

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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R.A/C.P No.
E.P/M.A No. 249/01

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SECTION OFFICER (Judl.)

Gahlot
19.12.112

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 243/2000 OF 199

Applicant(s) Sri Pradeep Kumar and ors.

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. G. K. Bhattacharyya

Mr. G. N. Das.

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

Notes of the Registry	Date	Order of the Tribunal
Summons issued and C. E. of Rs. 200 deposited vide IPO BD No. 499766 Dated 28.2.2000 M/17812K B. Basumatary 17/8/2000 Ran	21.9.00	<p>Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.</p> <p>Heard Mr G.N.Das, learned counsel for the applicant. Application is admitted. Issue usual notice.</p> <p>List on 6.11.2000 for written statement and further orders. In the meantime the impugned order U.O.No. 20/12/99-EA-I-1799 dated 2.5.2000 issued by the Cabinet Secretariat shall remain suspended until further orders.</p>
22/9/00 Notice Preferred and Sent to D/Section for Crossing the respondent No 1 lit 8 vide D/No 2018 2019 dtd 26/9/00 22/9/00	pg 6.11.00	<p>Vice-Chairman</p> <p>Four weeks time is granted to the respondents to file written statement on the prayer of Mr B.S.Basumatary, learned Addl.C.G.S.C.</p> <p>List on 4.12.2000 for written statement and further orders.</p>

Notes of the Registry	Date	Order of the Tribunal
<u>3-11-2000</u> Written Statement has been filed by the respondents. Pm	4.12.00	Written statement has been filed today. A copy of the written statement has furnished to the learned counsel for the applicant. The case is ready for hearing. List on 30.3.2001 for hearing. In the meantime the applicant may submit rejoinder if any.
<u>4-12-2000</u> Written Statement has been filed by the respondents No. 1-8. Pm	trd 30.3.2001	Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is allowed. No order as to costs.
No. Rejoinder has been filed. By 29.3.01	nkm	I C Usha Member
<u>30.4.2001</u> Copy of the order has been sent to the Dpeccy. for. Assessy the same to the applicant as well as to the L/Adm for the Rejoinder. HS		Vice-Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. No. 243 of 2000

DATE OF DECISION 30.3.2001

Shri Pradeep Kumar and 21 others

PETITIONER(S)

Mr G.K. Bhattacharyya and Mr G.N. Das

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C. and

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

ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.243 of 2000

Date of decision: This the 30th day of March 2001

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

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Pradeep Kumar and 21 others

.....Applicants

By Advocates Mr G.K. Bhattacharyya and Mr G.N. Das.

- versus -

1. The Union of India, represented by
The Cabinet Secretary,
Department of Cabinet Affairs,
New Delhi.
2. The Director General of Security,
Block-V (East),
New Delhi.
3. The Director, SSB,
Block-V (East),
New Delhi.
4. The Divisional Organiser, SSB,
A.P. Division,
Itanagar, Arunachal Pradesh.
5. The Area Organiser, SSB,
Bomdilla, Arunachal Pradesh.
6. The Area Organiser, SSB,
Along, Arunachal Pradesh.
7. The Area Organiser, SSB,
Tura, Arunachal Pradesh.
8. The Area Organiser, SSB,
Khonsa, Arunachal Pradesh.

.....Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The issue relates to grant of Special (Duty) Allowance (SDA for short) to the applicants who are twentytwo in number, serving under the Divisional Organiser, Special Service Bureau (SSB for short), Arunachal Pradesh Division, Itanagar. The applicants belong to Groups 'C' and 'D' cadre. In this application they have claimed SDA on the

ground that they were recruited on All India basis and they have a common seniority list and therefore, eligible for SDA.

2. The respondents in their written statement stated that the applicant No.4, Shri Bibhu Ranjan Parida, is not posted in the office of the Divisional Organiser, Arunachal Pradesh Division, Itanagar and that the applicant No.11, Shri Vikash Khajuria, applicant No.14, Shri T.P. Prajapati and the applicant No.14, Shri Jay Prakash Ray were not selected through direct recruitment tests held at various zonal selection centre, during 1989 onwards based on all India level as contended, but they were recruited locally by the respective Divisional Organisers and therefore, they are not entitled to SDA. In Misc. Petition No.49 of 2001 disposed of on 15.2.2001, it was stated that the applicant No.4 is serving as Stenographer in the office of the Area Organiser, SSB, Tezu under the administrative control of the Divisional Organiser, SSB, A.P. Division, Itanagar though in the O.A. he was shown as serving in the office of the Divisional Organiser, SSB, A.P. Division, Itanagar. In the circumstances the applicant No.4, Shri Bibhu Ranjan Parida, cannot be distinguished from the case of the other applicants.

3. We have heard Mr G.N. Das, learned counsel for the applicants and Mr A. Deb Roy, learned Sr. C.G.S.C. Admittedly, save and except applicant Nos.1, 14 and 20, are persons appointed on All India basis by the respondents and these persons have All India Transfer liability. The aforesaid persons are posted in the North Eastern Region. In the light of the O.M.s, more particularly, in the light of the Circular dated 2.5.2000 referring to SSB Directorate's letter dated 31.3.2000 and in the light of the Judgment and Order in O.A.No.136 of 2000 disposed of on 20.12.2000, all these applicants, save and except applicant Nos.11, 14 and 20, par se, cannot be excluded from the benefit of SDA. The applicants had to move to the North Eastern Region on the basis of their posting.

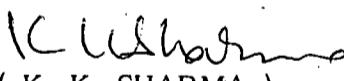
3. For the foregoing reasons the impugned order dated 26.5.2000 issued by the respondent No.4 is set aside and quashed and the respondents are directed to pay SDA to these applicants with effect from the date

or joining or from the date of entitlement. The respondents are also directed to pay the arrears preferably within three months from the date of receipt of the order.

4. As regards the applicant Nos.11, 14 and 20 the respondents, more particularly, the Divisional Organiser, SSB, Itanagar, shall examine as to whether these three applicants also possess All India Transfer liability and have come from outside the North Eastern Region and whether their promotions were done on All India basis based on common seniority list. If on consideration it appears that these three applicants also are from outside the North Eastern Region and their recruitment as well as promotions are made on All India basis and All India seniority, in that case these three applicants shall also be given the benefit of SDA.

5. The respondents shall refund the amount, so far, recovered from the applicants, save and except applicant Nos.11, 14 and 20. The case of refunding to these applicants will arise only in case they are found eligible by applying the test laid down.

6. The application is allowed to the extent indicated. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

(An application under Section 19 of the Administra-
tive Tribunals Act 1985)

OA NO. 243...../2000

1 Shri Pradeep Kumar
Son of Shri G R Bhishma
Deputy Field Officer (Telecom)
Office of the Divisional
Organiser, SSB
A P Division
Itanagar (Arunachal Pradesh)

2 Shri Sarat Chandra Sahoo
S/o Shri B C Sahoo
Stenographer
O/o the Divisional Organiser
SSB
A P Division
Itanagar (Arunachal Pradesh)

3 Shri Pradeep Kumar Mohanty
S/o Shri S P Mohanty
Stenographer
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

4 Shri Bibhu Ranjan Parida
S/o Shri B S Parida
Stenographer
O/o the Divisional Organiser
SSB, A P ~~Division~~ Division
Itanagar (Arunachal Pradesh)

5 Shri Pradip Roy
S/o Shri Salil Kumar Roy
LDC
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

6 Shri Manik Dutta
S/o Shri H S Dutta
Deputy Field Officer (Telecom)
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

7 Shri Dharmendra Kumar
S/o Shri Om Prakash
Deputy Field Officer
(Cipher & Computer)
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

8 Miss Anjana Das
D/o Sachindra Chandra Das
Sr Field Assistant (Medical)
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

9 Shri Provash Kumar Dutta
S/o Late Shambhu Nath Dutta
Field Assistant (General)
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

10 Shri Ashok Kumar Singh
S/o Shri RBN Singh
Field Assistant (General)
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

11 Shri Vikash Khajuria
S/o D C Khajuria
Driver
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

12 Shri Dheeraj Singh Chamyal
S/o Shri N S Chamyal
Deputy Field Officer (Telecom)
O/o the Divisional Organiser
SSB, A P Division
Itanagar (AP)

13 Shri Pallab Kr Dutta
S/o Late P K Dutta
Senior Field Assistant (Medical)
O/o the Area Organiser
SSB, Bomdila
Under the Administrative Control
of the Divisional Organiser
SSB, A P Division
Itanagar (AP)

14 Shri T P Prajapati
S/o Shri R Prajapati
Store Keeper
O/o the Divisional Organiser
SSB, A P Division
Itanagar (AP)

15 Shri Devendra Kr Poddar
S/o Shri B D Poddar
Pharmacist
O/o the Divisional Organiser
SSB, A P Division
Itanagar (Arunachal Pradesh)

