

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A.T.A No. 234/2000

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FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 234/2000 OF 199

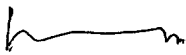

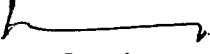
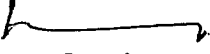

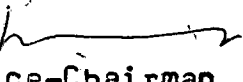
Applicant(s) Sri Gautam Deb and ors.

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. M. Chanda.
Mrs. N. D. Goowami

Advocate for Respondent(s) Mr. G. N. Chaurahaty,
C.G.S.C.

| Notes of the Registry | Date | Order of the Tribunal |
|---|---|--|
| <p>Application is in form and within time. F. of Rs 50/- deposited vide IPO B/D No 597305 Dated 12.7.2000</p> <p>17/7/00 One copy sheet. Notice prepared and sent to D/S. for issuing the respondents No 1 to 5. (order to No 1). Vide A/N No 1867 to 1871 dtd 18/7/00</p> <p>17/7/00</p> | <p>13.7.2000</p> <p>pg 14/7/2000</p> <p>16.8.00</p> | <p>Present : The Hon'ble Mr S.Biswas, Administrative Member.</p> <p>Heard Mr M.Chanda, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents.</p> <p>Application is admitted. Issue notice to the respondents.</p> <p>List on 16.8.2000 for written statement and further orders.</p> <p>Mr Chanda prays for an interim order The operation of impugned letter dated 18.1.1996, Annexure-3 shall be kept in abeyance and no recovery shall be made until further orders.</p> <p>S. Biswas Member (A)</p> <p>17/7/00</p> <p>16.8.00</p> <p>17/7/00</p> |

| Notes of the Registry | Date | Order of the Tribunal |
|--|---|---|
| <p>Notice duly served on Respondent No 1, 485. by 3/8/00</p> <p>25-9-2000</p> <p>No. written statement has been filed.</p> <p>24</p> <p>No. WPs has been filed.</p> <p>24</p> <p>24.10.2000</p> <p>The case is ready for hearing.</p> <p>24</p> <p>7.12.00</p> <p>Notice duly served on Respondent No. 1, 3, 485. by 7/12/00</p> | <p>26.9.2000</p> <p>nkm</p> <p>25.10.00</p> <p>pg</p> <p>8/12</p> <p>19.12.00</p> <p>1m</p> <p>22.12.00</p> <p>1m</p> | <p>Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman</p> <p>Two weeks further time allowed for filing of written statement on the prayer of Mr A. Deb Roy, learned Sr. C.G.S.C. Mr M. Chanda, learned counsel for the applicant, is present. List it on 25.10.00 for orders.</p> <p> Vice-Chairman</p> <p>Mr A. Deb Roy, learned Sr. C.G.S.C submits that written statement has already been filed. The case is ready for hearing.</p> <p>List on 8.12.2000 for hearing.</p> <p> Vice-Chairman</p> <p>no D.P. Adjourned to 19.12.2000</p> <p>AKS 8/12</p> <p>Heard counsel for the parties. Hearing concluded. Judgment reserved.</p> <p> Member</p> <p> Vice-Chairman</p> <p>Judgment & Orders pronounced in open Court. Kept in separate sheets. Application is allowed.</p> <p> Member</p> <p> Vice-Chairman</p> |

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 149 OF 1999.

(AND 17 OTHER ORIGINAL APPLICATIONS)

(@ As 217, 274, 297, 296, and 187 of 1998; 18, 21, 223, 23, 380 and 81 of 1999 AND 282, 208, 24, 21, 428 and 234 of 2000)

Date of decision - December, 22, 2000.

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

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

1. Ordinance Depot Civil Workers' Union,
Masimpur, P.O. Arunachal,
Dist Cachar, Assam.
2. Sri Badal Ch Dey,
President,
Ordinance Depot Civil Workers' Union,
Masimpur,
P.O. Arunachal,
Dist Cachar, Assam.
3. Sri Badal Chandra Dey,
Son of Late Birendra Chandra Dey,
Vill. Badarpur Part-II,
P.O. Nij Jaynagar,
(via Arunachal),
Cachar, Pin 788025.
4. Sri Salim Uddin Barbhuyan,
Son of Late Abdul Hakim Barbhuyan,
Village-Uzam Gram, P.O. Nij Jaynagar,
(via Arunachal) Dist Cachar, Assam.

(Applicant Nos. 3 and 4 are effected members of the aforesaid Association working under No. 1 Det 57 Mountain Division, Ordinance Unit as Mazdoor).

- APPLICANTS

By Advocates Mr. J.L. Sarkar, Mr. M. Chanda,
Mrs. S. Deka and Ms U. Dutta.

- Versus -

1. Union of India,
Through the Secretary to the Govt
of India, Ministry of Defence,
New Delhi.

contd ...

2. Officer Commanding,
57 Mountain Division,
Ordinance Unit,
C/O 99 APO.
3. LAO (A),
Silchar, Masimpur Cantonment,
No.1 Det 57 Mountain Division,
C/O 99 APO.

- RESPONDENTS

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

J U D G M E N T

M.P. SINGH, MEMBER (ADMN.) -

By filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicants have challenged the impugned order dated 12th January, 1999 whereby the Special (Duty) Allowance granted in the light of the Office Memorandum No.20014/3/83.E.IV dated 14th December, 1983 and Office Memorandum No.F.No.20014/16/86/E.IV/E.II(B) dated 1st December, 1988 is now sought to be recovered by the respondents. The applicants have sought relief by praying that the Office Memorandum dated 12th January, 1996 (Annexure-4) and 12th January, 1999 (Annexure-5) be quashed and set aside and the respondents be directed to continue to pay S.D.A. to the members of the applicant association in terms of O.M. dated 14th December, 1983, 1st December, 1988 and 22nd July, 1998. The applicants have also sought direction to the respondents not to make any recovery of any part of S.D.A. already paid to the members of the applicant association.



