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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-63/2001 ordered pg-1

Dismissed date- 23/02/01

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O.A/T.A No. 237/2000

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SECTION OFFICER (Judl.)

FORM NO. 4 -

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 237/2000 OF 199

Applicant(s) Sri Paban Ch. Paul.

Respondent(s) Union of India and others.

Advocate for Applicant(s) Mr. M. Chanda.

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

Notes of the Registry	Date	Order of the Tribunal
1. All documents form and writing done. P. F. of Rs. 400 deposited with IPO/BD No. 592326 Dated 12/7/2000 <i>12/7/2000</i> <i>SDA</i> <i>Reva</i>	13.7.00	Hon'ble Mr. S. Biswas, Administrative Member. Mr. M. Chanda learned counsel for the applicant and Mr. B. S. Basumatary, Addl. C.G.S.C.Z for the ^{case} respondents. This is a SDA/series of this application has been filed and Admited. Application is admitted. In this case similar interim order has been passed. In this situation the recovery proceedings should be kept in abeyance until further orders (Annexure 4). List on 16.8.2000 for orders.
Note:- Envelope not supplied by the Applicant. Notice preferred and sent w/ objection for coming the Subordinate No 1 to 5 w/ D/Nu 1880 to 1884 19/7/2000 <i>SDA</i>	16.8.00	There is no sum. adw to 27.9.00 <i>1870 in.</i>

Notes of the Registry	Date	Order of the Tribunal
	27.9.00	<p>Present : Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.</p> <p>Mr. B.S.Basumatary, learned Addl. C.G.S.C. prays for two weeks time to file written statement. The matter relates to SDA. List the case alongwith connected matters. In the meantime the respondents may file written statement.</p> <p>List on 19.12.2000 for hearing.</p> <p>trd 27/9/2000</p>
	20.12.00	<p>Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman and Hon'ble Mr. M.P.Singh, Administrative Member.</p> <p>Heard learned counsel for the parties. Hearing concluded. Judgment reserved.</p>
		<p>Member (A) Vice-Chairman</p>
2001 copy of the judgment been sent to the for issuing the e to the applicant well as to the Addl. S S	22.12.00	<p> Judgment pronounced in open Court, kept in separate sheets.</p> <p>Application is allowed. No order as to costs.</p> <p>Member (A) Vice-Chairman</p>

~~SECRET~~
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

237

2000

O.A. No. of

22/12/2000

DATE OF DECISION.....

PETITIONER(S)

Paban Ch Paul

Mr. M. Chanda, Mr. V.D. Goswami, Mr. G.N. Chakraborty - ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

RESPONDENT(S)

Union of India & Ors

Mr. B.S. Basumatary, Addl. C.G.S.C. - ADVOCATE FOR THE
CETRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH. - RESPONDENT(S)

THE HON'BLE MR. JUSTICE D.N. CHONDHURY, VICE-CHAIRMAN.
S.A. No. of

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

DATE OF DECISION.....

1. Whether Reporters of local papers may be allowed to see the
judgment ? PETITIONER(S)

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the
judgment ? ADVOCATE FOR THE
CETRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ?

4. Whether the Judgment is to be circulated to the other Benches ?
Judgment delivered by Hon'ble Mr. M.P. Singh, Member (Admn.)

RESPONDENT(S)

THE HON'BLE MR. JUSTICE D.N. CHONDHURY, VICE-CHAIRMAN.
S.A. No. of
CETRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH. - RESPONDENT(S)

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

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

DATE OF DECISION.....

1. Whether Reporters of local papers may be allowed to see the
judgment ? PETITIONER(S)

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the
judgment ? ADVOCATE FOR THE
CETRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO.237 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.

Sri Paban Chandra Paul,
Son of Late Santosh Ch. Paul,
aged about 43 years,
Resident of Dewal Road, Jorhat.

Working as JE (Presently Survey and
Contract) in the office GE (1)(P)
Teliamura, C/O Ex.GE(P) Agartala,
MES No.238713,
P.O. Salbagan, Agartala - 12.

- APPLICANT

By Advocates Mr.M. Chanda, Mr.V.D. Goswami
& Mr. G.N. Chakraborty.

- Versus -

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 Chief Engineer,
MES, Shillong Zone,
S.E. Falls, Shillong.
4. The Area Accounts Officer,
MES Shillong Zone, Shillong.
5. The Garision Engineer(I)(P),
Teliamura, C/O Ex-GE(P)
Agartala, P.O. Salbagan,
Agartala-12.

