9. The application is accordingly disposed of. No order as to costs.

51/- VICE-CHAIRMAN

Regional P. E. Commissioner-1
N. E. R., Guwahati-781005.

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No. 11131/95-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

Sub: Special Duty Allowance for civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region-regarding.

The undersigned is directed to refer to this Department's OH No. 20014/13-E.IV dated 14.12.83 and 20.4.1987 read with OH No. 2014/16/83-E.IV/E.II(B) dt. 1.12.88 on the subject mentioned above.

2. The Government of India vide the abovementioned OH dt. 14.12.83 granted certain incentives to the Central Government civilian employees posted to the NE Region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have "All India Transfer Liability".

3. It was clarified vide the above mentioned OH dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e., whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

4. Some employees working in the NE Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment letters carried the clause of All India Transfer Liability and, accordingly, directed payment of SDA to them.

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministers/Departments against the Orders of the CAT.

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F. C. Patil,
Regional P. F. Commissioner-1
N. E. R., Guwahati-781005.

6. The Hon'ble Supreme Court in their judgement delivered on 20.9.94 (in Civil Appeal no. 3251 of 1983) upheld the submissions of the Government of India that Central Government civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE 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 apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

7. In view of the above judgement 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 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments were made after this date i.e. 20.9.94) will be recovered.

8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.

9. In their application to employees of Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

10. Hindi version of this (U) is enclosed.

(C. Bafachandran)

Under Secy to the Govt of India

FA
All Ministries/Departments of the Govt. of India, etc.
etc.
Copy (with spare copies) to CAG, UPSC etc. as per standard endorsement list.

See 29/mw

P. C. Patir,
Regional P. F. Commissioner-1
N. E. R., Guwahati-781005.

IMMEDIATE

The U.P.W.D. staff met at Gwahati Airport on my way to Amroha and presented their demand for special duty allowance as sanctioned by the Ministry of Finance under their O.M.No.20014/3/03 D.V dt.14.12.03 to all staff posted in the U.P. Region. They produced documentary evidence of orders issued by several other departments under which those departments ordered payment of such allowance to all their employees i/o U.P. staff.

I explain to the staff that in CPWD the matter was under correspondence with the Finance. Pending a final decision of the U.O.I. on this point, I hereby order that the staff may be paid the allowance on their furnishing a duly signed undertaking immediately that in case it is finally decided that they are not entitled to the same, they will refund the full amount so paid to them. They will also agree for a transfer if in public interest as becomes necessary, to any place in India. A report for such undertaking may be given to the Executive Engineer, Aviation Division on the spot.

This may be immediately implemented for both Civil and Motor Vehicle of this department.

Ud/-O.S.HAO

D.O(Y) 5/1/26

Camp Gwahati.

To

The Chief Engineer (R2)

Calcutta

See 10/9/26
P. C. Patil,
Regional P. F. Commissioner-1
N. E. R., Guwahati-781005

was no provision of depreciation made. As the value of the assets is reduced every year due to wear and tear, the value reduced/eroded has charged in the expenditure side of the receipt and expenditure A/c as depreciated value and the amount also to be deducted from the respective assets reflected in the balance Sheet so as to represent the factu~~al~~ position of ~~acc~~ accounts.

Annex - XV

PARA: 8.

Un-authorized drawal of S.O.A.
Rs. 4.18 lakh.
Audit observation thereof.

Test check of relevant records revealed that the Staff of the R.P.F.C Office were paid special Duty Allowance @ 12½ % of basic pay in the revised scale of pay and although there was no such order received from the Govt. of India nor anything mentioned in the C.C.S. (RP) Rules 1997 in favour of it .

As per rules, allowances regarding which decision is yet to be taken by the Govt. of India, payment are being made on the basis of amount last drawn in the pre-revised Scale.

But, S.O.A on revised scale at the rate of 12½ % was allowance in the R.P.F.C. Office to his staff since ~~max~~ December 1997.

dec
15/9/20
P. C. Patil,
Regional P. F. Commissioner-1
N. I. R. Churahi-781005.