2. The cause of action, the issues raised and relief sought for in this O.A. are same as raised in O.A. No.217/98 (All India Central Ground Water Board Employees Association, North Eastern Region Central Ground Water Board, Tarun Nagar, Guwahati-5 and others - Vs - Union of India and others), (2) O.A. No.274/98 (Sri Dulal Sarma and others -Vs- Union of India and others), (3) O.A. No.18/99 (National Federation of Postal Employees Postmen and Gr.D - Vs - Union of India and others), (4) O.A. No.21/99 (Makhon Ch. Das and others - Vs - Union of India and others), (5) O.A. No.282/2000 (Rabi Shankar Seal and others - Vs - Union of India and others), (6) O.A. No.223/99 (Shri K. Letso and others - Vs - Union of India and others), (7) O.A. No.208/2000 (Krishanlal Saha and others - Vs - Union of India and others), (8) O.A. No.23/99 (Ordinance Mazdoor Union and another - Vs - Union of India and others), (9) O.A. No.24/2000 (Ramani Bhattacharyya - Vs - Union of India and others), (10) O.A. No.21/2000 (Sri Louis Khyriem and others - Vs - Union of India and others), (11) O.A. No.428/2000 (Sri T. Ahmed and others - Vs - Union of India and others), (12) O.A. No.297/98 (Biswajit Choudhury and others - Vs - Union of India and others), (13) O.A. No.380/99 (Smt. Sanghamitra Choudhury and others - Vs - Union of India and others), (14) O.A. No.296/98 (Dwijendra Kumar Debnath and others - Vs - Union of India and others), (15) O.A. No.187/98 (All Assam M.E.S. Employees Union and another - Vs - Union of India and others), (16) O.A. No.234/2000 (Gautam Deb and others - Vs - Union of India and others), (17) O.A. No.81/99 (Sri Nitya Nanda Paul - Vs - Union of India and others) and (18) O.A. No.84/2000 (Subodh Ch Gupta and 56 others - Vs - Union of India and others). We, therefore, proceed to hear all the

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cases together. Among these O.As, O.A. No.149/99 is to be treated as a leading case and the orders passed in this O.A. shall be applicable to all other aforesaid O.As.

3. The brief facts as stated in O.A. No.149/1999 are that the applicant No.1 is an association of Group 'D' employees representing 155 persons working under the Officer Commanding No.1, Det, 57 Mountain Division, C/O 99 APO. The applicant No.2 is the President of the aforesaid association and the applicant No.3 and 4 are the affected members of the said association. They are civilian Government employees working under the Officer Commanding of the aforesaid Mountain Division.

4. The Government of India granted certain facilities to the Central Government civilian employees serving in the States and Union Territories of North Eastern Region vide Office Memorandum dated 14th December, 1983. As per clause II of the said memorandum, Special (Duty) Allowance was granted to the Central Government civilian employees, who have all India transfer liability on posting to any station in the North Eastern Region. The respondents after being satisfied that all the members of the said Association who are civilian Central Government employees are saddled with all India transfer liability and are, therefore, entitled to S.D.A. in terms of the office memorandum dated 14th December, 1983 and office memorandum dated 1st December, 1988, The Special (Duty) Allowance was accordingly granted to the members of the applicant association. ^{But} The Respondent No.3 issued the impugned order dated 12th January, 1999

wherein ...

wherein it is stated that in view of the Supreme Court judgment, the persons who belong to North Eastern Region would not be entitled to S.D.A. but the said allowance would be payable only to the employees posted to North Eastern Region from outside the region. All the industrial persons working also fall within the same category and it is further requested to submit a list of employees showing permanent residential address for verification for entitlement of S.D.A. It was ^{also} further instructed to start recovery in respect of the employees who belong to North Eastern Region with effect from 21.9.1994 in instalments. As such, the applicants apprehend that in view of the instructions issued through impugned letter dated 12.1.1999, the respondents may start recovery of S.D.A. from the Pay Bill of May, 1999. The action of the respondents to stop the S.D.A. to the members of the applicant association is without any show cause notice and without following the principles of natural justice.

5. On an enquiry made by the applicants, they came to know that the Government of India while issuing the office memorandum dated 12th January, 1996 clarified the position regarding the entitlement of S.D.A. In para 6 of the said office memorandum, it is stated that the Hon'ble Supreme Court in the judgment dated 20th September, 1994 (in Civil Appeal No.3281 of 1993) upheld the submission of the Government civilian employees, ^{that those} who have all India transfer liability are entitled to the grant of S.D.A. on being posted to any station in the North Eastern Region from outside the region and S.D.A. would not be payable merely because of

the clause ...

the clause in the appointment order relating to all India transfer liability. It is also stated that the Apex Court ² also added that the grant of this allowance only to the officers transferred from outside the 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 Supreme Court further 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. But a contradictory view has been taken in regard to recovery of the Special (Duty) Allowance from the applicants vide para 7 of the office memorandum dated 12th January, 1996. The relevant para 7 of the office memorandum dated 12th January, ¹⁹⁹⁶ is as follows :-

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

- i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
- ii) the amount paid on account of SDA to ineligible persons after 20.9.94 (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."

6. According to the applicants, the Hon'ble Supreme Court keeping in mind the possible hardship to the low paid employees directed not to make recovery of the S.D.A. which is already paid to the employees. After a lapse of

considerable ...

considerable period, the respondents have now sought to recover the amount of S.D.A. paid to them after 20.9.1994. Aggrieved by this, they have filed this O.A. seeking relief as mentioned in Para-1 above.

6. The respondents have contested the case and stated in their reply that in order to retain the services of civilian employees from outside the North Eastern Region, who do not like to come to serve in the North Eastern Region being a difficult and inaccessible terrain, the Government of India brought out a scheme under the office memorandum dated 14th December, 1983 thereby extending certain monetary and other benefits including "Special (Duty) Allowance" (in short SDA). While the provisions of the office memorandum dated 14th December, 1983 were wrongly interpreted which raised some confusion relating to payment of S.D.A., the Government of India brought out a clarification to remove the ambiguity of the earlier office memorandum dated 14th December, 1983 by the office memorandum dated 20th April, 1987 and also extended the benefit to Andaman, Nicobar and Lakshdweep Islands. According to this clarification for the sanctioning of S.D.A., the all India transfer liability of the members of any service/cadre or incumbents 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 basis of all India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of S.D.A.

7. Thereafter, a number of litigations came up challenging the non-payment/stoppage of payment of S.D.A. to certain classes of employees who were not coming within the zone of consideration as stated in the office memorandum dated 14th December, 1983 and 20th April, 1987. The Hon'ble Supreme Court in Civil Appeal No. 3251/93 vide judgment dated 20th September, 1994 held that the benefit under the office memorandum dated 14.12.1983 read with office memorandum dated 20.4.1987 are available to the non-residents of North Eastern Region and such discrimination denying the benefit to the residents civilian employees of the region is not violative of Article 14 and 16 of the Constitution of India. It has also been held that as per the office memorandum dated 20th April, 1987 the S.D.A. would not be 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. According to another decision dated 7th September, 1995, the Hon'ble Supreme Court in Civil Appeal No. 8208-8213 held as follows :-

"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 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 and others - Vs - S. Vijayakumar and others (1994) 3 SCC 649."