16 Shri Rama Kanta Panda
S/o Shri N Panda
LDC
O/o the Area Organiser
SSB, Along
Under the Administrative Control
of Divisional Organiser
SSB, A P Division
Itanagar (AP)

17 Shri Balaram Majhi
S/o Shri E Majhi
Stenographer
O/o the Area Organiser
SSB, Along
Under the administrative control
of Divisional Organiser
SSB, A P Division
Itanagar (AP)

18 Shri Babu Chandra Sahu
S/o Shri Madhab Sahu
Pharmacist
O/o the Area Organiser
SSB, Along
Arunachal Pradesh

19 Shri Dharam Nath Prasad Mahato
S/o Shri Mangal Mahato
LDC
O/o the Sub-Area Organiser
SSB, Seppa, East Kameng District
Arunachal Pradesh

20 Shri Jay Prakash Ray
S/o Shri L D Ray
Driver
O/o the Sub-Area Organiser
SSB, Seppa
East Kameng District (AP)

21 Shri Ranjan Kumar Mohanty
S/o Late G N Mohanty
UDC
O/o the Divisional Organiser
SSB, A P Division
Itanagar (AP)

22 Shri Braja Bhushan Singh
S/o Shri G P Singh
Deputy Field Officer (Telecom)
O/o the Sub-Area Organiser
SSB, Miao Khonsa Area
Arunachal Pradesh

..... Applicants

(The applicants against serials nos 1, 7 and 8 are from Uttar Pradesh; 2, 3, 4, 16, 17, 18 & 21 are from Orissa; 5, 6, 8, 9, 13 & 19 are from West Bengal; 10, 14, 15, 20 & 22 are from Bihar; while the applicant against serial no. 11 is from J&K. All the applicants are serving in various capacities in the Special Service Bureau under the administrative control of the Divisional Organiser, SSB, AP Division, Itanagar (Arunachal Pradesh) and Area Organisers, SSB, Along, Bomdila, Tezu and Khonsa in Arunachal Pradesh.

- 1 Union of India
(Represented by the Cabinet Secretary, Department of Cabinet Affairs, Bikaner House, Shahjahan Road, New Delhi)
- 2 Director General of Security
Block - V (East)
R K Puram
New Delhi - 110066
- 3 Director, SSB
Block - V (East)
R K Puram
New Delhi - 110066
- 4 Divisional Organiser,
SSB, A P Division
Itanagar
Arunachal Pradesh
- 5 Area Organiser
SSB, Bomdila
Arunachal Pradesh
- 6 Area Organiser
SSB, Along
Arunachal Pradesh
- 7 Area Organiser
SSB, Tezu
Arunachal Pradesh
- 8 Area Organiser
SSB, Khonsa
Arunachal Pradesh

..... Respondents

..... 7

Khonsa

1. Particulars of the order against which the application is made :-

I) Impugned order of stoppage of payment of Special Duty Allowance (SDA in short) vide UO NO. 20/12/99-EA-I-1799 dated 02.05.2000 issued by the Cabinet Secretariat and forwarded by the Director, SSB, New Delhi .(Respondent No. 3) under cover of his office memorandum No. 42/ SSB/AI/99 (18)/2486-2508 dated 05.05.2000 which was locally circulated by the Divisional Organiser, AP Division, SSB, Itanagar (Respondent No. 4) vide his office memofandum No. NGE/F-9 (A)/2000/265 dated 26.05.2000 enclosing copies of the aforesaid Cabinet Secretariate UO letter dated 02.05.2000 and memorandum dated 05.05.2000 issued by the Respondent No.3 whereby the payment of SDA to the applicants is illegally sought to be stopped and recovered from the date of its payment to the applicants .

II) Illegal, arbitrary and unfair action of the authorities in stopping payment of SDA to the applicants and recovering the amounts already paid to them as SDA as they are now considered ineligible for grant of SDA.

2. Jurisdiction of the Tribunal:-

The applicants declare that the subject matter of the orders are within the jurisdiction of this Tribunal .

3. Limitation :-

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

4 Facts of the case :

I) That the applicants are all employees belonging to Group "C" and Group "D" of the special Service Bureau (S.S.B. in short) which is a department of the Govt. of India directly under the Cabinet Secretary. The applicants have a common interest in the matter and as such they are filing a single application as the relief, if granted to one of them will be equally applicable to all of them. The applicants crave leave of the Hon'ble Tribunal to allow them to file a single application as provided in Rule 4(5) (a) of the Central Administrative Tribunals (Procedure) Rules, 1987;

II) That the applicants who hail from outside the North Eastern Region were selected through direct recruitment on All India basis and posted to the SSB, A.P. Division, Itanagar on first appointment and they have been functioning under the administrative central of the Divisional Organiser, A.P. Division, S.S.B., Itanagar, A.P. (Respondent no. 4).

III) That the Govt. of India, with a view to attracting and retaining the services of competent officers for service in the N.E. Region, had decided to grant certain additional allowances/facilities to the civilian employees of the Central Govt. serving in the N.E. Region. Amongh the various allowances, the one was, the payment of SDA to those who have All India Transfer liability. The decision was conveyed by the Govt. of India, Ministry of Finance, Department of Expenditure, vide Memorandum no.

20014/2/83/E.IV dated 14-12-83 : In terms of the memorandum, the SDA was granted to the civilian employees of the Central Govt. serving in N.E. Region who have all India transfer liability at the rate of 25% of basic pay subject to a ceiling of Rs 400/- per month on posting to any station in this region.

An extract of the said memorandum dated 14-12-83 relating to the grant of SDA is annexed herewith and marked as Annexure - I.

IV) That the applicants beg to state that they were selected through direct recruitment test held at various Zonal selection centres during 1989 onwards based on all India level having all - India transfer liability. All of them hail from outside N.E. Region and posted to SSB, Itanagar on first appointment.

V) That the applicants beg to state and submit that the SDA was granted to the applicants by the respondent - authorities after being satisfied that the applicants are legally entitled to the SDA and they were getting regularly the SDA with effect from the date of their appointment under the administrative control Divisional Organiser, SSB, A.P. Division, Itanagar, in their monthly salary bill.

VI) That, thereafter, the Govt. of India, Ministry of Finance, Department of Expenditure, circulated their letter no. 11(3)/95 - E. 11(B) dated 12-1-96 regarding payment of SDA for civilian employees of the

Central Govt. serving in the N.E. Region for strict compliance of the clarifications contained therein. In the said memorandum dated 12-1-96, it was stated in paragraph 3 that it was clarified vide O.M. dated 20-4-87 that for the purpose or sanctioning of the SDA, the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment Zone, promotion Zone etc., i.e., whether recruitment to the service/cadre/post has been made on All India basis and whether promotion is also made on the basis of All India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

It was further stated, in paragraph 6 of the said memorandum dated 12-1-96, that the Hon'ble Supreme Court in their judgment delivered on 20-9-94 (in Civil Appeal No. 3251/93) upheld the submissions of the Govt. of India that the civilian employees of the Central Govt. who have All India Transfer Liabilities are entitled to the grant of the SDA on being posted to any station in the N.E. Region from outside the region and the SDA would not be payable merely because of the clause in the appointment letter relating to All India Transfer Liability. It is also stated

Subrata

that the Apex Court further added that the grant of this allowance only to the officials transferred from outside the region to the N.E. Region would not be violative of the provisions contained in Article 14 of the Constitution of India as well as the equal pay doctrine.

The Hon'ble Apex 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 (SDA) is concerned. In paragraph 7 of the said memorandum, it is further stated that in view of the judgment of the Hon'ble Supreme Court, as stated above, the matter has been examined in consultation with the Ministry of Law and it is, accordingly, decided the amount already paid by way of SDA to the ineligible persons on or before 20-9-94 will be waived and the amount paid to ineligible persons after 20-9-94 which also includes those cases in respect of which the SDA was pertaining to the period prior to 20-9-94 but payments were made after 20-9-94 would be recovered.

It would be pertinent to mention here that the SDA was initially paid, as stated above, by the respondent authorities of their own when it was found that they were eligible for grant of the SDA. The respondents are, therefore, not justified at this stage

for stopping payment of the SDA to the present applicants by enforcing the said memorandum dated 12-1-96 issued by the Ministry of Finance, Govt. of India inasmuch as the applicants are liable to be transferred from N.E. Region to the other states of the country and as such the applicants are saddled with All India Transfer Liability and they are also recruited on all India basis in various Zones and posted to N.E. Region. The present applicants are, eligible for grant of and continuance of SDA in the context of memorandum dated 14-12-93 (Annexure - I).

A copy of the said memorandum dated 12-1-96 is annexed herewith and marked as Annexure - II.

VII) That although the applicants were regularly getting SDA with effect from their date of appointment in 1997, the respondent authority suddenly stopped payment of SDA to the applicants illegally and arbitrarily without affording any opportunity of being heard and directed recovery of the amount paid to the applicants by way of SDA with effect from 21-9-94 or from the date of their appointment, whichever is later inasmuch as the applicants were treated as ineligible persons being local recruits only due to some amount of confusion at level of Divisional Head Quarters, SSB, Itanagar.