Contd.....P/2

Contd.....P/2-

to Rs. 59,662-00. This was based on the difference between the amount paid on the basis of pre-revised Scale in 11/97 and in the revised scale from 12/97. (Rs. 66,411 - Rs. 26,749-00). The total irregular payment made during the period from 12/97 to 6/98 comes to Rs. 4,17,634-00 (Rs. 59,662 X 7).

However, in reply to the aforesaid unauthorised drawal it has been given in Writing "that the benefit of SDA was extended on the basis of sanction by the competent authority vide C.O. letter No. Admn. (R-III)8(4)92/NER/4018 dt. 4/10/93.

Though, there is no specific authority for payment of SDA at revised scale of pay, nevertheless, the same is being drawn, keeping in view the computation at the rate of $12\frac{1}{2}\%$ of the pre-revised scale with maximum ceiling of Rs. 1000/ may however be mentioned that the undertaking from every individual staff had been obtained prior to disbursement in the month of November 1997 that any amount drawn in excess as may be determined in due course may be recovered from their Salary".

15/9/97

P. C. Patil,
Commissioner-1
1-181015.

Contd.....0/2

ई.ए.एस. शर्मा
E.A.S. SARMA

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व्यय विभाग

वित्त मंत्रालय

भारत सरकार

SECRETARY

DEPARTMENT OF EXPENDITURE

MINISTRY OF FINANCE

GOVERNMENT OF INDIA

नई दिल्ली / NEW DELHI

Dated : 22.3.1999

Annexure - R19

Dear

With a view to attracting and retaining competent officers for service in the North Eastern Region, the Government of India vide O.M.No.20014/3/84-E.IV dated 14.12.83 granted certain incentives to the Central Government Civilian employees posted in this Region. These incentives were applied mutatis mutandis to the A&N Islands and Lakshdweep Islands. These incentives have been further liberalised vide this Ministry's O.M. No.11(2)/97-E.II(B) dated 22.7.98. One of these incentives is the payment of 'Special Duty Allowance' (SDA) to those who have 'All India Transfer Liability'.

2. It was clarified vide this Ministry's O.M. No.20014/3/83-E.IV dated 20.4.87 that for the purpose of sanctioning Special Duty Allowance, the All India Transfer Liability of any service/cadre or incumbents of any post/group of posts is to be determined based on the criterion of recruitment zone, promotion zone, etc. A mere clause in the appointment letter that the person concerned is liable to be transferred anywhere in India did not make him eligible for the grant of SDA. The Hon'ble Supreme Court of India in the judgement delivered on 20.9.94 in Civil Appeal No.3251 of 1993 upheld the submission of the Government that the Central Government Civilian employees who have All India Transfer Liability are entitled to the grant of SDA on being posted to any station in the NE Region from outside the Region. This Ministry had clearly brought out the criteria for grant of SDA based on the judgement of the Supreme Court of India and issued necessary instructions vide O.M.No.11(3)/95-E.II(B) dated 12.1.1996.

3. In the above mentioned O.M., it was communicated that the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 (i.e. the date of the judgement of the Supreme Court) will be waived and the

dec 10/9/2000
P. C. Patir,
Commissioner-1
781005.

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amount paid on account of SDA to ineligible persons after 20.9.94 will be recovered. Inspite of these clear instructions, it has been brought to the notice of this Ministry that in some Departments (i.e D/o Telecom, CPWD and Regional Provident Fund Commissioner) SDA is still being paid to non-entitled persons. This has led to a serious situation where the employees of the other Departments, who are strictly following the instructions, are agitated. Immediate action therefore needs to be taken to strictly follow the guidelines by all the Departments regarding grant of SDA.

4. I shall be grateful if you could kindly issue necessary urgent instructions to all concerned in your Department to adhere to the conditions for grant of SDA and making FAs personally responsible for any irregularity. The irregular payments, if any, made on this account after 20.9.1994 may also be recovered without any further delay and responsibility for the erroneous payments fixed, under advice to us.

Respectfully
Yours sincerely,

(Signature)
(E.A.S. Sarma)

Dr. L. Mishra,
Secretary,
Ministry of Labour,
Shram Shakti Bhavan,
New Delhi

dec 19/94
P. C. Patil,
Regional P.F. Commissioner-1
N. E. R., Guwahati-781005.