8. This Tribunal in O.A. No.75/96 (Hari Ram and others - Vs - Union of India and others) vide judgment dated 4th January, 1999 held that the S.D.A. is not payable to those employees who are residents of the North Eastern Region. In pursuance of the Supreme Court judgment, the Government of India took a policy decision vide office memorandum No.11(3)/95-E-II(B) dated 12th January, 1996. According to the respondents, the applicants No.3 and 4 and those in Annexure-'I' are resident of North Eastern Region and are locally recruited in the region and they do not have all India transfer liability although the list does not indicate that these employees are either residents of North Eastern Region or they belong to some other region outside the North Eastern Region and posted from outside the region as per the office memorandum dated 14th December, 1983. In view of the instructions contained in the office memorandum dated 12th January, 1996, no S.D.A. has been paid after 31st January, 1999. It was proposed to recover the amount already paid after 20th September, 1994 to 31st January, 1999. No recovery has been effected by them so far. In view of the aforesaid legal position, the O.A. is misconceived and cannot sustain in law.

9. Heard both the learned counsel for rival contesting parties and perused the records.

10. The question for consideration before us is as to whether the applicants are entitled for the payment of S.D.A. and if not, whether the recovery of the amount of S.D.A. already paid to them beyond 20.9.1994 is to be effected. The issue relating to the grant of S.D.A. has been considered and decided by the Hon'ble Supreme Court in Union of India and others - Vs - S.Vijayakumar and others, reported in 1994 Supp (3) SCC 649. The Hon'ble Supreme Court in that case has held as under :

"We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi 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."

The position has been further clarified by the Supreme Court vide their judgment in Union of India and others - Vs - Geological Survey of India Employees Association and others passed in Civil Appeal No.8208-8213 (arising out of S.L.P. Nos.12450-55/92) as stated in para 7 above.

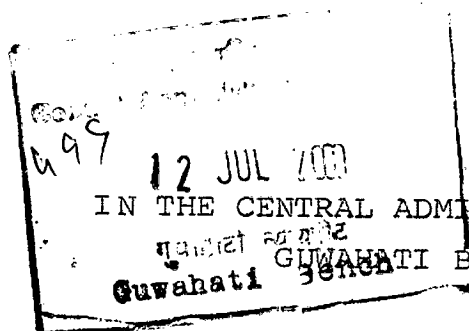
11. In view of the criteria laid down by the Hon'ble Supreme Court in the aforesaid judgments, the applicants are not entitled to the payment of S.D.A. as they are resident of North Eastern Region and they have been locally recruited and they do not have all India Transfer Liability. As regards the recovery of the amount already paid to them by way of S.D.A., the Hon'ble Supreme Court in the aforesaid judgments has specifically directed that whatever amount has been paid to the employees, would not be recovered from them. The judgment of the Supreme Court was passed on 20.9.1994 but the respondents on their own had continued to make the payment of S.D.A. to the applicants till 31.1.1999. The orders have been passed by the respondents to stop to payment of S.D.A. only on 12.1.1999. The order passed on 12.1.1999 can have only prospective effect and, therefore, the recovery of the SDA already paid to the applicants would have to be waived.

12. For the reasons recorded above, the O.A. is partly allowed and the respondents are directed that no recovery would be made by them of the amount of S.D.A. already paid to the applicants upto 31.1.1999. In case any amount on account of payment of S.D.A. has been recovered/withheld from retiral dues, the same shall be refunded/released to the applicants immediately.

The O.A. is disposed of with the above direction.

No order as to costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)



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

Title of the Case : O.A. No. 234/2000

Sri Gautam Deb & ⁵⁰~~39~~ Ors. : Applicants

-versus-

Union of India & Ors. : Respondents

I N D E X

| Sl.No. | Annexure | Particulars | Page No. |
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Date : 12-7-2000

Filed by

N.D. Goswami

Advocate

Gautam Deb

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

O.A. No. 234/2000

BETWEEN

1. Sri S.K. Kachari, MES No.225400
Upper Division Clerk,
Office of the Garrison Engineer, Shillong.
2. Smti Juliana Mauchary, M.E.S.No.264642,
Upper Division Cler,
Office of the Garrison Engineer,
Shillong.
3. Sri S.M.Roy, M.E.S. No. 224196,
Duftry
Office of the Garrison Engineer,
Shillong.
4. Smti P.Nongrum, MES No. 229495
Lower Division Clerk
Office of the Garrison Engineer,
Shillong.
5. Shri K.K.Bhattacharjee, MES No. 229030
J.E. (GUO,
Office of the Garrison Engineer,
Shillong.
6. Shri R.R.Deb , MES No. 228131
Duftry
Office of the Garrison Engineer,
Shillong

Contd....

Gautam Deb

7. Sri Dipak Thapa, MES No. 264630
Lower Division Clerk
Office of the Garrison Engineer,
Shillong.
8. Shri D.N.Das, MES No.233824
Carpenter/HS I
Office of the Garrison Engineer,
Shillong.
9. Shri N.K.Singh, MES No. 228957
Sub/OV
Office of the Garrison Engineer,
Shillong
10. Sri David Symleih, MES No. 223482
Carperter/HS II
Office of the Garrison Engineer,
Shillong.
11. Sri Gautam Deb, MES No. 229795
Painter/HS II
Office of the Garrison Engineer,
Shillong.
12. Shri RamSarat Geur, MES No. 229746
Mazdoor,
Office of the Garrison Engineer,
Shillong.
13. Shri Duna Prasad Joshi, 229761
Mazdoor
Office of the Garrison Engineer,
Shillong

Contd....

Gautam Deb

14. Sri Karna Bahadur, MES No. 229009
P/Fitter
Office of the Garrison Engineer,
Shillong.
15. Sri Nand Lall Rabidas, MES No. 228285
Pipe Fitter/HS II
Office of the Garrison Engineer,
Shillong
16. Sri Ram Chandra Rajak, MES No. 229757
Mazdoor
Office of the Garrison Engineer,
Shillong.
17. Sri Dalanan Singh, MES 225295
Mason/SK
Office of the Garrison Engineer,
Shillong.
18. Sri Moti Roy, MES No. ~~228294~~ 223481
~~Mason/HS II~~ Carpenter/ SK
Office of the Garrison Engineer,
Shillong
19. Sri R.S. Ram, MES No. 228294
Mason/HSII
Office of the Garrison Engineer,
Shillong
20. Sri Binda Rai, MES No. 229773
Mazdoor
Office of the Garrison Engineer,
Shillong

21. Smti Lucy Marry, MES No. 229865
F/Mazdoor
Office of the Garrison Engineer,
Shillong
22. Smti Mala Gurung, MES No. 229680
F/Mazdoor
Office of the Garrison Engineer
Shillong.
23. Harilal, MES No. 229141
Mason
Office of the Garrison Engineer,
Shillong
24. B.B. Gurung, MES No. 228121
J.E./B/R
Office of the Garrison Engineer,
Shillong.
25. Sri J.M. Rai, MES No. 22943
Elec/HSII
Office of the Garrison Engineer
Shillong
26. Deb Kr. Chettri, MES No. 229407
F.G.M, Office of the Garrison Engineer,
Shillong.
27. Sri Ram Chandra Singh, MES No. 228970
F.G.M.
Office of the Garrison Engineer,
Shillong.
28. N.K. Chanda, MES No. 480195
F.G.M.
Office of the Garrison Engineer,
Shillong.