VIII) That, thereafter, the respondent authorities received the U.O. No. 11(3)/85-E-11(B) dated 7-5-97 issued by the Ministry of Finance, Department

of Expenditure, Govt. of India and the Cabinet Secretariat, vide U.O. No. 20/3/96-EA 1-1040 dated 10-6-97, circulated the same among SSB and other organisations for information and taking further necessary action in the matter. It was stated in the said U.O. dated 7-5-97, inter alia, that the Cabinet Secretariat may determine, in each case, whether the employees locally recruited in N.E. Region who rejoin the N.E. Region on their transfer to N.E. Region from outside and the Central Govt. civilian employees who are posted on first appointment from outside N.E. Region to N.E. Region fulfills the said conditions or all India Transfer liability or not. If they fulfil all the conditions of all India transfer liability and are posted from outside N.E. Region to N.E. Region then they are entitled to SDA, otherwise not.

Copy of the said U.O. dated 10-6-97 issued by the Respondent No. 1 circulating U.O. dated 7-5-97 issued by the Ministry of Finance is annexed herewith and marked as Annexure - III.

IX) That the Divisional Organiser, A.P. Division, SSB, Itanagar (Respondent No. 4), in terms of the U.O. dated 7-5-97 issued by the Ministry of Finance and circulated by the Respondent No. 1 vide U.O. dated 10-6-97, restored the payment of SDA to the applicants and the amounts already recovered ~~with effect~~ ~~from 21.09.94~~ from them with effect from 21.09.94 were refunded to the applicants.

X) That the applicants beg to state and submit that there is some amount of confusion in interpretation of the provisions / clarifications contained in various memoranda issued by the competent authorities in proper perspective regarding payment of SDA to the civilian employees of the Central Govt serving in the NE Region and as such the applicants have been subjected to untold sufferings in the matter of payment / recovery of SDA. As stated above, the SDA paid to the applicants which was illegally stopped was restored to the applicants and the amounts recovered with effect from 21.09.94 were refunded to the applicants and since then they have been regularly getting the SDA.

XI) That thereafter the applications became shocked and surprised when they have come to know that the payment of the SDA to the applicants is sought to be discontinued w.e.f July 2000 by the respondent authorities and also to recover the amount already paid as SDA w.e.f 21.09.94 or from the date of appointment whichever is later illegally and arbitrarily and without assigning any reason to that effect in terms of the Cabinet Secretariate UO No. 20/12/99-EA-I-1799 dated 02.05.2000 which was circulated by the Director, SSB, New Delhi (Respondent No. 3) under cover of his office memorandum no. 42/SSB/AI/99(18)/2486-2508 dated 05.05.2000. The said UO dated 02.05.2000 clarified the position by the SSB Directorate regarding payment / entitlement of SDA for

civilian employees of the Central Govt serving in NE Region and directed that the payment of SDA to the said employees be reviewed / regulated in terms of the Cabinet Secretariate UO dated 02.05.2000 (above). In terms of this UO, the present applicants have now been considered ineligible again as per para (i)(a) of the said UO dated 02.05.2000 for getting SDA and as such it was directed that the payment of SDA to the ineligible employees serving in various locations / units be stopped forthwith and necessary recovery of irregular payment may be made from the date of payment. The respondent no. 4, in turn, circulated both the afore-noted UO dated 02.05.2000 of the Cabinet Secretariate and the memorandum dated 05.05.2000, by his office memorandum no. NGE/F-9(A)/2000/265 dated 26.05.2000, to various units of the SSB under his administrative control including the respondents no. 5, 6, ~~and~~ 7 & 8 for compliance regarding stoppage of payment of SDA and recovery of the amount already paid.

Copies of the said impugned UO dated 02.05.2000 circulated by the Respondent No. 3 vide his office memorandum dated 05.05.2000 and by the Respondent No. 4 vide his office memorandum no. NGE/F-9(A)/2000/265 dated 26.05.2000 are annexed herewith and marked as Annexure-IV (series).

XII) That the Divisional Organiser, AP Division, SSB, Itanagar (Respondent No. 4), by his order dated 14.06.2000, as communicated in his office memorandum no. NGE/F-9(A)/96/2000/280 dated ~~xx~~ 14.06.2000, issued in terms of Cabinet Secretariate UO no. 20/12/99/EA/ 1-1799 dated 02.05.2000 (Annexure-IV) has ordered that the applicants who were hailing from outside NE Region but were appointed at Divisional HQrs at Itanagar in NE Region on first appointment after selection through direct recruitment based on all-India basis in various selection zones are not entitled to the grant of SDA for being posted to NE Region. It is further ordered that in terms of OM No. 11(3)/95-E-11(B) dated 12.01.96 (Annexure-II) issued by the Ministry of Finance, Govt of India, Deptt of Expenditure, the amount of SDA paid to those ineligible officials w.e.f 21.09.94 or from the date of payment whichever is later will be recovered.

Copy of the said order dated
14.06.2000 is annexed herewith
and marked as Annexure-V.

XIII) That some of the applicants including Shri P K Mohanty and Pradeep Kumar submitted, on 5th June 2000, representations to the Respondent no. 4 praying for reconsideration of their eligibility for grant of SDA and also for not recovering the amount of SDA already paid to them. The respondent no. 4, by his OM



dated 13.06.2000, intimated both of them that they were not entitled to the grant of SDA in terms of Cabinet Secretariate UO dated 02.05.2000 (Annexure-IV) and that the amount of SDA paid to them w.e.f 21.09.94 or from their respective dates of joining service whichever is later would be recovered from them.

It would be pertinent to mention here that the applicants were not at fault to receive the SDA inasmuch as it was paid to them voluntarily by the respondent authorities and the applicants had reason to believe that they were entitled to receive the SDA. The amount already paid to the applicants should be recovered as no notice was given to the applicants as to the action proposed to be taken against the applicants. The recovery, if made, would, therefore, amount to flagrant violation of the principles of natural justice and as such this is a fit case where this Hon'ble Tribunal would exercise jurisdiction and grant relief.

The copies of the said representations dated 05.06.2000 and the OM dated 13.06.2000 are annexed herewith and marked as Annexure-VI, VII and VIII respectively.

XIV) That the applicants beg to state that the respondent authorities have discontinued payment of SDA

Kumar

to the applicants from the month of July, 2000 and at the same time recoveries are being made from the pay bill of July, 2000 in terms of the said impugned U.O. dated 02-05-2000 (Annexure-IV) which is evident from the order dated 26-05-2000 issued by the Respondent No. 4 and in the present circumstances, finding no remedy, the applicants have now approached this Hon'ble Tribunal praying for protection of the rights and interests of the applicants and for proper relief.

XV) That the applicants beg to state that some employees of the Base Hospital No. 151, Basistha, Guwahati who are similarly situated like the present applicants filed two cases before this Hon'ble Tribunal which were numbered as CA 45/98 and OA 90/98. As both the applications involved similar facts and law, this Hon'ble Tribunal, by a common order dated 28-7-99, disposed of both the applications. Relying on several cases decided by the Hon'ble Apex Court, as referred to in the order, the action of the respondent authorities to recover the amount of SDA was quashed and set aside. The respondents were further directed to refund the amount of SDA, if any, recovered from the applicants within a period of 2 months from the date of receipt of that order.

Copy of the said common order
dated 28.07.99 passed by the

Hon'ble Tribunal, while disposing of OA 45/98 and OA 90/98, are annexed herewith and marked as Annexure-IX.

XVI) That the applicants beg to state that some employees of the CPWD, Guwahati, who are also similarly situated like the present applicants filed applications before this Hon'ble Tribunal which were numbered as OA 97/97, OA 104/97, OA 106/97, OA 109/97, OA 110/97, OA 244/97, OA 24/98, OA 35/98 and OA 75/98. All these original applications relate to SDA involving common question of law and similar facts and as such this Hon'ble Tribunal, by a common order dated 26.06.98, disposed of all the original applications. This Hon'ble Tribunal directed the respondent authorities to first determine whether the applicants are entitled to SDA or not as per the decision of the Apex Court in Civil Appeal no. 1572/97 holding, inter alia, that persons who belong to the N E Region were not entitled to SDA. If it is found, after examination, that the applicants or some of them are not entitled to SDA, they shall not be paid SDA. However, the amount already paid to them shall not be recovered.

Copy of the said order dated 26.05.98 is annexed herewith and marked as Annexure-X.

XVII) That the applicants beg to state and submit that all of them, having all-India transfer liability, selection / recruitment on all-India basis having a common seniority list on all-India basis, are similarly situated like those who were applicants in the above noted original applications and as such the case of the present applicants is squarely covered by the orders passed by this Hon'ble Tribunal in the above noted original applications.