- RESPONDENTS

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

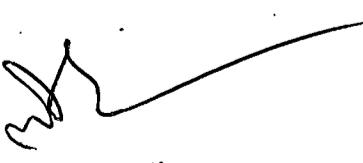
JUDGMENT

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

By filing the original application, the applicant has challenged the Office Memorandum dated 12th January, 1996 circulated by the Ministry of Defence under letter No.1(19)/83-D(Civ.I)Vol.II dated 18.1.1996. He has sought relief by praying for a direction to the respondents not to make any recovery of Special (Duty) Allowance (S.D.A. in short) already paid to the applicant and also for a direction to continue to pay S.D.A. to the applicant in terms of the Office Memorandum (O.M. in short) dated 14th December, 1983, 1st December, 1988 and 22nd July, 1998.

2. The facts of the case as stated by the applicant are that the applicant was initially appointed as a Surveyor Assistant Grade-II during the year 1980 in the department of M.E.S. The recruitment to the post of Surveyor Assistant Grade-II (S.A.II in short) is being made on All India basis and the seniority of the applicant in the cadre of S.A.II is being maintained on All India basis. As per condition laid down in the appointment order/recruitment rules, the applicant is liable to be transferred on all India basis.

4. The applicant was promoted to the post of Surveyor Grade-I in 1988. On his promotion, he was transferred to Mumbai under Southern Command, M.E.S. He stayed in Mumbai for about 3 years in the cadre of S.A. Gr.I. He was again

 transferred ...

transferred to Jorhat in the year 1992 in the office of the C.W.E. Both the transfer and posting of the applicant were made in the public interest. He is presently posted as J.E. Quantity Survey and Contract in the office of the G.E. (1) (p) Teliamura, Agartala. The Government of India granted certain allowances and facilities to civilian Central Government employees vide Office Memorandum dated 14th December, 1983. One of such allowances granted vide the above stated O.M. to the civilian Central Government employees is called Special Duty Allowance (S.D.A. in short). The applicant was found eligible by the respondents for payment of S.D.A. in terms of the said O.M. and accordingly, they have started paying S.D.A. to the applicant since 1983 as per O.M. dated 14th December, 1983 except for the period during his stay at Bombay. However, in the month of May, 2000, the respondents stopped the payment of S.D.A. as well as recovered an amount at the rate of Rs.1,000/- from the pay bill of the applicant for the months of May and June, 2000. The applicant came to know that the stoppage and recovery of S.D.A. has been made following the order/direction contained in O.M. dated 12th January, 1996 circulated by the Ministry of Defence vide their letter dated 18th January, 1996 whereby it is directed that the locally recruited employees are not entitled to S.D.A. as such whatever payment is made after 20th September, 1994 should be recovered from the employees concerned. It is also mentioned therein that these instructions have been issued in pursuance of the decision of the Supreme Court dated 20th September, 1994 in Civil Appeal No.3251/1993. According to the judgment of the Hon'ble Supreme Court, the Central Government employees who have all India transfer



liability ...

liability are entitled to payment of S.D.A. on being posted to any station in the North Eastern Region from outside the region. A mere reading of the circular dated 12 th January, 1996 makes it abundantly clear that the applicant fulfilled all the conditions laid down therein for grant of S.D.A. The applicant's recruitment zone, promotion zone and seniority of the cadre are being maintained on all India basis and the question of all India transfer liability is evident from his transfer and posting to Bombay during the year 1988 and as such, the applicant is entitled to S.D.A. in terms of the O.M. dated 14th December, 1983. Aggrieved by the action of the respondents to stop the payment of the S.D.A. to the applicant and issuing the order for recovery of the same, he has come before this Tribunal and sought the relief as mentioned in para-2 above.

5. The respondents have contested the case and have stated that as per O.M. dated 12th January, 1996 issued by the Ministry of Finance, mere clause in the appointment letter to the effect that persons concerned are liable to be transferred ~~to~~ anywhere in India, did not make him eligible for the grant of S.D.A. Thus, the S.D.A. payable to the Central Government employees having all India transfer liability is stopped and recovery on account of S.D.A. paid after 20th September, 1994 was ordered. However, the respondents have not disputed the contention of the applicant made in para-4.2 about his transfer to Mumbai in the year 1988 and thereafter, he was transferred back to Jorhat in the year 1992. On perusal of the O.M. dated 12th January, 1996 issued by the Ministry of Finance, we find that the

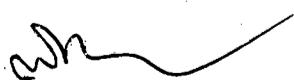


Central ...