106 Annexure - R20

Annex - XVI

1/3 - - -

Most Immediate

Z-13018/2/99-0oord.
Ministry of Labour/Shram Mantralaya
Government of India/Bharat Sarkar
Shram Shakti Bhawan/Rafi Marg

Annexure

New Delhi, dated the 03.05.99

The Heads of All Attached
and Subordinate offices
including Autonomous Bodies
under the Administrative
Control of Ministry of Labour.

Subject : Incentive to the Central Government Employees
posted in the North Eastern Region.

Sir,

I am directed to say that with a view to
attracting and retaining competent officers for service
in the North Eastern Region, the Government of India vide
Ministry of Finance, Deptt. of Expenditure O.M. No.
20014/3/84-E.IV dated 14.12.83 (copy enclosed) granted
certain incentives to the Central Government Civilian
employees posted in this Region. These incentives were
applied mutatis mutandis to the A&N Islands and
Lakshdweep Islands. These incentives have been further
liberalised vide Ministry of Finance, Deptt. of
Expenditure O.M. No. 11(2)/97-E.II(B) dated 22.7.98.
One of these incentives is the payment of "Special Duty
Allowance" (SDA) to those who have "All India Transfer
Liability." The above mentioned O.M. dated 22.7.98 has
been circulated vide this Ministry's endorsement no.
Z-11011/1(22)/98-Coord. dated 13.8.98.

dec
15/9/mw
P. C. Patil
Regional P. P. Commissioner-1
N.E.R., Guwahati-781005.

contd.....P/2-

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2. It was clarified vide Ministry of Finance, Deptt. of Expenditure O.M. No. 20014/3/83-E.IV dated 20.4.87 that for the purpose of sanctioning Special Duty Allowance, the All India Transfer Liability of any service/cadre or incumbents of any post / group of posts is to be determined based on the criterion of recruitment zone, promotion zone, etc. A mere clause in the appointment letter that the person concerned is liable to be transferred anywhere in India did not make him eligible for the grant of SDA. The Hon'ble Supreme Court of India in the judgement delivered on 20.9.94 in Civil Appeal No. 3251 of 1993 upheld the submission of the Government that the Central Government Civilian employees who have All India Transfer Liability are entitled to the grant of SDA on being posted to any station in the NE Region from outside the Region. The Ministry of Finance, Deptt. of Expenditure had clearly brought out the criteria for grant of SDA based on the judgement of the Supreme Court of India and issued necessary instructions vide their O.M. No.11(3)/95-E.II (B) dated 12.1.96 (copy enclosed).

3. In the above mentioned O.M., it was communicated that the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 (i.e. the date of the judgement of the Supreme Court) will be waived and the amount paid on account of SDA to ineligible persons after 20.9.94 will be recovered. In spite of these clear instructions, it has been brought to the notice of

de
P.C. Patil
Joint Secretary
Ref. No. 11(3)/95-E.II (B)

Ministry of Finance, Deptt. of Expenditure that SDA is still being paid to non-entitled persons. This has led to a serious situation where the employees of the other Deptts. who are strictly following the instructions, are agitated. Immediate action, therefore, needs to be taken to strictly follow the guidelines by all the Deptt. regarding grant of SDA. 104

4. I am, therefore to request that the conditions for grant of SDA may kindly be adhered to and for any irregular payments in this regard you may be held personally responsible. The irregular payments, if any, made on this account after 20.9.94 may also be recovered without any further delay and position intimated to this Ministry urgently so that further necessary action could be taken in the matter.

Yours faithfully,

Gopal Singh

(GOPAL SINGH)
UNDER SECRETARY TO THE GOVT. OF INDIA

Encls. : A/a

dec
15/9/94
N. C. Patil,
Regional P. P. Commissioner
M. E. R., Coimbatore-16/10/94

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Annexure-R2, 115

Annex - XVIISpecial Cost -

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P.F.C. SECRETARIATE

Receipt No. 31/100

Date

P.V. 50(1)/99/NER-incentive

/5585

G. July 95

Regional Provident Fund Commissioner.
North Eastern Region.
Guwahati

Subject : Grant of Special Duty Allowance in respect of employees of EPFO posted in North Eastern Region.

Reference : RPFC DO Letter No. Adm/AS/380/Part.II/057 dated 02.06.1999.