XVIII) That the applicants beg to state and submit that this Hon'ble Tribunal be pleased to stay the operation of the impugned orders conveyed in UO dated 02.05.2000 of the Cabinet Secretariate (Annexure-IV) and OM no. NGE/F-4(A)/2000/265 dated 23.05.2000 issued by the Respondent No. 4 as an interim measure inasmuch as the applicants will suffer irreparable loss and injury if the operation of the said orders is not stayed. This Hon'ble Tribunal would also be pleased further to set aside and quash the said impugned orders as not sustainable in law.

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

5 Grounds for relief with legal provisions :-

I) For that the applicants have the eligibility criteria for grant of SDA in terms of OM dated



29

14.12.83 (Annexure-I) and UO dated 07.05.97 (Annexure-III) issued by the Govt of India, Ministry of Finance, Department of Expenditure, and as such unilateral discontinuation of the SDA in terms of the impugned UO dated 02.05.2000 (Annexure-IV) and NGE/F-9(A)/2000/265 dated 26.05.2000 issued by the respondent no. 4 is extremely arbitrary, illegal and unfair and as such the action of the respondent authorities is bad in law and liable to be set aside and quashed.

II) For that the respondent authorities have paid SDA to the applicants after being fully satisfied of their own that the applicants are eligible for payment of SDA in terms of the OM dated 14.12.83 (Annexure-I) and UO dated 07.05.97 (Annexure-III) issued by the Ministry of Finance, Govt of India, Department of Expenditure, New Delhi, and it is now not open to the respondent authorities to hold that the applicants are not eligible for grant of SDA and as such the action of the authorities in stopping payment of SDA and in ordering recoveries of the amount already paid to them is bad in law and liable to be set aside.

III) For that the applicants were & regularly getting SDA from their respective dates of joining and in 1997, the respondent authorities suddenly stopped payment and ordered recoveries of the amount paid to

them w.e.f 21.09.94 or from the date of their appointment whichever is later but the respondent no. 4, in terms of the UO dated 07.05.97 (Annexure-III) restored the payment of SDA to the applicants and the amounts already paid to them were refunded to them and ~~xxxx~~ as such it is evident that the authorities have not yet taken any final decision in the matter and that there is some amount of confusion at some level regarding proper interpretation of orders / circulars issued from time to time on the issue in the context of what has been laid down by the Hon'ble Apex Court and therefore the action of the respondent authorities in ordering recoveries and stopping payment of SDA is bad in law and liable to be set aside.

IV) For that the action of the respondent authorities in declaring the applicants ineligible to draw SDA in terms of the impugned UO dated 02.05.2000 issued by the Cabinet Secretariate is bad in law and liable to be set aside.

V) For that the impugned action of the respondents in stopping payment of SDA to the applicants forthwith and at the same time ordering recoveries involves serious civil consequences and as such the applicants are legally entitled to an opportunity of being heard before the impugned administrative orders were passed and that not having been done, the action of the

authorities is bad in law and liable to be set aside and quashed on this ground alone as it has been done in flagrant violation of the principles of natural justice.

VI) For that the impugned action of the respondents in depriving the applicants of the benefits of the SDA is extremely arbitrary, illegal and unfair and as such the impugned action of the respondents is bad in law and liable to be set aside.

VII) For that the order of recovery contained in paragraph VII of the impugned UO dated 02.05.2000 relates to the payment made to the employees hailing from N E Region and posted to the N E Region only. It is also added that the payment made to the ineligible employees hailing from N E Region and posted in NE Region ~~to~~ be recovered from the date of payment or after 20.09.94 whichever is later. The instructions contained therein in paragraph VII relating to recoveries ~~to~~ excluded the present applicants inasmuch as they are all from outside NE Region and posted to NE Region on first appointment and as such the action of the authorities in recovering the SDA amounts paid to them is bad in law and liable to be set aside.

VIII) For that the case of the applicants is squarely covered by the orders passed by this Hon'ble Tribunal in the matter of stopping payment of SDA to the employees who are similarly situated like the applicants



in those original applications and recoveries of payment already made and as such the applicants are legitimately expecting that their interest will be similarly protected as has been in those original applications. The orders passed in this regard are placed at Annexure- IX and X.

IX) For that, in any view of the matter, the action of the authority in denying SDA to the applicants and at the same time ordering recoveries of the amount already paid to them are bad in law and liable to be set aside.

6. Details of remedies exhausted :-

Some of the applicants have submitted representations praying for continuance of payment of SDA and for not recovering the amount already paid but the same have been turned down .

7. Matters not previously filed or pending with any other Court :-

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

contd...

8. Relief sought :-

It is , therefore, prayed that your Lordships would be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why they should not be directed to continue payment of SDA to the applicants and as to why the recoveries of the amount already paid to the applicants as SDA should not be stopped and after perusing the causes shown, if any, and hearing the parties, set aside the impugned UO dated 02.05.2000 (Annexure-IV) issued by the Cabinet Secretariate which is circulated by the Respondent No. 3 vide his OM dated 05.05.2000 and direct that the applicants are entitled to the drawal of SDA with effect from the date of their joining in NE Region on first posting and/or pass any other order/orders as your Lordships may deem fit and proper.

And for this act of kindness, the applicants, as in duty bound, shall ever pray .

contd...

9. Interim order, if any, prayed for :-

It is, further prayed that your Lordships would be pleased to stay the operation of the impugned order contained in UO dated 02.05.2000 (Annexure - IV) till final disposal of this applicants would suffer irreparable loss and injury if the operation of the said impugned order is not stayed.

10. Does not arise. The application will be presented personally by the Advocates of the applicants.

11. Particulars of the Postal order in respect of the application fee :-

IPO No. 499766 dated 28.7.2000 issued by the Guwahati PO payable at Guwahati is enclosed .

12. List of enclosures :-

As stated in the Index .

contd....

VERIFICATION

I, Shri Pradeep Kumar, son of Shri G. R. Bhishma, aged about 26 years, presently serving as the Deputy Field Officer (Telecom), S.S.B., under the administrative Control of the Divisional Organiser, S.S.B., A.P. Division, Itanagar (A.P.) do, hereby, verify that the contents in paragraphs No. I, II, IV, V, VI, VII, VIII, X, XIV, XVII, XVIII and XIX are true to my personal knowledge and those in paragraphs III, VI, VII, XI, XII, XIII, XV, and XVI are believed to be true on legal advice and that I have not suppressed any material fact.

I, being one of the applicants, have been authorised by other applicants to sign this verification on behalf of all the applicants.

Place :- Guwahati.

Date :-



Signature of the applicant.

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Annexure-2 (Extract)

No. 20014/2/83/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 some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and ~~and~~ Administrative Reforms, to review the existing allowances & 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.

x x x x x x x x

ii) Weight-age for Central deputation/training abroad and special mention in confidential Records.

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 percent of basic pay subject to ~~any~~ 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

Contd..

*At the end
Date
P.S.W.*

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

XXXXXX

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XXXXXXXXXX

XXXXXXXXXX

Sd/- S.C. MAHALIK
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

*Approved
S.C. MAHALIK
Dated*

No. 11(3)/95-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

3X

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's O.M. No. 20014/3/83-E.IV dated 14.12.1983 and 20.4.1987 read with O.M. No. 20014/16/86-E.IV/E.II (b) dated 1.12.1982 on the subject mentioned above.

2. The Government of India vide the above mentioned OM dt. 1412.83 granted certain incentives to the Central Government Civilian employees posted to the N.E. 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 Allowances' the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc: i.e. whether recruitment to service/cadre/post has been made on all India basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

Contd...

Passes file
Order
Adv.

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

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

6. The Hon'ble Supreme Court in their Judgement 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 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.

Contd..

*After 1st
Order
Adv.*

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

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

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

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

10. Hindi version of this OM is enclosed.

Sd/- C.Balachandran
Under Secy to the Government of India

To

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

After 7/8/94
CAG
ASW

~~-33-~~

From Shri A Chandra Sekhar, Additional Secretary (S.R.)
(Cabinet Secretariat U.O. No. 7/47/84-NG I dated 17.7.85 (Cabinet
Secretariat).)

RIKET

RIKET HOUSE (Annexure) is appended below :

CABINET SECRETARIAT

BIKANER HOUSE (ANNEXURE).

Sub : Allowance and facilities for civilian employees
of Central Govt. serving in the States and Union
Territories of North Eastern Region Improvement
thereof.

Director of Accounts may please refer to this
of
Secretariates U.O./even No. dated 28.9.84 under which
certain clarification were issued regarding drawal of
special duty allowance.

2. The matter was further examined in consultation
with the Ministry of Finance and the following clarifi-
cations are issued.

Group C employees recruited locally in the North
Eastern Region, but who liable to serve anywhere, will
be eligible for special duty allowance though may not
have been transferred outside that region since their
joining the service due to Administrative reasons.

3. In view of the above position Directorate of
Accounts may continue to pay the special duty allowance
to Group C employees mentioned above. In case any
recoveries have been made from them on the basis of the
earlier clarification issued on the 28.9.84 may be paid
back to them.