Central Government civilian employees 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. Para-6 of the O.M. dated 12th January, 1996 issued by the Ministry of Finance states as follows :-

"The Hon'ble Supreme Court in their judgment delivered on 20.9.94 (in Civil Appeal No.3251 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 S.D.A., on being posted to any station in the NE Region from outside the region and S.D.A. 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 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."

6. Heard both the learned counsel for rival contesting parties and perused the records.
7. On perusal of records placed before us, we find that the applicant in this case has the transfer liability on all India basis. He has been recruited to the post of



S.A. Grade-II ...

S.A. Grade-II on all India basis and his seniority in the cadre is being maintained on all India basis. He has been transferred to North Eastern Region from outside in 1992. Keeping in view the criteria laid down in Ministry of Finance letter dated 12.1.1996, the applicant is entitled to the payment of S.D.A. As regards the recovery of the amount of S.D.A. already paid to the applicant, the Hon'ble Supreme Court in their judgment dated 20th September, 1994 in Union of India and others - Vs - S. Vijayakumar and others (reported in 1994 Supp (3) SCG 649) has 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. In this view of the matter, no recovery can be made from the amount of S.D.A. already paid to the applicant. Therefore, the amount already recovered at the rate of Rs.1,000/- from the pay Bill of the applicant for the months of May and June, 2000 as stated in para-4.5 of the O.A. will have to be refunded to the applicant by the respondents.

8. In the light of the above discussion, the O.A. is allowed and the respondents are directed to continue to pay the S.D.A. to the applicant in terms of the O.M. dated 14th December, 1993 and 21st January, 1996. The respondents are further directed that no recovery would be made from the amount of S.D.A. already paid to the applicant. In case, any amount of S.D.A. already paid has been recovered by the respondents, the same shall be refunded to the applicant immediately. The above direction shall be complied with within a period of 2(two) months from the date of receipt of a copy of this order.



9. Application is disposed of with the above directions.

No order as to costs.

(M.P. SINGH)

MEMBER (ADMN.)

(D.N. CHOWDHURY)

VICE-CHAIRMAN

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Gen.

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গুৱাহাটী বিধৃত
Guwahati Bench

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In the Central Administrative Tribunal

Guwahati Bench at Guwahati.

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

Title of the suit : O.A. NO. 237 /2000.

Shri Paban Ch. Paul : Applicant.

- Vs -

Union of India & Others : Respondents.

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Filed by

Manik Chanda
Advocate.

Paban Ch. Paul

3

In the Central Administrative Tribunal
Guwahati Bench at Guwahati.
(An application under Section 19 of the Administrative
Tribunals Act 1985).

Original Application No. _____ /2000.

BETWEEN

Shri Paban Chandra Paul
Son of Late Santosh Ch. Paul
aged about 43 years
Resident of Dewal Road
Jorhat.

Working as JE (presently Survey and Contract)
In the Office GE (1) (P) Teliamura
C/O. Ex. GE (P) Agartala,
MBS No. 238713,
P.O. Salbagan, Agartala - 12

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.

Paban Ch. Paul

3. The Chief Engineer
MES, Shillong Zone
S.E. Falls, Shillong.
4. The Area Accounts Officer,
MES Shillong Zone,
Shillong.
5. The Garrison Engineer (I)(P)
Teliamura
C/O. Ex-GE (P) Agartala,
P.O. Salbagan, Agartala - 12.

..... Respondents.

DETAILS OF THE APPLICATION:

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

The instant application is directed in respect of the Office Memorandum No. 11(3)/95-E.II dated 12.1.96 circulated under Ministry of Defence letter No. 1(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 applicant and also for a direction to continue to pay Special (Duty) Allowance to the applicant in terms of the Office Memorandum dated 14.12.83, 1.12.88 and 22.7.98

2. Jurisdiction of the Tribunal.

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

Fasanch. Paul

3. Limitation.

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

4. Facts of the case :

4.1 That your applicant is a Citizen of India as such he is entitle to all the privileges guranteed by the Constitution of India. The applicant is presently serving as Survivor Assistant Grade -I in the office of the Garrison Engineer (I) (P) Teliamura in the State of Tripura.