Sir,

A copy of the Ministry of Labour Letter No. Z-13018/2/99-Coord. dated 03.05.1999 on the subject with the annexures, is forwarded herewith. It may be seen there from that the special duty allowance is to be paid only to such employees who not only carry the All India transfer liability but also got the posting to North Eastern Region on transfer from outside the Region as per the Transfer Policy / administrative requirement. The staff who are recruited specifically for posting in North Eastern Region and are serving in North Eastern Region, are not entitled to payment of special duty allowance. These instructions of Ministry of Labour are based on the instructions issued by the Ministry of Finance, Department of Expenditure vide their O.M. No. 11(3)/95-E-II (B) dated 12.01.1996 (copy enclosed).

2. In view of the above, you are advised to stop the payment of special duty allowance to all non-entitled employees with immediate effect. *forward compliance report -*

3. The instructions issued vide Head Office letter No. Adm.(R-III)/8(4)/92/NER/4018 dated 4th October 1993 as regards payment of SDA may be treated as suspended accordingly.

4. *Not issue with the approval of C.F.F.*

Yours faithfully,

C. Bheemanna
(C. BHEEMANNA)

15/9/99
P. C. Patil,
Regional P.F. Commissioner-I
N. E. R., Guwahati - 781005.

সংগ্রহীত, গুৱাহাটী
 Bhavishy Anidhi, Guwahati
 1381 - 562047



562047
 566265
 560956

কর্মচারী ভবিষ্য নিধি সংগঠন
 Employees' Provident Fund Organisation.

শ্রম মন্ত্রালয়, ভারত সরকার

Ministry of Labour, Govt. of India

কেন্দ্রীয় কার্যালয়, পূর্বোত্তর ক্ষেত্র, জি. এম. রোড,

REGIONAL OFFICE, N. E. REGION, G. S. ROAD,

ভাঙ্গাগড়, গুৱাহাটী - 781 005 (অসম)

BHANGAGARH, GUWAHATI - 781 005 (ASSAM)

Annex - XVIII

Adm/AS/380/Part-II/2673-77

दिनांक
 Date 14.7.99

OFFICE ORDER

Central Office vide their letter No. P-V/30(1)/99/NER-Incentive/3585 dated 6.7.99 have instructed this office to stop making payment of S.O.A. to non-eligible Staffs of N.E. Region.

Accordingly, the payment of SOA to non-eligible staff of N.E. Region may be stopped w.e.f. 1.7.99.

(This issue with the approval of RPFC-1)

(M. THAKURIA)

Assistant P.F. Commissioner(Adm)

To,

1. Pay Bill Sect.
2. P.A.C.
3. All Officers-in-Charge of GROs for information and necessary action.

(M. THAKURIA)

Assistant P.F. Commissioner(Adm)

15/9/99
 P. C Patir,
 Regional P.F. Commissioner-1
 N. E. Region - Guwahati - 781005.

Annex - XIX

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BEFORE THE REGIONAL P.F. COMMISSIONER, N.E.R., GUWAHATI
CONSEQUENT UPON THE FORCIBLE CONFINEMENT OF THE OFFICERS
BY THE STAFF UNION ON 23th SEPTEMBER, 1999
FROM 4.30 P.M. TO 10.30 P.M.

The matter in brief is stated hereunder specifying the compelling circumstances under which such appeal was made to RPFC-I, N.E.R.

At about 4.30 P.M. the following officers were advised by the RPFC-I over Intercom to make themselves available immediately in the Chamber of RPFC-I for participating in the meeting to be held with the representatives of the Staff Union. All the officers were present by 4.35 P.M. and a meeting with the General Secretary and the President of the Union was convened at about 4.45 P.M. in the Chamber of RPFC-I in the presence of the officers. Both the representatives of the Union requested the RPFC once again to consider the payment of S.D.A. to the Staff members (Group C & D employees) for the month of September, on the plea of the request made by the R.L.C (Central) Guwahati. However, the RPFC could not consider the payment for Sept' 99 explaining the difficulties in allowing such payments and requested the representatives of the Staff Union to convey the message to the Staff members. But the representatives requested the RPFC to go to the meeting place of the Staff Union and to explain the reason before the General Body. As this was not within the code of discipline, the RPFC advised them to explain the position by the General Secretary/President of the Staff Union. Consequent upon refusal of RC-I to go to the meeting place the General Secretary and President entered to the chamber forcibly alongwith the members of the Staff Union at about 5.00 P.M. and gheraoed the RPFC and the other officers.