Sd/- A. Chandra Sekhar
Addl. Secretary (S.R.)

*A. Chandra Sekhar
Addl. Secretary (S.R.)*

COPY

Cabinet Secretariat
EA.I Section

Subject : Special Duty Allowance for Civilian employees of the Central Government in the States and Union Territories of North Eastern Region regarding. /

The matter was taken up with Ministry of Finance (Department of Expenditure) and a copy of their U.O.No.11(3)/85-EA-II(B) dated 7th May 1997 is enclosed for information and further necessary action. /

(Jagdish Chandra)
Desk Officer

1. Deputy Director (B) ARC w.r.t. his U.O.No.ARC/Coord./16(3)/94 dated 29/10/1996.

2. AD (EA) SSB w.r.t. U.O.No. 42/SSB/A1/92(61)-1855 dated 9/ /1996.

Cabinet Secretariat U.O.No.20/3/96-EA.1-1040 dated 10 JUNE 1997

Ministry of Finance
Department of Expenditure
E.II(B) Branch

Subject : Special Duty Allowance for Civilian employees of the Central Government in the States and Union Territories of North Eastern Region regarding.

Cabinet Secretariat may please refer to their D.O. letter No.20/3/96-EA-I-645 dated 8th April 1997 on the above mentioned subject and to say that for the purpose of sanctioning of Special Duty Allowance to Central Government Civilian employees, that All India transfer liability of the members of any Service/Cadre or incumbent of any posts/group of posts has to be determined by applying tests 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 based on a common seniority list for the service/cadre/posts as a whole. mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance.

2. Therefore, Cabinet Secretariat may determine in each case whether the employees locally recruited in NE Region, who rejoin NE Region on their transfer to NE Region from outside and the Central Govt. Civilian employees who are posted on first appointment from outside NE region to NE region, fulfill the above said conditions of all India transfer liability, or not. If they fulfill all the conditions of all India transfer liability and are posted from outside NE region to NE region then they are entitled to SDA, otherwise not. However, if further advice is needed on any particular case, the same may be referred to this Ministry alongwith the views of IFU thereon.

sd/-

(P.S.Walia)

For Under Secretary to the Govt. of India.

Cab.Sectt. Bikaner House Annex. (Sh. P.N. Thakur Director
MOF (Exp)'s U.O.No.11(3)/85 EA-II(B) dt. 7th May 1997

To

The Divisional Organiser,
SSB- AP Division,
Itanagar.

Subject : Regarding recovery/stopping of S.D.A.

Sir,

I have the honour to inform you that as per Cab. Sectt. U.O. No. 20/12/99-EA-I-1794 dated 2.5.2000, forwarded vide SSB Dte. Memo No. 42/SSB/AI/99(18)2486-2508 dtd. 5.5.2000, circulated vide this office Endst. No. NGC/F-9(A)/2000/265 dtd. 26.5.2000, it is learnt that my S.D.A. is being stopped from June/2000 and recovered from the date of its payment. In this regard, I have to submit following few lines for kind consideration and sympathetic action please.

That, I belongs to Orissa and selected under direct recruitment test based on all India level at ARC, Charbatia, Orissa during 1991 and posted to Div HQ., A.P. Division on first appointment which support to para-(i)(a) to make me ineligible to get SDA. But there is not clear as to whether the recruitment zone of All India level Selection falling under 'NE' region or outside N.E. Perhaps it may effect to the persons those who are hailing from outside N.E. region but recruited in NE region on the basis of all India level selection.

Further, the M.O.F. UO No. 11(3)/95.E.II(B) dated 7.5.97 referred in above Cabinet Sectt. order, it is cleared that a person who has been appointed on his first appointment in N.E. region after selection in various recruitment Centres based on all India basis which has been modified by Cab. Sectt. without any justification which may kindly be examined and arranged to seek clarification from Cab. Sectt.

It may also be added that my SDA was stopped and recovered during 1997 and again released the payment of SDA as well as the recovered amount in the same year after sometimes.

Lastly, it is stated that nowhere in the above referred Cab. Sectt. order, it is mentioned to recover the S.D.A. from the ineligible person who are hailing from outside N.E. region whereas question of recover is only meant for the ineligible employees who are hailing from N.E. region.

Under the circumstances mentioned above, I would request to your honour to kindly consider the facts for seeking clarification from SSB Dte. and Cab. Sectt. and necessary order may issued for not to stop/recover my S.D.A. from my salary which may also avoid me from financial hardship.

Yours faithfully,

S.C. Sahoo

30/5/00

(S.C. Sahoo)
Steno
Div HQ., SSB Itanagar

//Copy//

NO. NGE/F-9(A)/96/2000/280
 DIRECTORATE GENERAL OF SECURITY
 OFFICE OF THE DIVISIONAL ORGANISER
 AP DIVISION, SSB : ITANAGAR-791111
 Dated : June 14 , 2000

O R D E R

In terms of Cabinet Sectt. U.O. No. 20/12/99-EA-I-1799 dtd. 2.5.2000 communicated vide SSB Dte. Memo No. 42/SSB/AI/99(18)2486-2508 dtd. 8/5/2000, following officials who are hailing from outside N.E. region but were appointed at Divisional Hqrs., A.P. Division, Itanagar in N.E. region on first appointment after selection through direct recruitment based on the recruitment made on all India basis/based on local recruitment when there were no cadre rules for the post, are not entitled to the grant of Special Duty Allowance for being posted in N.E. region :-

<u>Sl. No.</u>	<u>Name & Design. of official</u>	<u>State to which belong</u>	<u>Remarks</u>
<u>S/Shri</u>			
✓1.	D.S. Chamyal, DFO(T)	U.P.	
✓2.	Pradeep Kumar, DFO(T)	U.P.	
✓3.	Braj Bhushan Singh, DFO(T)	U.P.	... Transferred to Khonsa Area.
✓4.	Mani Dutta, DFO(T)	W.B.	
✓5.	Vireshwar Kumar, DFO(CC)	U.P.	... Transferred to U.P.
✓6.	Dharmender Kumar, DFO(CC)	U.P.	
✓7.	R.K. Mohanty, UDC	Orissa	... Transferred to SSB Dte. wef. August/98.
✓8.	Sarat Ch. Sahoo, Steno	Orissa	
✓9.	P.K. Mohanty, Steno	Orissa	
10.	Rajesh Nautiyal, Steno	U.P.	... Transferred to AO, Bomdila wef 30.11.98
✓11.	P.K. Roy, LDC	W.B.	
✓12.	D.K. Poddar, Pharmacist	Bihar	
✓13.	Miss Anjana Das, SFA(M)	W.B.	
14.	Miss Bivabati Pal, SFA(M)	W.B.	... Transferred to Along Area.
✓15.	Ashok Singh, FA(G)	Bihar	
✓16.	Provash Dutta, FA(G)	W.B.	
17.	Lagan Deo, Peon	Bihar	
18.	D.B. Sonar, Peon	Nepal	
19.	H.P. Sharma, Peon	-do-	
20.	D.M. Pradhan, Peon	-do-	
21.	Keshab Sharma, Peon	-do-	
22.	R.B. Thapa, Peon	-do-	
23.	R.B. Sonar, Peon	-do-	
24.	G.C. Sarkar, Peon	W.B.	
25.	P.K. Roy, Peon	-do-	
✓26.	T.P. Prajapati, S.K.	U.P.	
			P.T.O.

✓ 27. Vikash Khajuria, Driver J&K
28. B.B. Poon, Peon Nepal
29. Lal Bahadur Dorjee, Peon -do-
30. R.P. Sharma, Peon -do-

2. In terms of Min. of finance (Dept. of Expenditure) O.M. No. 11/3/95-E.II(B) dated 12.1.96, the amount of SDA paid to the above ineligible officials w.e.f. 21.9.94 or from the date of payment whichever is later will be recovered in easy instalments.

3. This issues with the approval of D.O. AP.

Sd/-

AREA ORGANISER (STAFF)
SSB : AP DIV. ITANAGAR

Distribution :

1. The Director of Accounts, Cab. Sectt., RK Puram, New Delhi.
2. The Jt. Deputy Director(EA), SSB Dte., RK Puram, New Delhi.
3. The Accounts Officer, Div HQ., Itanagar for information and necessary action.
4. The Area Organiser, Bomdila/Ziro/Along/Tezu/Khonsa and Comdt., WATS, Itanagar for information. Officials who have been allowed to draw SDA on the above situation have now become ineligible for the grant in view of Cab. Sectt. U.O. dtd. 2.5.2000 circulated vide this office Endst. No. NGE/F9(A)/2000/265 DTD. 26.5.2000. Necessary action may, therefore, please be taken to recover the amount already paid & stop further payment with immediate effect.
4. Spare Copy for circulation to all officials concerned.