4.2. That your applicant is a diploma holder in Civil Engineering Course, he was initially appointed as Surveyor Assistant Grade-II during the year 1980 in the Department of MES, the recruitment of the post of S.A.II is being done on All India basis and the seniority of the applicant in the Cadre of S.A. Grade.II /I is being maintain on All India basis. As per condition laid down in the appointment order/ recruitment rule the applicant is saddled with All India Transfer Liability.

The applicant was promotted to the post of Surveyor Grade -I during the year 1988, the said promotion of the applicant was considered on All India Basis. The applicant immediately after his promotion transferred and posted at Mumbai under the Southern-Command, MES. The applicant stayed at Mumbai for about

lajan chand

three years in the Cadre of SA Grade-I thereafter he was again transferred back at Jorhat in the year 1992, in the office of the CWE, both the transfer and posting of the applicant mentioned above were made in public interest.

It is stated that the applicant was ~~was~~ transferred and posted in different places in North Eastern-Region including his posting at Mumbai, therefore it is established beyond all doubt that the applicant is saddled with all India Transfer Liability. He is presently posted as J.E. Quantity survey and contract in the office of the GE (1) (P) Teliamura C/O EX-GE(P) Agartala P.O. Salbagan, Agartala -12.

4.3. That the Government of India Department of Expenditure, Ministry of Finance, New Delhi granted certain allowances and facilities to Civilian Central Government Employees, serving in the States and Union Territories in the N.E. Region under office memorandum No. 20014/3/83-E.IV dated 14.12.83, one of such allowance is called Special Duty Allowance (in short SDA) was to the Civilian Central Government Employees on posting to any Station in N.E. Region, who are saddled with all India Transfer Liability, the said allowance is granted @ 25% with a maximum of Rs.400.00 as per O.M. dated 14.12.83. However the said rate was revised from time to time by the Government vide O.M. dated 1.12.88 and O.M. dated 22.7.98.

Copies of the O.M dated 14.12.83, 1.12.88 and 22.7.98 are enclosed as Annexure - 1, 2 and 3.

Laban Ch. Lall

4.4. That your applicant beg to state that the applicant was found eligible by the respondents for payment of SDA interms of the Office Memorandum dated 14.12.83, 1.12.88 and 22.7.98 and accordingly they have started paying SDA to the applicant since 1983 as per O.M. dated 14.12.83 except for the period during his stay at Bombay.

4.5. But most surprisingly in the month of May, 2000 the respondents without any notice/showcause and in total violation of Principle of Natural Justice, stopped the payment of SDA as well as recovered an amount at the rate of Rs.1000/- from the pay bill of the applicant for the month of May and June '2000 and the applicant thereafter an enquiry came to know from reliable source that hence forth recovery at the rate of Rs.1000/- will be continued till the alleged excess amount paid to the applicant with effect from 20.9.94 is fully recovered on account of SDA. The applicant also came to know that the stoppage and recovery of SDA has been made following the order/direction contained in the O.M. No.11(3)/95-EII dated 12.1.96 circulated under Ministry of Defence letter No. 4(19)/83-D(Civ-I) Vol.II dated 18.1.96 whereby it is directed that locally recruited employees are not entitled to SDA as such whatever payment is made as after 20.9.94 should be recovered from the employees concerned. It is relevant to mention here that there was a mention of the Decision of the Hon'ble Supreme Court delivered on 20.9.94 in

Saban chand

in Civil Appeal No. 3251/1993 where Hon'ble Supreme Court uphold the submission of Govt. of India that Central Govt. Employees who have All India Transfer Liability are entitle to payment of SDA on being to any station in the N.E. Region from out side the region, and on the alleged ground of locally recruited the respondents stopped the payment of SDA and started recovery.

A mere reading of the circular dated 12.1.96 makes it abundantly clear that the applicant fulfilled all the conditions laid down therein for grant of SDA. It is categorically submitted that the circular dated 12.1.96 supporting case of the applicant as such stoppage and recovery of SDA without notice from the salary of May, 2000 onwards is contrary to law and the said decision is liable to be set aside and quashed.

Copy of the O.M. dated 18-1-96 is enclosed as Annexure - 4.