29. Bindeswar Singh, MES No. ~~228270~~ 22150
F.G.M., Office of the Garrison Engineer,
Shillong.
30. Jugeswar Paul, MES No. 228221
F.G.M., Office of the Garrison Engineer,
Shillong.
31. Debraj Pathania, MES No. 147121
F.G.M., Office of the Garrison Engineer,
Shillong.
32. Laxmi Singh, MES No. 222540
F.G.M., Office of the Garrison Engineer,
Shillong.
33. Bularchand Singh, MES No. 228246
V/M, Office of the Garrison Engineer,
Shillong.
34. Ganesh Rai, MES No. 229570
V/M, Office of the Garrison Engineer,
Shillong.
35. Ganesh Sharma, MES No. 229715
Met/Elec. Office of the Garrison Engineer,
Shillong
36. Sri Sheodutta Singh, MeS No. 228997
Mason, Office of the Garrison Engineer,
Shillong.
37. San Bahadur Thapa, MES No. 229489
M/Mason, Office of the Garrison Engineer,
Shillong.
38. Rudal Mahto, MES No. 229828
Mazdoor, Office of the Garrison Engineer,
Shillong

Fullom Deb

39. Krishna Bahadur Rana,
MES No. 229795
Mazdoor, Office of the Garrison
Engineer, Shillong.
40. Dedimas Kharmappheling,
MES No. 229091
Mate/Carpenter
Office of the Garrison Engineer.
Shillong.
41. Puram Singh,
Painter (SK)
Shillong.
42. Satya Narayan Rai,
Electric (M HS-I)
43. Jawharlal Kori
FGM (SK)
Shillong.
44. C.W. Lama,
FGM (SK)
Shillong.
45. Berrilal Joshi,
P/Fitter (SK)
Shillong

22/

Gautam Deb

-7-

46. Gopinath Upadhyay,
Painter (SK), Shillong.

47. K.S. Rai Kumar,
P/Fitter (HS-II) Shillong.

48. Baldeo Rai,
Mazdoor, Shillong.

49. Raju Ram Sophoh,
P/Fitter (SK) Shillong.

50. Pannalal Rai,
Mate (Mason), Shillong.

51. Dhan Bahadur Iohar,
Mazdoor, Shillong.

..... Respondents.

-AND-

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

2. The Headquarter Chief Engineer,
Eastern Command, Fort William,
Calcutta.

3. The Controller of Defence Accounts,
Basistha, Guwahati.

4. The Army Headquarter,
Engineer-in-Chief's Branch
Kashmir House, DHQ P.O. New Delhi.

5. The Garrison Engineer,
M.E.S., Shillong Division,
Shillong.

Geetam Deb

DETAILS OF APPLICATION

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

The instant application is directed in respect of the Office Memorandum No. 11(3)/95-E.II dated 12.1.1996 circulated under Ministry of Defence letter No.4(19)/83-D(Civ.I) Vol. II dated 18.1.1996 and praying for a direction to the respondents not to make any recovery of Special (Duty) Allowance already paid to the applicants and further be pleased to direct the respondents to continue to pay Special (Duty) Allowance to the applicants in terms of the Office Memoranda dated 14.12.1983, 1.12.1988 and 22.7.1998.

2. Jurisdiction of the Tribunal

The applicants declare that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicants further declare that the application is filed within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case

4.1 That all the applicants are citizens of India, and as such, they are entitled to all the rights protections and privileges guaranteed under the Constitution of India.

4.2 That the grievance relating to which the instant application has been filed in respect of the applicants

Paulom Deb

has arisen out of the same cause of action. The applicants are all similarly situated and the reliefs sought for by them are also the same. Further, they have got common interest in the matter. Accordingly, the applicants have filed the instant application jointly. It is most respectfully prayed that the applicants may be permitted to join together in this application as provided for under Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

4.3 That all the applicants are serving under the cadre of Group 'C' and 'D' under the Garrison Engineer, Shillong Division, Shillong i.e. respondent No.5. The applicants fulfil all the conditions precedents for getting Special Duty Allowance is mentioned in the relevant circulars, mention has been made in subsequent paragraphs to this application. Accordingly all the applicant have been granted Special Duty Allowance ever since the said allowance was made applicable to the applicants concerned working in the North Eastern Region.

4.4 That the Government of India, Ministry of Finance, Department of Expenditure, under the Office Memorandum dated 14.12.1983, issued under No. 20014/3/83-E.IV while granting certain facilities to the employees of the Central Government Departments also granted an allowance called as Special(Duty) Allowance (for short SDA). The applicants having fulfilled all the criteria laid down in the said O.M. were granted the said Special

Gautam Deb

(Duty) Allowance which they have been enjoining till the month of July, 1996. It will be pertinent to mention that here that the applicants not only carry All India Transfer Liability as one of their service conditions but they have also got all India basis common seniority list, all India basis promotion zone, unlike other employees of the Central Government organisation carrying merely a clause of All India Transfer Liability without fulfilling the other conditions precedents as laid down vide O.M. dated 14.12.1983, ~~12.1.1996~~ and 12.1.1996 mention of which has been made in subsequent paragraphs.

A copy of the said O.M. dated 14.12.1983, ~~is~~ 1-12-88 and 22-7-98 annexed as Annexure-1 *See*

4.5 That your applicants beg to state that the respondents started paying Special (Duty) Allowance to the applicants after being found them eligible for grant of SDA and all the applicant drawn SDA either with effect from 1.11.83 or from their respective date of joining in their services. As such the SDA was paid to the applicant by the respondents themselves. However, the said SDA was suddenly stopped without any prior notice to the applicants with effect from July 1995 but it is understood from a reliable source that the same has been stopped in terms of Ministry of Defence letter bearing No. 4(19)/83-D(CIB.I) Vol. II dated 18.1.1996 by which the O.M. No. 11(3)/95-E.II(B) dated 12.1.1996 issued by the Ministry of Finance, was circulated in various offices of the respondents and following the above

Pratim Deb

instructions of the Ministry of Finance the payment of SDA had been stopped without issuing any notice to the applicants with effect from July, 1996. In this connection it is stated that in the Office Memorandum dated 12.1.1996 it was stated that locally recruited employees are not entitled to SDA which was circulated through letter dated 18.1.1996.