During the course of such wrongful restraint and wrongful confinement they also held demonstration and passed derogatory remarks against RPFC and other officers. The demonstration and gherao continued upto 10.30 P.M. in the late night and there was no scope to inform the matter to the Police authority in the absence of electricity. The damages to the office property, continued disconnecting electricity and Telephone lines. The President & General Secretary also forced the subordinate officers to vacate the RC's chamber with an intention to get the orders signed by the RPFC-I under duress and coercion.

Contd.....P/2-

15/9/2000
 P.C. Patir,
 Regional P. Commissioner

Contd.....

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Under the prevailing circumstances such as was made before the RPFC-I to concede to their request September, 1999 with a condition to furnish an undertaking to recover the dues if the conciliation proceedings fails or relaxation orders not received from the Government of India apprehending physical assaults of the officers in the chamber of RPFC-I in the late darknight.

M. Thakuria
27/9/99
(M. THAKURIA)
APFC(ADM)

B. Sarma
(B. SARMA) 27/9/99
CONTROLLER OF PENSION

L.N. Sethy
27/9/99
(L.N. SETHY)
(RPFC(F&A))

N.K. Deb
27/9/99
(N.K. DEB)
APFC(PEN)

B. Lalpamang
(B. LALPAMANG)
APFC(ACCTS)

R. Kapai
27/9/99
(R. KAPAI)
APFC(CASH)

P.C. Patil
15/9/99
P. C. Patil,
Regional P. F. Commissioner-I
N. E. R., Guwahati-781005.

113 118 Annexure - R24
Annex - XX

तार : भविष्यनिधि, गुवाहाटी
Telegram : BHAVISHYANIDHI, Guwahati
फेक्स/Fax : 0361 - 562047



562047
दूरभाष/Phone : 566265
560958

कर्मचारी भविष्य निधि संगठन
Employees' Provident Fund Organisation,
ग्राम मंत्रालय, भारत सरकार,
Ministry of Labour, Govt. of India
क्षेत्रीय कार्यालय, पूर्वोत्तर क्षेत्र, जी. एस. रोड,
REGIONAL OFFICE, N. E. REGION, G. S. ROAD,
भांगगढ़, गुवाहाटी - 781 005 (असम)
BHANGAGARH, GUWAHATI - 781 005 (ASSAM)

क्रमांक
Ref. No. Adm/AS/380/Part-III/282 - 286

दिनांक
Date 25.09.99

To,

The Officer-in-Charge,
Dispur Police Station,
Dispur.

Sir,

On or about 4.45 P.M on 23.09.99 the staff of this office numbering 130(approx.) led by Shri Dwijen Das UDC, General Secretary and Shri Pradip Dey, UDC, President of the Staff Union pursuant to their demand for payment of Special Duty Allowance which was ordered to be stopped started demonstration within the office premises and started slogan shouting outside the Chamber of the R.P.F.C. (Regional Provident Fund Commissioner). Besides continuing their demonstration they disconnected the telephone line and light and fan connection and confined the R.P.F.C and other colleague officers present with the R.P.F.C for 5½ hours upto 10.30. P.M. and did not allow him to leave the chamber. They entered the chamber of R.P.F.C. at 9.00 P.M. enmasse and demanded that the payment must be made.

While they continued slogan shouting hooliganism throughout they also indulged in destroying office property incurring losses for the Govt. The extent of damage may be verified immediately.

In view of their above acts which tantamounted to forceable wrongful confinement with criminal intent and destroying public property, you are requested to register this complaint and take appropriate actions against the concerned staff responsible.

As this office is a Public Utility Service, it is of outmost importance that discipline is maintained and as such your prompt action will go a long way to maintain discipline.

Contd.....P/2..

15/9/2000
Regd. Asst. Commissioner-1
N. E. R. C. U. - 781005.