4.5. That it is categorically stated that the applicant's recruitment Zone, promotion Zone and seniority of the cadre is being maintained in All India Basis, and the question of All India Transfer Liability is evident from his transfer and posting to Bombay during the year 1988 as such the applicant is entitle to SDA interms of O.M. dated 15.12.83, 1.12.88 and 22.7.98 and also interms of clarification issued under O.M. dated 12.1.94.

baban ch. lal

4.6 That your applicant in the compelling circumstances stated above finding no other alternative approaching this Hon'ble Tribunal praying for a direction upon the respondents to continue to pay SDA and not to make any recovery of SDA and also for a declaration that the applicant is entitle to SDA.

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

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

5.1. For that the impugned Memorandum dated 12.1.96 circulated under letter dated 18.1.96 is not applicable in the instant case of the applicant rather supports the case of the applicant.

5.2. For that the applicant was posted to Jorhat during the year 1992 from Bombay i.e. from outside the N.E. Region as such entitle to SDA.

5.3. For that applicant's posting at Bombay from Assam made it abundantly clear that he is saddled with All India Transfer Liability.

5.4. For that payment of SDA and recovery has been made in total violation of the Principal of Natural Justice.

5.5 For that no notice or show cause was issued to the applicant before the deduction at the rate of

Paban Ch. Paul

Rs.100/- is made from the Salary of the applicant from May 2000 onwards.

- 5.6. For that applicant is saddled with the All India Transfer Liability interms of O.M. 14.12.83, 1.12.96, and 22.7.98 as such he is entitle to payment of SDA.
- 5.7. For that the applicant is eligible for grant of SDA in terms of clarification govern by the Govt. of India, Department of Expenditure, Ministry of Finance, New Delhi in paragraph 3 of the said O.M. 12.1.1996

6. Details of remedy exhausted.

The applicants beg to state that there is no other alternative remedy under any rule, then to file this Application before the Hon'ble Tribunal.

7. Matter not pending before any other court.

The applicants further declare that they had not previously filed any application, writ petition or suit regarding the matter in which the application hss been made before any court of law or any other authority or any Bench of the Tribunal and/or any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for :

- 8.1 That the Hon'ble Tribunal be pleased to declare that the payment is entitle to payment of SDA in terms of O.M. dated 14.12.83, 12.1.88 and 22.7.98 and also interms of clarification issued

Hasan Ch. Patel

under O.M. dated 12.1.96.

- 8.2. That the Hon'ble Tribunal be pleased to declare that the respondents are not entitle to recovery of SDA already paid to the applicant.
- 8.3. That the respondents be directed to continue to pay SDA to the applicant in terms of O.M. dated 14.12.83, 12.1.88 and 22.7.98.
- 8.4. To pass any other order or orders as seem fit and proper.
- 8.5. Cost of the case.
9. Interim prayer.

During the pendency of the case the applicant prays for the following relief.

- 9.1 That the Hon'ble T Tribunal be pleased to stay the operation of impugned letter dated 18.1.96
*(Annexure - 4) and be pleased to direct
not to make any recovery.*
10.

This application has been filed through advocate.

11. Particulars of I.P.O.

I.P.O. No. : 2659726.

Date of Issue : 12-7-2000

Issued from : G.P.O., Guwahati.

Payable at : G.P.O., Guwahati.

12. Particulars of Enclosures.

As stated in the Index.

Ladan Ch. Paul

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

I, Shri Paban Chandra Paul, son of late Santosh Chandra Paul, aged about 43 years, working as J.E. Quantity Survey and Contract in the office of the G.E. (I)(P) Teliamura C/O Ex-GE (P) Agartala P.O. Salbagan, Agartala applicant in the above case do hereby declare by verify and declare that statements made in paragraph 1 to 12 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification today the 13th day of July, 2000 at Guwahati.

Paban Ch. Paul

Signature.

No. 20014/2/83/S. 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 Control 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.

XXXXXX XXX XXX X

ii) Weightage for Central deputation/training abroad and special mention in confidential Reports.

XXXXXX XXX XXX 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 are exempted from payment of Income Tax will, however, not be

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Annexure-9 (Contd.)

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.

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Sd/- S.B. MAHALIK

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

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Annexure-2
Annexure-82

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-Z.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 :

- i) x x x x x xx
- 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
xxxxxxxxxxxx

99/- Illegible

30-9-1998

20-7-98

10/11/98

20

Annexure 9

Annexure -3

Forwarded for information
and necessary action.