A copy of the letter dated 18.1.1996^{and 12.1.1996} is annexed as Annexure-3. *Seems.*

4.6 That the authority on receipt of the letter dated 18.1.1996 as well as the Office Memorandum dated 12.1.1996 stopped the payment of SDA however no attempt was made for recovery of the SDA as the same was paid by the respondents on their own after the applicants being found eligible for the said allowance. But suddenly the respondents now in the month of July, 2000 proposed to make recovery^{of} the SDA which was already paid to them and accordingly they have prepared the bills for recovery of SDA since September, 1994. But no notice was served to the applicants for illegal recovery of SDA without following the principles of natural justice. As such, finding no other alternative the applicants approaching this Hon'ble Tribunal praying inter alia for a direction to the respondents not to make any recovery of SDA which was already paid to the applicants by the respondents on their own.

4.7 That your applicants beg to state that the payment of SDA which was received by the applicants have already been spent and now if the recovery is made it will cause undue hardship to the applicants

Gautam Dab

and after such a long lapse the respondents are not entitled to make any recovery of SDA and this has already been settled by the Apex Court in various judgements and order. Some of the similarly situated employees of other department ~~xxxxxx~~ approached this Hon'ble Tribunal ~~for~~ asking for a direction to the respondents not to recover any amount of SDA which already paid to them as the bacuase respondents are not entitled to recover the paid SDA to them on their own in the light of the various decision of the Hon'ble Supreme Court as well as various decision of this Hon'ble Tribunal. It is pertinent to mention here that the Division Bench of the Tribunal in O.A. Nos.

368/99 after hearing the counsel for the parties stayed the operation of the impugned order for recovery of SDA and the O.A.s are pending before the Hon'ble Tribunal.

Copy of the order of the Tribunal in O.A.

Nos. 368/99 dated 17.11.99 are annexed as Annexure-2.

4.8 That this application is made bonafide and for the ends of justice.

5. Grounds for relief(s) with legal Provisions.

- 5.1 For that the proposal of recovery of SDA already paid prima facie is not sustainable and the same ~~xxxxxxx~~ proposal has been made without any notice to the applicants.
- 5.2 For that under the circumstances no recovery can be made from the pay of the applicants in respect of the payment made after 20.10.1994 from the

Goulam Dcb

pay of the applicants with effect from the month of July, 2000 that too without notice is arbitrary, illegal and principles of natural justice.

- 5.3 For that respondents are not entitled to make any recovery of SDA already paid to the applicants in respect of the payment made after 20.10.94. If at all any recovery was to be made same should have been done by the respondents immediate after 20.9.94 instead they kept on paying the SDA to the applicants but now by a stroke of pen that too behind the back of the applicant has sought to recover the amount on account of SDA paid to the applicants after 20.9.1994.
- 5.3 For that as pointed in paragraph 4 the applicants satisfy the pre-requisite for grant of SDA and accordingly they have also been paid the SDA on the strength of concerned O.M. Now the respondents on a mechanical application of the O.M. dated 12.1.1996 has sought to recover the amount of SDA and discriminated the same which is arbitrary and illegal.
- 5.4 For that the respondents have failed to appreciate the order of the Hon'ble Apex Court in various judgements and orders that the amount of SDA is already been paid to the employees shall not be recovered.
- 5.5 For that decision/proposal of recovery of SDA which is already paid to the applicants amounts to hostile discrimination in violation of Article 14 and 16 of the Constitution of India.

Goulson Deb

5.6 For that the decision of recovery of SDA in respect of the applicants had been made without any notice to the applicants as such the same is not sustainable and liable to be set aside and quashed.

6. Details of remedies exhausted.

The applicants further declare that they had no scope to file representation before the authority as because the decision of recovery of SDA has been taken by the authority behind the back of the applicant now they no other alternative remedy than to come under the protective hands of this Hon'ble Tribunal.

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

The applicants further declare that they have not filed any application, writ petition or suit in respect of the subject matter of this application before any other court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought for :

Under the facts and circumstances stated above, it is most respectfully prayed that the Hon'ble Tribunal may be pleased to admit this O.A. call for the records of the case and upon hearing the parties on the cause or causes that may be shown and on perusal of the records be pleased to grant the following reliefs :

Centem Deb

- 8.1 Hon'ble Tribunal be pleased to declare that the respondents are not entitled to recover the SDA already paid to the applicants on their own in the light of the various decisions of the Hon'ble Supreme Court as well as various decisions of this Hon'ble Tribunal.
- 8.2 Hon'ble Tribunal further be pleased to direct the respondents to continue to pay SDA to the applicants in the light of the O.M. dated 14.12.83, 1.12.1988 and 22.7.1998.
- 8.3 Any other relief or reliefs to which the applicants are entitled to and as may be deemed fit and proper by this Hon'ble Tribunal.
- 8.4 Costs of the Application.

9. Interim order prayed for :

Pending disposal of the Original application, the applicants pray that the Hon'ble Tribunal be pleased to direct the respondents that they are not entitled to recover the amount of SDA already paid to them till

disposal of this application and stay the operation of the impugned order dt-18.1.1996 (Annexure-3).

10.
This application is filed through Advocate.

11. Particulars of the I.P.O.

- i. I.P.O.No. : 26.597305 dt-12.7.2000.
- ii. Issued from : G.P.O., Guwahati.
- iii. Payable at : G.P.O., Guwahati
- iv. Date of Issue : As per index.

12. List of enclosures

As stated in the Index.

Gautam Deb

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

I, Sri Gautam Deb, son of *Hate . S . Deb* .
aged about 32 years, working as Painter, H.S.II,
in the office of the Garrison Engineer, Shillong
Division, Shillong one of the applicants in this
application do hereby solemnly affirm and verify
that the statements made in the accompanying application
in paragraphs 1 to 4 and 6 to 12 are true to my legal
advice and I have not suppressed any material fact.
I have been duly authorised ~~and competent~~ by the other
applicants and competent to sign this verification
on behalf of other applicants.

And I sign this verification on this the 10th
day of July, 2000.

Gautam Deb

Signature

No. 20014/E/83/E.IV
 Government of India
 Ministry of Finance
 Department of Expenditure

New Delhi, the 14th Dec '83

OFFICE MEMORANDUM

Sub : 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 Mizoram has been engaging the attention of the Government for sometime. The Government had appointed a committee under the Chairmanship of 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 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.

x x x x x x x x x x x x x

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

x x x x x x x x x x x x x

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% 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 exempted from payment of Income Tax will, however, not be

Contd...

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- 29 -

Annexure-7 (Contd.) *Swiss*

eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and the deputation duty allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

x x x x x x

x x x x x x

x x x x x x

x x x x x x

86// - S.D. MAHALIK

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

- 47-18 -
- 30 -
- 28 -

Annexure-8 / Series 35

Annexure-2 (Extract)

F.No. 20014/16/86/E.IV/E.II (D)
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. 20014/3/83-2.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.

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xxxxxx xxxxxx

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20-5-8-98

Annexure - 1
11-98
2A

Forwarded for information
and necessary action.