15/9/2000

List of witnesses:

1. Shri B.Sarma, Controller of Pension.
2. Shri L.N.Sathy, Regional P.F.Commissioner-II.
3. Shri N.V. Deb, Asstt. Commissioner.
4. Shri M. Thakuria, Asstt. Commissioner.
5. Shri B. Lalzamang, " "
6. Shri R. Kapai, " "

Yours faithfully,

[Signature]
 (R. GOSWAMI) 23/09/99
Regional P.F. Commissioner-INNER

Copy to:

1. D.G.Police, for information
2. S.P.(City) with request to direct O.C., Dispur Police Station for immediate investigations and action.
3. Secretary, Deptt.of Labour, Govt. of Assam and Chairman, Regional Committee, E.P.F.O., Assam.

[Signature]
 (R. GOSWAMI) 23/09/99
Regional P.F. Commissioner-I(ER)

e/c.

dec 10/9/99

P. C. Patir,
 Regional P.F. Commissioner-I
 N. H. R. Co. 23/09/99

Annex - XX

No: G/R.8(17)/97-P.A.

MEMORANDUM OF SETTLEMENT ARRIVED AT UNDER SECTION 12(3) OF THE I.D. ACT, 1947 BETWEEN THE MANAGEMENT OF EMPLOYEES' PROVIDENT FUND ORGANISATION, NER, GUWAHATI AND ITS EMPLOYEES REPRESENTED BY EMPLOYEES PROVIDENT FUND STAFF UNION BEFORE R.L.C.(C), GUWAHATI ON 04.11.1999.

PARTIES TO THE DISPUTE

On behalf of Management:

1. Shri E. Goswami,
R.P.F.C., NER,
Guwahati.

On behalf of Union/workmen:

1. Shri P. Day, President,
E.P.F.S.U., Guwahati.
2. Shri D.C. Das, General Secretary,
EPFSU, Guwahati.
3. Shri N. Medhi, A.G.S.,
EPFSU, Guwahati.

SHORT RECITAL OF THE CASE

Shri D.C. Das, General Secretary, E.P.F.S.U., Guwahati raised an Industrial dispute vide his letter No. EPFSU/NER/99/50 dated 14.9.99 regarding payment of Special Duty Allowance (SDA) to the employees working in the N.E. Region on the ground mentioned therein. The dispute was taken up in conciliation and C.P. were held on 17.9.99 when both the parties were present. After detailed discussions on 17.9.99 it was observed that on representation from the union on the order of the Government to stop the payment of SDA, the matter was referred by E.P.F.O. to the Ministry of Labour. Both the parties were requested to give the full facts and the conciliation proceeding was adjourned to 5.10.99. On 5.10.99 though the management attended the C.P. but the union was absent as it was a Bandh day and C.P. were further adjourned to 4.11.99. During discussions on 4.11.99 it was observed that the matter relating to payment of SDA has been referred by the Ministry of Labour to the Ministry of Finance whose decision is awaited. Further, during conciliation proceedings it was suggested by the R.L.C.(C), Guwahati that pending decision of the Ministry of Finance the payment of SDA may be continued on the undertaking of the employees concerned. After detail discussions both the parties agreed to resolve the disputes on the following terms of settlement.

TERMS OF SETTLEMENT

It is agreed by both the parties:

1. That the decision of the Ministry of Finance, to whom the matter relating to payment of Special Duty Allowance to the employees of E.P.F.O., NER, Guwahati has been referred by the Ministry of Labour, shall be final and binding on both the parties.
2. However, pending decision of the Ministry of Finance as referred to above the payment of SDA shall be made to the employees of E.P.F.O., NER, Guwahati subject to their individual undertaking to the effect that the payment of SDA made to them will be refunded by them as per decision of the Ministry of Finance, if the Ministry of Finance decides not to make the payment of SDA.

Both the parties shall submit implementation report of this settlement by 15.12.99 to the R.L.C.(C), Guwahati.

Signed by

(P. Day) 11/99

Regional
N. E. R., Guwahati - 781005.

~~Annex~~ XXIIय निधि" नई दिल्ली
"KENDRIYA NIDHI" New Delhi

R. P. F. C. SECRETARIATE

Receipt Serial No.