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

~~Recruitment & Pay~~
(ii. VELUKUTTAMALI)
SR. ADMINISTRATIVE OFFICER
(AUDIT RULES)

OFFICE MEMORANDUM

New Delhi, Dated July 22, 1998.

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/Lilabari/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.

(viii) 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(U) 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.

*Approved by
Sunder Rajan
Dated 1/6/97*

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.

- 22-11 -

ANNEXURE



46

10

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 regarding.

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

Received & read
Discussed & noted
Copy to D.C.I.D.
Dated 29-3-1996

Q.Khanna
(2.2.9. Shri
Section Officer
Date. 30.3.96)

AG/Off. 4(CIV.I) (d)	DRDO/Peru(c)	DRDO/Adm
Mr. Hora./PPDR-2	DRDO/S/73-2(?)	DRDO(Adm)/Adm
DRDO/CP Dte.	The CFC Calcutta	DRDO(Adm)/Adm
DRDO/Officer./DOP	DRR	DRDO(Adm)/Adm
M of D.I.D. No. 4(19)/83-D(CIV.I) 16.1.96	16.1.96	16.1.96

Copied to:-

The Compt. Audt; All Govt; All Sr. Dy. Dops; The Compt. Auditor General and Auditor of Accounts; Director of Accounts; DPA(AG); DPA(Navy); DPA(AF); FA(Budget-1); FA(DP-1); C.C.I. (Factors) Calcutta.

Copy of "Ministry of Finance (Department of Expenditure) Special Duty Allowance for civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region",

1. Attached
Other
File

P

The undersigned is directed to refer to this Departmental OM No. 20014/3/83-E.17 dated 14.12.83 and 20.4.1997 read with OM No. 20014/16/86-E.19/E.11(b) dt. 1.12.00 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 O.M. dt. 20.4.1997 that for the purpose of sanctioning 'Special Duty Allowance', the All India Transfer Liability of the members of the 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 the person is serving/and/or posted/being posted in all India basis or in the particular station to which posted on the basis of initial and/or subsequent order issued for the service/cadre/post in question. It will be observed in the recruitment letter to the effect that the person concerned is liable to be transferred anywhere in India, etc. not the him eligible for the grant of SDA.

4. Some employees working in the IT Norton approached the Hon'ble Central Administrative Tribunal (C.A.T) (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 on 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 Supreme Court by some Mafatlals/centrists against the Orders of the C.A.

6. The Hon'ble Supreme Court in their judgment delivered on 20.9.94 (in Civil Appeal no. 5251 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.

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Annexure - 4

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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:

- 1) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived;
- 2) the amount paid on account of SDA to the 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.
3. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.
4. In their application to employees of Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.
5. Hindi version of this OM is enclosed.

7/94
Under Secretary to the Govt. of India.
(C. B. Bachanirao)

Handed
while
out

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 368/99 OF 199

Applicant(s)

Sri Sailembra Kc. Sclar ma.
Union of India and others.

Respondent(s)

Mr. J. L. Sarkar, Mr. M. Chandra,
Mrs. N. D. Goswami, Mr. G. N. Chakraborty.

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 appli- cation under the provisions of Rule 4(5) (a) of the Central Administrative Tri- bunal (Procedure) Rules 1987.</p> <p>perused the application. Application is admitted. Issue notice on the respon- dents by registered post. Written state- ment within four weeks.</p> <p>List on 20.12.99 for written state- ment and further orders.</p> <p>Mr Sarkar prays for an interim order.</p>

contd..

Notes of the Registry	Date	Order of the Tribunal
1. (100)	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)ACCTS/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>
		<p>15</p> <p>Certified to be true Copy मान्यता दिलायी</p> <p>Myre 18/11/99 Deputy Registrar (O) Central Administrative Tribunal Gurahati Bench 18/11/99</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

OA 237 OF 2000

Shri Paban Chandra Paul

Applicant

Vs

Union of India & others

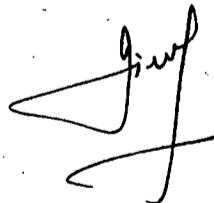
Respondents

IN THE MATTER OF

Written statement submitted on behalf of the Respondent No 1 to 5.