F. No. 11(2)/97-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

~~12/11/98~~
(H. VELKAT/MAHAT)
SR. ADMINISTRATIVE OFFICER
(AUDIT RULES)

New Delhi, Dated July 22, 1998.

OFFICE MEMORANDUM

Subject: Allowances and Special Facilities for Civilian Employees of the Central Government serving in the States and Union Territories of the North-Eastern Region and in the Andaman & Nicobar and Lakshadweep Groups of Islands — Recommendations of the Fifth Central Pay Commission.

With a view to attracting and retaining competent officers for service in the North-Eastern Region, comprising the territories of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, orders were issued in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 extending certain allowances and other facilities to the Civilian Central Government employees serving in this region. In terms of paragraph 2 thereof, these orders other than those contained in paragraph 1(iv) *ibid.* were also to apply mutatis mutandis to the Civilian Central Government employees posted to the Andaman & Nicobar Islands. These were further extended to the Central Government employees posted to the Lakshadweep Islands in this Ministry's O.M. of even number dated March 30, 1984. The allowances and facilities were further liberalised in this Ministry's O.M. No. 20014/16/86/E.IV/E.II(B) dated December 1, 1988 and were also extended to the Central Government employees posted to the North Eastern Council when stationed in the North-Eastern Region.

2. The Fifth Central Pay Commission have made certain recommendations suggesting further improvements in the allowances and facilities admissible to the Central Government employees, including Officers of the All India Services, posted in the North-Eastern Region. They have further recommended that these may also be extended to the Central Government employees, including Officers of the All India Services, posted in Sikkim. The recommendations of the Commission have been considered by the Government and the President is now pleased to decide as follows :

- (i) Tenure of Posting/Deputation
The provisions in regard to tenure of posting/deputation contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read with O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.
- (ii) Weightage for Central Deputations/Training Abroad and Special Mention in Confidential Records
The provisions contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read with O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

- (iii) Special [Duty] Allowance
Central Government Civilian employees having an "All India Transfer Liability" and posted to the specified Territories in the North-Eastern Region shall be granted the Special [Duty] Allowance at the rate of 12.5 per cent of their basic pay as prescribed in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, but without any ceiling on its quantum. In other words, the ceiling of Rs 1,000 per month currently in force shall no longer be applicable and the condition that the aggregate of the Special [Duty] Allowance plus Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs 1,000 per month shall also be dispensed with. Other terms and conditions governing the grant of this Allowance shall, however, continue to be applicable.

In terms of the orders contained in this Ministry's O.M. No. 20022/2/88-E.II(B) dated May 24, 1989, Central Government Civilian employees having an "All India Transfer Liability" and posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands are presently entitled to an Island Special Allowance at varying rates in lieu of the Special [Duty] Allowance admissible in the North-Eastern Region. This Allowance shall continue to be admissible to the specified category of Central Government employees at the same rates as prescribed for the different specified areas in the O.M. dated May 24, 1989, but without any ceiling on its quantum. This Allowance shall also henceforth be termed as Island Special (Duty) Allowance. Separate orders in regard to this Allowance have been issued in this Ministry's O.M. No. 12(1)/98-E.II(B) dated July 17, 1998.

Attention is also invited in this connection to the clarificatory orders contained in this Ministry's O.M. No. 11(3)/95-E.II(B) dated January 12, 1996, which shall continue to be applicable not only in respect of the Central Government employees posted to serve in the North-Eastern Region but also to those posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands.

(iv) Special Compensatory Allowances

Orders in regard to revision of the rates of various Special Compensatory Allowances, such as Remote Locality Allowance, Bad Climate Allowance, Tribal Area Allowance, Composite Hill Compensatory Allowance, etc., which are location-specific, have either been separately issued or are under issue based on the Government decisions on the recommendations of the Fifth Central Pay Commission relating to these allowances. These orders shall apply to the eligible Central Government employees posted in the specified localities in the North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands, depending on the area(s) of their posting and subject to the observance of the terms and conditions specified therein. Such of those employees who are entitled to the Special [Duty] Allowance or the Island [Special Duty] Allowance shall also be entitled, in addition, to the Special Compensatory Allowance(s) as admissible to them in terms of these separate orders.

Central Government employees entitled to Special Compensatory Allowances, separate orders in respect of which are yet to be issued, will continue to draw such allowances at the existing rates with reference to the 'notional' pay which they would have drawn in the applicable pre-revised scales of pay but for the introduction of the corresponding revised scales till the revised orders are issued on the basis of the recommendations of the Fifth Central Pay Commission and the Government decisions thereon.

(v) Travelling Allowance on First Appointment

The existing concessions as provided in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 and further liberalised in O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(vi) Travelling Allowance for Journeys on Transfer; Road Mileage for Transportation of Personal Effects on Transfer; Joining Time with Leave

The existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 shall continue to be applicable.

(vii) Leave Travel Concession

In terms of the existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, the following options are available to a government servant who leaves his family behind at the old headquarters or another selected place of residence, and who has not availed of transfer travelling allowance for the family :

- (a) the government servant can avail of the leave travel concession for journey to the Home Town once in a block period of two years under the normal Leave Travel Concession Rules;

OR

- (b) in lieu thereof, the government servant can avail of the facility for himself/herself to travel once a year from the station of posting to the Home Town or the place where the family is residing and for the family (restricted only to the spouse and two dependent children of age up to 18 years in respect of sons and up to 24 years in respect of daughters) also to travel once a year to visit the government servant at the station of posting.

These special provisions shall continue to be applicable.

In addition, Central Government employees and their families posted in these territories shall be entitled to avail of the Leave Travel Concession, in emergencies, on two additional occasions during their entire service career. This shall be termed as "Emergency Passage Concession" and is intended to enable the Central Government employees and/or their families (spouse and two dependent children) to travel either to the home town or the station of posting in an emergency. This shall be over and above the normal entitlements of the employees in terms of the O.M. dated December 14, 1983, and the two additional passages under the Emergency Passage Concession shall be availed of by the entitled mode and class of travel as admissible under the normal Leave Travel Concession Rules.

Further, in modification of the orders contained in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, Officers drawing pay of Rs 13,500 and above and their families, i.e. spouse and two dependent children (up to 18 years in respect of sons and up to 24 years in respect of daughters) will be permitted to travel by air on Leave Travel Concession between Agartala/Aizawl/Imphal/Litlabari/Silchar in the North East and Calcutta and vice versa; between Port Blair in the Andaman & Nicobar Islands and Calcutta/Madras and vice versa; and between Kavaratti in the Lakshadweep Islands and Cochin and vice versa.

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Amendment - 1st
Amendment - 2nd

(vii) Children Education Allowance and Hostel Subsidy

The existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 shall continue to be applicable. The rates of Children Education Allowance and Hostel Subsidy having been revised in the Department of Personnel & Training O.M. No. 21017/1/97-Estt.(Allowances) dated June 12, 1998, the Allowance and Subsidy shall be payable at the revised monthly rates of Rs 100 and Rs 300 respectively per child.