Date



EMPLOYEES' PROVIDENT FUND ORGANISATION

कन्द्रीय कार्यालय CENTRAL OFFICE

इसका विभाग, 14 भोपाली बाजार, नई दिल्ली-110006
Hudco Bhawal, 14 Bhikaji Bazar, New Delhi-110006

No HRM-V/P-V/50(1)99/NER-Incentive

To

Y NAME TO:-
Shri R. Goswami,
RPFC (Grade-I)*
The Regional Provident Fund Commissioner,
North-Eastern Region,
GuwahatiSub: Discontinuance of payment of Special Duty Allowance
to the non-entitled employees working in North-Eastern
Region.

Sir,

Please refer to this office letter no. P-V/50(1)99/NER/
incentive/5598, dated the 5th October '99 on the above subject.2. The Govt of India, Ministry of Labour has informed that
as per the instructions dated 22nd March '99 of the Ministry
of Finance, it is not possible to grant payment of Special Duty
Allowance to non-entitled employees of Employees Provident Fund
Organisation. The Employees State Insurance Corporation has
also stopped payment of Special Duty Allowance to its non-entitled
staff posted in the North-Eastern Region.

Yours faithfully,

(B.R. RATTAN)

REGIONAL PROVIDENT FUND COMMISSIONER (HRM)

Regional P.F. Commissioner-1
N.E.R. Guwahati-781005.

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Ann ~~XXV~~ (H) 121
Annexure-R27No. 13017/1/99-MS.I
Government of India/ Bharat Sarkar
Ministry of Labour/ Shram Mantralaya

New Delhi, dated

April, 2000

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The Central Provident Fund Commissioner,
(Shawari), Nidhi Bhawan,
14, Balraj Cama Place,
NEW DELHI-110 066.Subject: Discontinuance of payment of Special Duty Allowance to
the non-entitled employees working in North Eastern Region

Sir,

I am directed to refer to your office letter number
P.7/50(1)20/MSR-Incentive/3163 dated the 29th December, 1999 on the
subject mentioned above and to say that the matter has been
examined in consultation with the T.F.D. In view of the instruct-
ions dated 22.3.99 of the Ministry of Finance, it is not possible
to grant payment of SDA to non-entitled employees of the EPFO.
The Employees' State Insurance Corporation has also stopped payment
of Special Duty Allowance to its non-entitled staff in the North
Eastern Region.

Yours faithfully,

J. P. SHUKLA
DEPUTY SECRETARYP. S. Patil
Regional P.F. Commissioner-1
(N.E. Region)



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Annexure-R28 दुरभाष Phone : 566265
560958
कर्मचारी भविष्य निधि संगठन
Employees' Provident Fund Organisation
श्रम मंत्रालय, भारत सरकार,
Ministry of Labour, Govt. of India
क्षेत्रीय कार्यालय, पूर्वोत्तर क्षेत्र, जी. एस. रोड,
REGIONAL OFFICE, N. E. REGION, G. S. ROAD,
भांगगाछ, गुवाहाटी - 781005 (असम)
BIHANGAGARI, GUWAHATI - 781 005 (ASSAM)

क्र. No. Adm/As/320/Part-II/576-82

दिनांक Date 8/5/2000

OFFICE ORDER

Central Office vide their letter No. HRM-V/PV/50(1) 99/NER incentive/5195 dt. 26.4.2000 has informed that it is not possible to grant payment of SDA to non-entitled employees of E.P.F.O posted in N.E.Region. Hence, payment of SDA is stopped with immediate effect.

Recovery of SDA paid will commence from the pay bill of May 2000 in accordance with the terms of settlement and undertaking submitted by the Employees.

This issues with the approval of RC-I.

(R. J. KAPAI)
ASST. P.F. COMMISSIONER (ADM)

To,

1. Pay Bill.
2. PAC
3. Notice Board.

Copy to:-

1. O.I.C., S.R.O., Agt/Shg/Tsk. They are directed to take similar action. Copy of C.O. letter is enclosed.
2. G.S., EPFSU, Ghy-5 for information. (Copy of C.O. letter is enclosed)

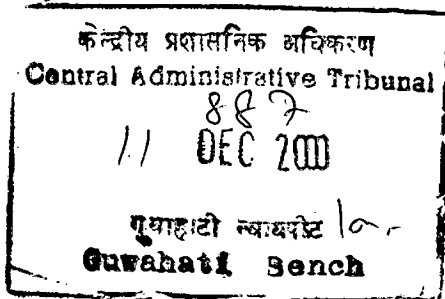
15/9/2000
Regional P.F. Commissioner
N.E. Region, Guwahati - 781005
(ADM)

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Filed by Mr. applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI



Original Application No. 207/2000

The Employees P.F. Staff Union
N.E. Region

.... Applicant

-versus-

Union of India & Ors.