WRITTEN STATEMENT

The humble respondents begs to submit Written statement as follows:



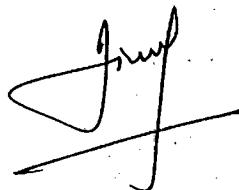
2/-

File by
Roshan
Bijendra Singh Dhami
AO, CGS
19/12/2000

1. I am the Garrison Engineer (I) (P) Teliamura the respondent No 5 above named. I am authorised to verify and file this written statement on behalf of the respondent No 1. I am aquatinted with the facts and circumstances of the case, I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions, statements, allegations and averments made in the application have been categorically denied.

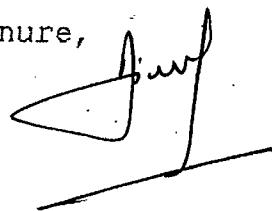
2. That with regard do Para 1(i) the answering respondent begs to state that as per Office Memorandum No 11(3)/95-E.II dated 12.1.96 circulated under Ministry of Defence letter No 4(19)-83/D Civ-I dated 18.1.96 (enclosed and marked as Annexure 'I') pertains to non recovery of special duty allowance already paid to the def civ employees having all India Transfer Liability and also is a direction to continue to pay special duty allowance in terms of the office memorandum dt 14.12.83, 1.12.88 and 22.7.98. That with regard to paragraphs 2 and 3, it is stated that the same are matters of record and no comment is required from the answering respondents.

3. That with regard to Para 4 respondent begs to state that as per para of Ministry of Finance (Department of Expenditure) OM No 11(3)95-E(B) dated 12.1.96 Hon'ble Supreme Court has ruled out that more clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make



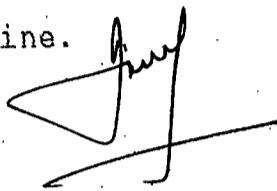
him eligible for the grant of SDA as stated the Government of India's letters.. Thus the SDA payable to the Central Government Employees having all India Transfer liability is stopped and recovery on account of SDA paid after 20 September 1994 was ordered.

4. That with regard to para 5 the respondent begs to state that on the basis of the memorandum dated 14-12-1983 the applicants were given SDA and they received. However, in certain cases of similar nature "THAT ALL ASSAM MES EMPLOYEES UNION" filing civil appeal No 1572 of 1997. The Apex court disposed of those case on 17.2.2-1997 as directed the Government to modify the order and issue the Corrigendum accordingly. Later, the case was appealed by "ALL ASSAM MES EMPLOYEES UNION" vide appeal No OA 71/97 and the Hon'ble CAT Guwahati Bench has passed the order subsequently vide dispatch No 28 dated 2-01-98. Accordingly to the CAT Judgement, I would like to submit that the present. Applicants also though working in the various departments under the Central Government were not outsiders. He belongs to this Region. As per the common Judgement dated 03-1-98 (copy enclosed as Annexure II and as per the decision of the Apex Court they were not entitled to get the SDA. However applicant is in receipt of SCA as admissible. In view of the facts stated above, the grounds mentioned in para 5 of the application are misconceived and untenable. NER recruitee are not authorised for SDA even on some occasion they might have to be transferred outside NER for a fixed tenure,



5. That with regard to paragraphs 6 and 7, it is stated that the same is matter of records and no comment is required from the answering respondents.

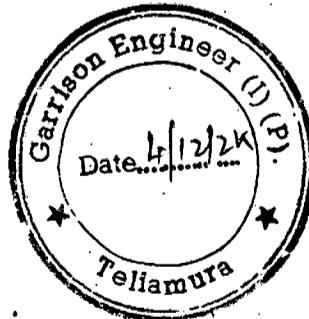
6. That with regard to paragraphs 8 and 9, it is stated that in view of the facts already stated herein above in this written statement, the applicant is not entitled to any of the reliefs and an applicants is deserved do be dismissed in limine.

A handwritten signature, possibly 'J. J. J.', is written over a horizontal line.

VERIFICATION

I, Major Dinesh Khanna, Garrison Engineer, GE (I) (P) Teliamura, do hereby declare that the statement made in this verification including those have been made in paragraphs----- of this written statement are true to the best of my knowledge and belief and jthose have been made in paragraphs 2,3,4,5----- are true to the best of my information which have been derived from the records.

I sign this verification of this the --04--day of Dec 2000 -----at Teliamura.



Dinesh Khanna
(Dinesh Khanna)
Major.
Garrison Engineer.