(ix) Retention of Government Accommodation at the Last Station of Posting

The facility of retention of Government accommodation at the last station of posting by the Central Government employees posted to the specified territories and whose families continue to stay at that station is available in terms of the orders contained in the erstwhile Ministry of Works & Housing O.M. No. 12035/24/77-Vol. VI dated February 12, 1984, as amended from time to time. This facility shall continue to be available to the eligible Central Government employees posted in the North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands. In partial modification of these orders, Licence Fee for the accommodation so retained will be recoverable at the applicable normal rates in cases where the accommodation is below the type to which the employee is entitled to and at one and a half times the applicable normal rates in cases where the entitled type of accommodation has been retained. The facility of retention of Government accommodation at the last station of posting will also be admissible for a period of three years beyond the normal permissible period for retention of Government accommodation prescribed in the Rules.

(x) House Rent Allowance for Employees in Occupation of Hired Private Accommodation

The orders contained in this Ministry's O.M. No. 11016/1/E.II(B)/84 dated March 29, 1984, and extended in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(xi) Retention of Telephone Facility at the Last Station of Posting

As provided in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, Central Government employees who are eligible for residential telephones may be permitted to retain their residential telephone at their last station of posting, provided the rental and all other charges are paid by the concerned employees themselves.

(xii) Medical Facilities

Families and the eligible dependants of Central Government employees who stay behind at the previous stations of posting on the employees being posted to the specified territories shall continue to be eligible to avail of CGHS facilities at stations where such facilities are available. Detailed orders in this regard will be issued by the Ministry of Health & Family Welfare.

3. The President is also pleased to decide that these orders, in so far as they relate to the Central Government employees posted in the North-Eastern Region, shall also be applicable *mutatis mutandis* to the Civilian Central Government employees, including Officers of the All India Services, posted to Sikkim.

4. These orders will take effect from August 1, 1997.

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

6. Hindi version will follow.

Accounted by
Sunder Rajan
10/8/98

N. Sunder Rajan

(N.SUNDER RAJAN)

Joint Secretary to the Government of India

To

All Ministries/Department of the Government of India [As per standard Distribution List]

Copy [with usual number of spare copies] forwarded to C&AG, UPSC, etc. [As per standard Endorsement List]

Copy also forwarded to Chief Secretary, Andaman & Nicobar Islands and Administrator, Lakshadweep.

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 368/99

OF 199

Applicant(s)

Sri Sailendra K. Sharma

Respondent(s)


Union of India and ors.

Advocate for Applicant(s)

Mr. J. L. Sarkar, Mr. M. Chandra,
Mr. S. N. D. Gooch, Mr. G. N. Chandra
bary.

Advocate for Respondent(s)

C.G.S.C.

| Notes of the Registry | Date | Order of the Tribunal |
|---|----------|--|
|  | 17.11.99 | <p>Present : Hon'ble Mr Justice D.N.Baruah, Vice-Chairman and Hon'ble Mr G.L.Sanglyine, Administrative Member.</p> <p>Heard Mr J.L.Sarkar, learned counsel for the applicants and Mr B.S.Basumatary, learned Addl.C.G.S.C for the respondents.</p> <p>Eleven applicants have filed this application jointly with a prayer to allow them to join in this single application under the provisions of Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules 1987.</p> <p>perused the application. Application is admitted. Issue notice on the respondents by registered post. Written statement within four weeks.</p> <p>List on 20.12.99 for written statement and further orders.</p> <p>Mr Sarkar prays for an interim order.</p> |
| | | |

contd..

| Notes of the Registry | Date | Order of the Tribunal |
|---|----------|---|
| <p>17.11.99</p> <p>Mr Basumatary submits that he has no instruction. Issue notice on the respondents to show cause as to why the interim order as prayed for shall not be granted.</p> <p>List on 20.12.99 for filing reply to the show cause and further orders. In the meantime the operation of Office Memorandum No.A-46011/3/94-O.M.(Vol.III) dated 1.11.1999 (Annexure-8) and No.1 (76)ACCTTS/ASM/99 dated 5.11.1999 (Annexure-9) shall be kept in abeyance until further orders.</p> <p>SD/- VICE-CHAIRMAN SD/- MEMBER (A)</p> | 17.11.99 | <p>Mr Basumatary submits that he has no instruction. Issue notice on the respondents to show cause as to why the interim order as prayed for shall not be granted.</p> <p>List on 20.12.99 for filing reply to the show cause and further orders. In the meantime the operation of Office Memorandum No.A-46011/3/94-O.M.(Vol.III) dated 1.11.1999 (Annexure-8) and No.1 (76)ACCTTS/ASM/99 dated 5.11.1999 (Annexure-9) shall be kept in abeyance until further orders.</p> <p>SD/- VICE-CHAIRMAN SD/- MEMBER (A)</p> |

Certified to be true Cop.
प्रमाणित प्रतिलिपि

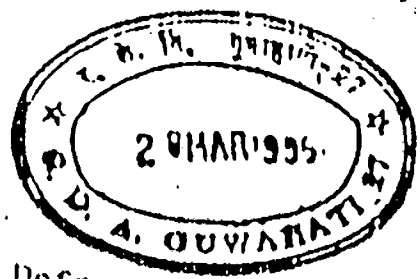
Deputy Registrar (A)
Central Administrative Tribunal
Gurubhati Bagchi

18/11/99

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ANNEXURE 2

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Ministry of Defence
D(Civ.I)

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

194

O.P. No. 11(3)/95-E.11(B) dated 12th Jan. 1996 on the above mentioned subject is forwarded herewith for information and necessary action, in as far as civilians paid from Defence Services Estimates are concerned. Full version is also enclosed herewith.

Handwritten notes:
1. Expenditure
2. Revenue
3. Civilian
4. May 1996
5. (over)

Signature: R. Sharma
(R. Sharma)
Section Officer
Tele. 3012014.

AG/Off 4(Civ)(d)
Mr. Hara./PPSR-2
MR/CP Dto.
MRD/Offn./DOP
M of D I.D. No. 4(19)/83-D(Civ.I) Vol. II dated 17.1.96.

DFEC/Secy(C)
DCAF 5/79-2(3)
The CFC Calcutta
DPR
MRD/Adm
MRD(Adm)/Adm
DCAF(Coord)
D(CAF)

Copy to:-

The CDA; All DCA; All Sp. Dy. DADS; The Secy; The Asstt. Audit Officers (Defence Services), Shri. Kanner, Bangalore and All India Director of Accounts (Postal) and Secy, Secy - (CFC).
DFA(AG); DFA(Mavv); DFA(AF); FA(Budget-11); FA(DP-1)
C.C. (Factory) Calcutta.
Copy of Ministry of Finance (Department of Expenditure) O.P. No. 11(3)/95-E.11(B) dated 12th Jan. 1996 regarding Special Duty Allowance for civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region-Regd.