Dated, Itanagar the 5th June, 2000

To

The Divisional Organiser,
SSB, A.P. Division,
Itanagar.

Sub: Prayer for not to stop/recover the Special Duty Allowance.

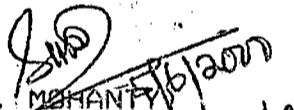
Sir,

I have the honour to inform you that as per Cab. Sectt. U.O. No. 20/12/99-EA-I-1779 dated 2.5.2000 forwarded vide SSB Dte. Memo No. 42/SSB/01/77/1002486-2508 dated 5.5.2000 circulated vide this office Endst. No. NGE/F-9(A)/2000/263 dtd. 26.5.2000, it is learnt that my S.D.A. is being stopped from July/2000 and recovered from the date of my appointment in this Division. In this regard, I have to submit following few lines for kind consideration and sympathetic action please.

Sir, I joined this Division on my first appointment from outside NE region to NE region & thus entitled to draw SDA according to Min. of Finance U.O. No. 11(3)/85/C-II(B) dtd. 7.5.97. But there are some contradictions on categorisation of the employees: as per Cab. Sectt. U.O. dtd. 2.5.2000 without mentioning any justifications to make the person ineligible, who joined on first appointment in NE region from outside NE region.

Therefore, I would request to your honour to kindly consider the facts and seek clarification from Cab. Sectt. and not to stop/recovery of payment of SDA from my salary for which I shall be very grateful to you.

Yours faithfully,


(P.K. MOHANTY)
STENO
DIV.HQR:SSB:ITANAGAR
P.C.

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To

The Divisional Organiser,
SSB, A.P. Division,
Itanagar.

(Through proper channel)

Sub: Prayer for not to stop/recover the Special Duty Allowance.

Sir,

I have the honour to inform you that as per Cab. Sectt. D.O. No. 20/12/99-EA-1-1/... dated 2.5.2000 forwarded vide SSB Dte. Memo No. 42/SSB/AI/99(I)(II)2486-2508 dated 5.5.2000 circulated vide this office Endst. No.NGE/F-9(A)/2000/265 dtd. 26.5.2000, it is learnt that my S.D.A. is being stopped from July/2000 and recovered from the date of my appointment in this Division. In this regard, I have to submit following few lines, for kind consideration and sympathetic action please.

Sir, I joined this Division on my first appointment from outside NE region to NE region & granted to draw SDA vide Min. of Finance U.O. No. 11(3)/85/C-11(B) dtd. 7.5.97 supporting to grant SDA in r/o those who have been posted on their first appointment from outside NE region to NE region.

SSB Dte. Memo No.42/SSB/AI/99(I)(II)2486-2508 dated 5.5.2000 circulated vide this office Endst. No.NGE/F-9(A)/2000/265 dtd. 26.5.2000, as per Para (i) of this memo which also refers to Min. of Finance U.O. dtd. 7.5.97 & Sub-para (a) which reads "A person belongs to outside NE region but is appointed and on first appointment posted in NE region -- S.D.A. not granted.

It is not clear whether it is for those :-

- (1) who appointed in NE region and on first appointment posted in NE region or
- (2) who appointed outside NE region and on first appointment posted in NE region.

Statement (1) supports the earlier & latest interpretation of Min. of Finance U.O.

but Statement (2) is totally contradictory to the earlier & latest interpretation of Min. of Finance U.O..

As per para (vii) which supports recovery from only those ineligible employees who hails from NE region and posted in NE region and not those who belongs to outside NE region.

In view of the above circumstances it seems that para (a) is applicable for those who have been appointed in NE region and on first appointment posted in NE region, therefore, it is kindly requested that before clarifying para 11 (a) no recovery/stopping may effected from my salary.

I wish, you would be kind enough to grant my prayer & oblige thereby.

Yours faithfully,

Radeep Kumar
(Radeep Kumar)

DFO(T)

DIV.HDR:SSB:ITANAGAR

P/C

IRI. NGE/F-3(A)/96/2000/278

DIRECTORATE GENERAL OF SECURITY
OFFICE OF THE DIVISIONAL ORGANISER
AP DIVISION, SSB : ITANAGAR-791111

Dated : June/3, 2000
/3

MEMORANDUM

Sub. : Regarding Recovery and Stopping of Payment of SDA.

With reference to your application dated 3.6.2000, on the above subject, this is to inform you that in terms of Cab. Sectt. B.O. No.20/12/99-EA-I-1799 dtd. 2.5.2000, you are not entitled to the grant of SDA since you hail from outside N.E. region but was appointed in N.E. region on first appointment. Due to above, the amount of SDA paid to you w.e.f. 21.9.94 will also be recovered in easy instalments.

AREA ORGANISER (STAFF)
SSB : AP DIV, ITANAGAR

To

Shri S.C. Sahoo,
Steno,
Div. HQ., Itanagar.

Copy to : 1) Shri P.K. Mohanty, Steno (for information w.r.t. their application dated 5.6.2000.)
2) Shri Pradip Kumar, DFO(T)


AREA ORGANISER (STAFF)
SSB : AP DIV, ITANAGAR

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

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

Shri G.L.Sanglyine, Administrative Member.

Original Application No. 45 of 1998.

Shri Ajitangshu Deb and 16 others.

Original Application No. 90 of 1998.

Shri S.K.Benerjee and 4 others.

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

- Versus -

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

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

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

. Respondents

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

ORDER

G.L.SANGLYINE, ADMN. MEMBER,

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

2. Seventeen applicants in C.A.No.45/98 and five applicants in O.A.No.90/98 are Group 'C' and Group 'D' employees, as the case may be, in the Base Hospital No.151, Basistha, Guwahati. They were allowed to draw Special(Duty) Allowance (SDA for short) in terms of Office Memoranda issued from time to time with regard to payment of SDA. But from July 1996 the payment of SDA was stopped. Further recovery of SDA paid from 20.9.1991

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

3. Mr M.Chanda, the learned counsel for the applicants submitted that consequent to the order of the Hon'ble Supreme Court dated 20.9.1994 in Civil Appeal No. 3251 of 1993 (U/t/o of India & Ors. vs. S.Vijayakumar & Ors.) the Ministry of Finance, Department of Expenditure issued an Office Memorandum dated 12.1.1996 and para 7 of the O.M. is as below :

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

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

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

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

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

4. I have heard counsel of both sides. In both the O.A.S the applicants are local residents of North Eastern Region and recruited locally to work in the region. In such situation they are not eligible to benefit of SDA in view of the decision dated 20.9.1994 of the Hon'ble Supreme Court mentioned above. However, in these cases they continued to be paid SDA till it was stopped in July 1996. The decision to recover the amount paid after 20.9.1994 was taken by O.M. dated 12.1.1996 and adopted by the Ministry of Defence, respondent No.1 on 18.4.1996. No recovery was however made till February 1998. In February 1998 the recovery was initiated without giving any notice to the applicants regarding the action proposed to be taken against them by the respondents. The letter dated 13.2.1998 referred to by Mr Pathak is not addressed to any of the applicants and there is no indication that the contents of the above letter were brought to the notice of the applicants. The respondent No.1 had not therefore acted fairly and reasonably in making recovery of the amount of SDA paid to the applicants between 20.9.1994 and 30.6.1996. The recovery therefore is not sustainable in law. Moreover, in view of the facts and circumstances relating

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

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

Sd/ MEMBER (Adm)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.97 of 1997 and others

Date of decision: This the 26th day of June 1998

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

1. O.A.No.97 of 1997

All India Junior Engineers Association & others, CPWD,
Guwahati.

2. O.A.No.104 of 1997

All India Engineering Drawing Staff
Association and others,
C.P.W.D., Guwahati.

3. O.A.No.106 of 1997

C.P.W.D. Class IV Staff Union,
Guwahati Branch, Guwahati.

4. O.A.No.109 of 1997

C.P.W.D. Staff Association,
Guwahati Branch, Guwahati.

5. O.A.No.110 of 1997

C.P.W.D. Mazdoor Union,
Guwahati Branch, Guwahati.

6. O.A.No.244 of 1997

Shri M.C. Baruah and 289 others

7. O.A.No.24 of 1998

Shri H.K. Das and 35 others

8. O.A.No.35 of 1998

Shri R.P. Thakur and 84 others

9. O.A.No.75 of 1998

Shri A.K. Gohain and 5 othersApplicants
By Advocates Mr J.L. Sarkar, Mr B.K. Sharma,
Mr M. Chanda, Mr A. Ahmed, Mr S. Sarma and
Ms N.D. Goswami.

- versus -

Union of India and others

.....Respondents

By Advocates Mr S. Ali, Sr. C.G.S.C. and
Mr A.K. Choudhury, Addl. C.G.S.C.

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O R D E R

BARUAH.J. (V.C.)

All the above applications relate to Special (Duty) Allowance (SDA for short). As the applications involve common questions of law and similar facts I propose to dispose of all the applications by this common order.