.... Respondents

-AND-

IN THE MATTER OF :

Rejoinder submitted by the applicants.

The applicant abovenamed most humbly and respectfully
begs to state as under :

1. That your applicant categorically denies the contention of the Respondents and further begs to state that the SDA has been paid to the applicants unauthorisedly and also denied the validity of the objection raised by the Audit (A.G.) regarding entitlement/payment of SDA to the members of the applicants association. It is admitted by the respondents union in their written statement that the proposal for grant of SDA has been approved by the both executive committee of Central Board of Trustees held on 23.3.93 and following the assurance as well as the agreement the applicants association cleared the pending workload and arrear works of the office of the Regional Provident Funds Commissioner (RPFC/NER, Guwahati). It is relevant to mention here that on

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the basis of written assurance from the Respondents side the special (CA) 2497/89 pending before the Hon'ble Supreme Court which was preferred by the applicants association being aggrieved with the judgement and order passed in G.C. No.70/87 dated 14.7.87, was withdrawn by the applicants association which would be evident from Hon'ble Suprim Court's order dated 26.10.93 passed in C.A. No. 2497/89, therefore agreement as well as settlement arrived at between the applicants association and the Respondents particularly at the instance of the respondents are now binding between the parties and the Respondents union cannot make any departure on the plea that the Ministry of Finance did not agree upon to continue the payment of SDA to the applicants association. It is also relevant to mention here that certain conditions were given by the respondents for payment of SDA and the members of the applicants association fulfil all those conditions as such the respondent union are duty bound to continue the payment of SDA to the applicants and the decision of Ministry of Finance cann stand on the way of payment of SDA to the applicants. The conditions of the Office Memorandum dated 14.12.1983 is not applicable in the instant case of the applicants, considering the peculiar fact and circumstances of the case.

It is also admitted by the Respondents in paragraph 6 that Central Board of Trustees has power to make a departure from the rules or orders in respect of service conditions of the employees that with the service conditions of the Central Government employees, as such there is no difficulty on the partes of the respondents to pay

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SDA to applicants in terms of agreement referred to above.

2. That your applicants categorically denies the statement made in paragraphs 7,8,9,10,11,12,14 and 15 of the written statement and further beg to state that the SDA were granted to the members of the applicants association by the Respondent association by the Respondent Union not under any mistaken believe regarding transfer of liability of Group C and Group D staff but SDA has been paid to the applicants after datailed scrutiny of the Memorandum dated 14.12.1983 and by imposing certain conditions for clearance of heavy pending arrears works accumulated in the RPFC, NER, Guwahati which were not the condition precedent for payment of SDA as per O.M. dated 14.12.1983, as such, the respondents are duty bound to continue the payment of SDA as per decision arrived in the both Executive Committee meeting. It is pertinent to mention here that the respondents were very much well aware regarding conditions for grant of SDA as they have contested O.A. 70/87 before the Hon'ble Tribunal and the said case was dismissed by the Hon'ble Tribunal and the judgement of the respondents. Therefore, contention of the respondents that the SDA is paid to the applicants on a mistaken believe is totally false and misleading. Now it appers that an attempt is being made by the respondents to thrown out the agreement after got the work clear from the members of the applicants association. Therefore, action of the respondents are highly arbitrary, illegal, and the same is unfair labour practice. and on that score

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alone the impugned order dated 6.7.1999, 26.4.2000 &
5.2.2000 are liable to be set aside and quashed.

In the facts and circumstances stated above the
application is deserves to be allowed with costs.

~~XXXXXXXXXXXXXX~~

V E R I F I C A T I O N

I, Shri Jogen Chandra Kumar, Son of Late Laharuram Kumar, aged about 43 years working as Upper Division Clerk and also the General Secretary of the Employees Provident Fund Staff Union, Guwahati, I have been authorised to sign the verification on behalf of the Union and I do verify that the statements made in paragraphs 1 and 2 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 11th day of December, 2000.

Signature