Handwritten signature: A. H. ...

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dt. 14.12.83 and 20.4.1987 read with OM No. 20014/16/86-E.IV/E.11(3) dt. 1.12.88 on the subject mentioned above.

2. The Government of India vide the above mentioned 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 increments of any post/group of posts has to be determined by applying the terms of recruitment zone, promotion zone etc. i.e. whether recruitment/service/cadre/post has been made on All India basis. Whether promotion is done on the basis of All India basis or not is not for the service/cadre/post to be considered. It is to be decided by the 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. However, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministries/Departments against the Orders of the CAT.

6. The Hon'ble Supreme Court in their judgment delivered on 20.9.94 (in Civil Appeal no. 2251 of 1993) 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.

Att. Secy
Dy. Secy
SDV

Att. Secy
Dy. Secy

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

- 1) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived;
- 11) the amount paid on account of SDA to ineligible persons after 20.9.94 (which also included 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 OM is enclosed.

- 94/ -
(C. Balachandran)
Under Secretary to the Govt. of India.

Attested
@ while
Adv

27 44
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

22
GUWAHATI BENCH, GUWAHATI

186
CA No Guwahati 234/2000

Shri Gautam Deb and others

- Vs -

Union of India and others

- AND -

In the matter of

Written statement submitted by the
Respondents Nos 1,2,3,4, & 5

(Written Statement)

The humble respondents beg to submit their
written statements as follows :-

1. That the instant application is not maintainable under the law and facts and is liable to be rejected in limine.
2. That the applicants are by and large are residents on NE Region and were recruited in this region and are not eligible for SDA (Special duty allowances), which was intended to attract the people from out side this region; in view of the special situation prevailing in this area, which have been clearly interpreted by Hon'ble Appex Court in case of civil appeal No 3251 of 1993 with civil appeal Nos 84 of 1994 on 20 Sept 1994.

3. Para 1 : Statement made in para 1 are matter of records.

contd . . .2/-

4. Para 2,3,4,18 & 2: The statement made in para 2,3,4,1 & 4.2 are matter of facts.

5. Para 4.3 : With regards to the statements made in para 4.3 are incorrect and denied hereby in as much as the applicants are not entitled to get special duty allowance as they do not fulfil the conditions precedents by Hon'ble Supreme Court in civil Appeal No 3251 of 1993 with civil appeal nos 6163-81 of 1994 delivered on 20 Sept 1994 in the case of Union of India and others Vrs S.Vijay Kumar and others that SDA is not ~~admit~~ admissible to those who are recruited/residents in North Eastern Region.

6. Para 4.4 : With regards to statements made in para 4.4 it is respectfully submitted that the SDA would not become payable nerely because of the clause in the appointment order relating to All India Transfer liability. The SDA paid to the applicants was stopped in accordance with the interpretation render by the Hon'ble Appex Court in case of civil appeal No 3251 of 1993 with civil appeal Nos 6163-81 of 1994 delivered on 20 Sept 1994.

7. Para 4.5 : With regards to the statements made in para 4.5 the respondents respectfully submit that merely because the petitioners were paid the said allowances and this bonafide mistake does not entitle the applicants to enjoy the same benefit in perpertual and the respondents

Contd....3/-

are very much within the rights to stop the payment without entitlement to the petitioners in accordance with the judgement of Hon'ble Supreme Court and as such issue of any kind of notice is not warranted. The SDA was intended to attract people outside this region to work in this difficult/volatile region as such the people those who were being recruited or residents of this area can not reasonably claim said allowance as matter of right. The fact that the payment was made earlier does not confer any permanent interest to the recipients. This whole scheme being a matter of Govt policy the employees are not entitled to question its authority.

8. Para 4.6 : With regards to the statements made in para 4.6, The respondents respectfully submit that the respondents are very much within the rights to regularise/recover the un-authorized payment or the payment not permissible under relevant rules paid between 1994 to 1996 after the matter was finally ~~and~~ decided by the Hon'ble Supreme Court in civil appeal mentioned in the above paras.

9. Para 4.7 : Not legally tenable and denied hereby in as much the petitioners are not entitled to get SDA and in the event of the judgement of Hon'ble Apex Court, the persons recruited in NE Region are not entitled for SDA and the respondents have started

contd....4/-

to recover the SDA amount paid to the petitioners after 1994 is after the Hon'ble Appex Court Judgement on Sept 1994.

10. Para 4.8 : Incorrect and denied hereby in as much as this application is intended to stall the recovery the dues from the applicants in accordance with the Law laid down by the Hon'ble Appex and on this behalf.

11. Para 5.1 to 5.6 : Not legally tehable and with regards to the statements made in para 5.1 to 5.6, the respondents respectfully submit that the payment made not in accordance with rules and is liable to be recovered and as such its legality cannot be questioned. Besides the Hon'ble Appex Court in its Judgement under ref erence the categorically observed that "What ever the amount has been paid to the respondents or for that matter to the similarly situated employees would not be recovered from their in so far as the allowances concerned".

12. Para 6 : With regard the statement mention in para 6 it is respectfully submitted that the decision to recover the SDA paid to the applicants which was not entitled to them under the scheme as interpreted by the Hon'ble Appex court was taken in compliance with the said order as and the applicants can't taken exeeption in the account.

13. Para 7 : The statements made para 7 are the matters within the knowledge of the petitioners/ applicants. The respondent has no comments due to lack of knowledge.

contd....5/-


14. Para 8.1 to 8.4 : With regards to the statements made in para 8.1 to 8.4, the respondents respectfully submit that the payment made not in accordance with rule & is liable to be recovered in light of the Judgement delivered by Hon'ble Supreme Court on 20 Sept 1994 in civil appeal Nos 3251 of 1993 with civil appeal Nos 6163-81 of 1994 and as such it is legally can't be questioned. This will conceived petition is not maintainable under the law and facts the petitioners are not entitle for any relief as prayed for and the petition liable to be dismissed with cost to the respondents and the interim order dated 13.7.2000 passed by this Hon'ble Court may kindly be vacated.

15. Para 9 : Prayed for rejection and interim order passed by this Hon'ble Tribunal needs to be vacated.

VERIFICATION

I, Shri RM Rout, AEE E/M Shillong, S/O Shri BD Rout do hereby solemnly declare that the a coments given in the written statement from para 1 to 9 above are based on the informations and derived from available records and true to my information and the rest are my humble submission before this Honourable Tribunal.

And I sign this verification this 8 day of Sep 2000.


(RM Rout)
AEE
Legal Officer