2. The applicants claim that they are entitled to SDA as per the Office Memorandum No.20014/3/83.E-IV dated 14.12.1983, but the same was denied to them. Some of the employees, situated similarly, approached this Tribunal praying, inter alia, for payment of SDA. This Tribunal gave direction to the respondents to pay SDA to those applicants. Though the present applicants did not approach this Tribunal and there was occasion to give such direction to the respondents for payment of SDA to the present applicants. However, in view of the order passed by this Tribunal in the earlier cases, the respondents continued to pay SDA to the present applicants also. Meanwhile, the respondents challenged the earlier order of this Tribunal before the Apex Court by filing Civil Appeal No.1572 of 1997 and other Civil Appeals holding, inter alia, that persons who belong to the North Eastern Region were not entitled to SDA. The present applicants are working in various departments under the Central Government, but it is not very clearly known whether all the applicants were recruited outside the North Eastern Region and have come on transfer. By the strength of the earlier order of this Tribunal, even

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those persons who are not entitled to SDA also continued to draw SDA. However, as per the Apex Court's decision in aforesaid civil appeals those persons who belong to the North Eastern Region are not entitled to SDA. In the said civil appeals the Apex Court also held that the amount of SDA which has already been paid to the employees should not be recovered.

3. I have heard both sides. After hearing the learned counsel for the parties and following the decision of the Apex Court in Civil Appeal No.1572 of 1997 and others, I direct the respondents to first determine whether the present applicants are entitled to SDA or not as per the decision of the Apex Court. If after examination it is found that the applicants or some of them are not entitled to SDA they shall not be paid SDA. However, the amount already paid to them shall not be recovered.

4. With the above observation all the applications are accordingly disposed of. No order as to costs.

Sd/-VICECHAIRMAN

केन्द्रीय ए Central Govt.

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Guwahati Bench

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1. *Desmodium*
A. L. C. S. S. 112/202

Aug 27

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

In the matter of - OA No. 243/2000

Shri Pradeep Kumar & othersApplicants

Versus

Union of India and others..... Respondents

Written statement for and
behalf of the respondents 1 to 8.

1. Before submitting para-wise reply of the original application, this deponent begs to raise the following preliminary objection with regard to the entitlement of filing common and consolidated application as provided u/r 4(5)(b) of the Central Administrative Tribunal(Procedure) Rules, 1987.

(i) Shri Bibhu Ranjan Parida appearing at Sl. No. 4 in the list of the applicants is not posted in the office of the Divisional Organiser, AP Division, Itanagar.

(ii) Shri Vikash Khajuria, Driver appearing at Sl.No. 11, Shri T.P. Prajapati, Store Keeper appearing at Sl. No. 14 and Shri Jay Prakash Ray, Driver appearing at Sl.No. 20 of the list were not selected through direct recruitment tests held at various zonal selection centre, during 1989 onwards

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based on all India level as contended by the applicants vide para-4(iv) of the O.A. The applicants were recruited locally by the respective Divisional Organisers and presently posted in A.P.Division.

2. With regard to para-1(i) and 1(ii), the deponent submits that the contents of orders mentioned therein are admitted, however, it is denied that the applicants are entitled for SDA as alleged by them. The over payment of SDA is required to be recovered as they are not entitled for the same.

3. With regard to para 2 & 3, the deponent has no comments.

4. i) With regard to the averment made by the applicants vide para-4(i) of the O.A. this deponent has no comments.

ii) With regard to the averment made in para-4(ii) of the O.A. this deponent beg to submit that except the employees appearing at Sl.No.11, 14 and 20 as stated vide sub-para-2 of the preliminary objection rest all are recruited on direct recruitment basis.

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(iii) That with regard to the averment made in para-4(iii), this deponent beg to submit that with a view to accepting and retaining the services of competent officers for serving in N.E. region the government of India had decided to grant certain additional allowances/facilities to the civilian employees of central government service in N.E. region, among the various allowances one was the payment of S.D.A. to those who have all India transfer liability. Now, the applicants of the O.A. were recruited though on the basis of all India level selection test and posted to N.E. region initially, they do not posses any competency /experience in service, hence according to the basic principle for granting SDA an employee should be posted to the N.E. region from outside of the region. Obviously this posting does not indicate initial posting as they cannot at any cost claim for the said allowance only by virtue of their posting to this region from outside of the region. They are purely raw in experience and competency. Hence the claim of the petitioners is devoid of merit according to the fundamental criteria for granting the said allowance.

(iv) With regard to the averment made vide para-4(iv), of the O.A. except S1.No. 11, 14 and 20 as pointed out in the preliminary objections, rest

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all have been recruited on the basis of direct selection basis carried out through all India level. But above criteria, does not entitle them to claim the said allowance.

(v) With regard to the averment made vide para-4(v) the applicant of the O.A. granted SDA on the basis of Ministry of Finance, Deptt. of Expenditure, U.O. No. 11(3)/85-E-II(B) dated 7.5.97 (Annexure-A) on the analogy that they have been posted to N.E. region from outside of the region. Therefore, position has since been reviewed on the basis of Cab. Sectt. U.O. No. 20/12/99-EA-I-1799 dated 2.5.2000. (Annexure-B), which clearly indicates that a person belonging to outside N.E. region but appointed on first appointment posted in NE region after selection through direct recruitment basis on the recruitment made on all India basis having a common/centralised seniority list and all India transfer liability are not entitled to drawal of SDA.

(vi) With regard to the averment made in para-4(vi) of the O.A., this deponent begs to submit that contention of the applicants is based on the mere surmises and conjecture. They have totally misconceived the issue for granting of

SDA. The judgement of the Hon'ble Apex Court in the case of civil appeal No. 3251/93 dated 20.09.94, incorporated in Ministry of Finance, Deptt. of Expenditure OM No. 11(3)/95-E.II(B) dated 12.01.96, has clearly stated that SDA will be paid to the civilian employees who have all India transfer liability and posted to N.E. region, from outside of 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 officials transferred from outside the region, to this region would not be violative of the provision contained in Article-14 of the Constitution as well as equal pay doctrine. All the applicants, of the O.A. were posted to NE region, on their first appointment and therefore, neither the applicants, were employed nor transferred from outside NE region to NE region. Therefore, claim of SDA by the petitioners would be a sheer violation of the judgement of Apex Court as well as basic principles for granting of SDA to ineligible persons.

(vii) With regard to the averment made in para-4(vii) of the O.A., this deponent begs to submit that stoppage for drawal of SDA in respect

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of the applicants was not illegal and arbitrary. It was based on the specific orders of the competent authority when drawal of SDA itself was irregular and therefore, recovery of the same cannot be termed as irregular and arbitrary. Overpayment from the government exchequer, if any, has to be recovered for which the applicants have no right to retain and as such cannot have any grievance.

(viii) With regard to the averment made in para-4(viii) of the O.A, this is again a misconstruction of the applicants. It has already been reiterated that on the basis of the orders of Cabinet Secretariat dated 10.06.1997 SDA was paid to the applicants but the said payment being irregular had to be recovered as per the revised/amended instructions of Cab.Sectt. issued vide their U.O. dated 2.5.2000. In the instant case the applicants were posted in NE region on initial appointment which constitute that they were neither employed nor transferred from outside the NE region to NE region and therefore, they are not entitled to grant of SDA in terms of judgement of Apex Court dated 20.09.94.

(ix) With regard to the averments made in para-4(ix) of the O.A. this deponent has no comments as the same are matter of record.

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However, the Cabinet Secretariat has clarified that the applicants are not entitled to SDA as per UO dt. 02.05.2000.

(x) With regard to the averment made in para-4(x) of the O.A. this deponent submits that the applicants are not entitled to the grant of SDA as per existing policy. The applicants should not have any pain for such recovery as they have no legal right to retain the over payment. They should not have been aggrieved and also should not have any other motive in their mind in recovery of payment for which they were not entitled.

(xi) With regard to the averment made in para-4(xi) of the O.A. this deponent submits that the applicants of the O.A. should not have shocked and surprised on the decision of the Cab. Sectt. as the said order of Cab. Sectt. was circulated amongst all staff as such question of recovery of irregular payment of SDA from the effected employees cannot be termed as illegal and arbitrary. It is also not proper on the part of the applicants that some action have been taken keeping them in dark. As such the allegations raised by the petitioners are misconceived and misplaced.

(xii) With regard to the averments made in para-4(xii) of the O.A. this deponent has no comments as the same are matter of record.

(xiii) With regard to the averments made in para-4(xiii) of the O.A. this deponent begs to submit that the recovery of irregular payment of SDA made to the applicants cannot be termed as flagrant violation of principle of natural justice as already reiterated that the notice of eligibility conditions of SDA were circulated through the notice board of the office, with a view that every employee who is receiving irregular payment of SDA can make up his mind and calculate out their eligibility conditions. Undoubtedly the applicants were in fault in receiving the irregular payment of SDA. As a matter of principle they should have ascertained their position in this regard instead of blaming the administration.

(xiv) With regard to the averments made in para-4(xiv) this deponent submits no comments as the same are matter of record. However, it is reiterated that recovery of overpayment of SDA cannot be termed as violative of rights of the applicants. It is pertinent to mention here that recovery of such overpayment has been made since the applicants are not entitled for same.

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(xv) With regard to the averments made in para-4(xv) of the O.A. this deponent has no comments as the same are matter of record.

(xvi) With regard to the averments made in para-4(xvi) of the O.A. this deponent has no comments as the same are matter of record.

(xvii) With regard to the averments made in para-4(xvii) of the O.A. this deponent begs to submit that the cases of the applicants as pointed out in the aforesaid O.A. do not come within the purview for grant of SDA, owing to the reasons that it is their first appointment and granting SDA to them will be utter violation of the basic principles and judgement of the Apex Court. In this connection, it is also submitted that SDA cannot be granted on the basis of the hardship faced by the applicants but it is only an incentive for posting to the NE region which has to be granted to attract the employees serving in other parts of the country due to inaccessibility of terrain etc.. Initial appointment in any case cannot be termed as posting in NE region for the grant of SDA.

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(xviii) With regard to the averments made in para-4(xviii) of the O.A. the deponent begs to submit that in view of the position explained in the foregoing paras and also in terms of the judgement of Apex Court dated 20.09.94, applicants of the O.A. are not entitled for drawal of SDA as such the Cab. Sectt. order dated 02.05.2000 cannot be termed as illegal/arbitrary and the same are very much sustainable in law.

(xix) With regard to the averments made in the para-4(xix) of the OA this deponent begs to submit that the claim of the applicants is bad in law, therefore, the instant application needs to be set aside and has no valid ground for maintenance of the original application.

3. Ground for relief with legal provisions.

i) With regard to the averments made in para-5(i) of the O.A. the applicants are not eligible for drawal of SDA, as such their claim is extremely illogical and unfair and not maintainable in law. Therefore, the claim may be set aside and quashed by the Hon'ble Tribunal.

ii) With regard to the averments made by the applicants vide para-5(ii) of the O.A., it is reiterated that the respondents are guided on the

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basis of the authoritative instructions of the department and action whatsoever have been taken by the respondent in this regard were within the parameter of the instructions received from the department for which applicants are not entitled to challenge such instructions of the department.

iii) With regard to the averments made in the para-5(iii) of the O.A. this deponent begs to submit that as already reiterated in the foregoing paras the respondents are guided by the authoritative instructions of the department. As such question of confusion in this aspect as contained by the applicants does not arise.

iv) With regard to the averments made in the para-5(iv), this deponent begs to submit that the applicants are not eligible for grant of SDA in terms of the Cab.Sectt. UO dated 2.5.2000. In view of the reasons explained in the foregoing paras so far the eligibility criteria of the applicants is concerned, the said order of Cab.Sectt. cannot be termed as illegal, nor bad in law. On the other hand, the O.A filed by the applicants is liable to be set aside on the ground that it is not sustainable in law.

(v) That with regard to the averments made in para-5(v), this deponent begs to submit that no

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amount of civil consequences should be there in recovering the said amount of SDA paid erroneously to the applicants of the O.A. The eligibility criteria of the applicants have already been discussed in the above paras and on the said analogy action of the respondent cannot be termed as bad in law. On the other hand, prayer of the applicants is unjustified, illegitimate and bad in law, therefore, liable to be quashed without any relief.

vi) With regard to the averments made in para-5(vi) this deponent submits that the questions of depriving the applicants does not arise. The issue has totally been misconceived by the applicants. In view of the fresh appointment lacking experience etc. they are not entitled for the said incentive for posting in the NE region, although they hail from the outside of the region. This cannot be claimed as a matter of right.

vii) That with regard to the averments made by the applicants in para-5(vii), it is reiterated that Cab. Sectt. Order dated 2.5.2000 clearly states that employees posted to the NE region from outside of the NE region are not entitled for drawal of SDA, because it is their initial appointment and not posting from outside of the region. Hence, no

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iota of doubt and misconception amongst the employees should be there. This is a clear attempt on the part of applicants to misguide the Hon'ble Tribunal in this context. In view of the above, recovery of SDA from the said members of the O.A. is not bad in law but very much within the parameter of the authoritative instructions conveyed by the department.

viii) With regard to the averment made in para 5(viii) and 5(ix), this deponent has no comments as the same have already been discussed in the aforesaid paragraphs. The applicants of the O.A. are not entitled to any relief as claimed by them. Any amount/relief granted to them will be against the fundamental principle for granting the said allowance and will be bad in law.

5. With regard to the averments made in para 6 & 7 of the O.A, this deponent has no comments as the same are matter of record.

6. Relief sought.

The applicants of the O.A. are not entitled to any relief as per the submission made by the deponent in the aforesaid paras. The O.A. is therefore, liable to be quashed and dismissed outright being devoid of merit.

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Verification :

I, Mohit Lal Chaudhury, Divisional Organiser, Special Service Bureau, Arunachal Pradesh Division, Itanagar do hereby verified that the statement made in paragraph No. 1, 2, 4(ii), 4(iii), 4(iv), 4(vi), 4(vii), 4(viii), 4(ix), 4(x), 4(xi), 4(xiii), 4(xiv), 4(xvii), 4(xviii), 4(xix), 3(i) to 3(viii) and 6 of the written statement are true to my knowledge and belief those made in paragraphs 3, 4(i), 4(xii), 4(xv), 4(xvi) and 5 being matters of record are true to my information derived there from and those made in the rest are humble submission to the Hon'ble Tribunal.

And I sign the verification on this day of
2nd Dec, 2000.

DEPONENT



Divisional Organiser
A.P. Division : SSB.
Itanagar

Annexure-A

Ministry of Finance
Department of Expenditure
E.II(B) Branch

Subject : Special Duty Allowance for Civilian employees of the Central Government in the States and Union Territories of North Eastern Region regarding.

Cabinet Secretariat may please refer to their D.O. letter No.20/3/96-EA-I-645 dated 8th April 1997 on the above mentioned subject and to say that for the purpose of sanctioning of Special Duty Allowance to Central Government Civilian employees, that All India transfer liability of the members of any Service/Cadre or incumbent of any posts/group of posts has to be determined by applying tests 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 based on a common seniority list for the service/cadre/posts as a whole. mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance.

2. Therefore, Cabinet Secretariat may determine in each case whether the employees locally recruited in NE Region, who rejoin NE Region on their transfer to NE Region from outside and the Central Govt. Civilian employees who are posted on first appointment from outside NE region to NE region, fulfill the above said conditions of all India transfer liability, or not. If they fulfill all the conditions of all India transfer liability and are posted from outside NE region to NE region then they are entitled to SDA, otherwise not. However, if further advice is needed on any particular case, the same may be referred to this Ministry alongwith the views of IFU thereon.

sd/-

(P.S.Walia)

For Under Secretary to the Govt. of India.

Cab.Sectt. Bikaner House Annex, (Sh. P.N. Thakur Director)
MOF (Exp)'s U.O.No.11(3)/95 EA-II(B) dt.7th May 1997

Cabinet Secretariat
(EA.I Section)

Subject :- Special Duty Allowance for Civilian employees of the Central Government serving in the States and Union Territories of North Eastern Region - regarding.

SSB Directorate may kindly refer to their UO No.42/SSB AI/99(18)-2369 dated 31.3.2000 on the subject mentioned above.

2. The points of doubt raised by SSB in their UO No.42/SSB AI/99(18)-5282 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Department of Expenditure) and clarification to the points of doubt is given as under for information, guidance and necessary action :

i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95-E.II(B) dated 7.5.97.

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a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on All India basis and having a common/centralised seniority list and All India Transfer Liability.

b) An employee hailing from the N.E. Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.

ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/S3-E.IV dated 14.12.83 and 20.4.87 read with

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SSB/Itanagar

OM 20014/16/86 E.II(B) dated 1.12.88 but subsequently the post/Cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the NE Region though they can be transferred out to any place outside the NE Region having All India Transfer Liability.

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iii) An employee belongs to NE Region and subsequently posted outside NE Region, whether he will be eligible for SDA if posted/transferred to NE Region. He is also having a common All India seniority and All India Transfer Liability. YES

iv) An employee hailing from NE Region, posted to NE Region initially but subsequently transferred out of NE Region but re-posted to NE Region after sometime serving in non-NE Region. YES

v) The MOF, Deptt. of Expdr. vide their UO No. 11(3)/95-E.II(B) dated 7.6.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. For determination of the admissibility of the SDA to any Central Govt. Civilian employees having All India Transfer Liability will be by applying tests (a) whether recruitment to the Service/Cadre/Post has been made on All India basis (b) whether promotion is also done on the basis of All India Zone of promotion based on common seniority for the service/Cadre/Post as a whole (c) in the case of SSB/DGS, there is a common recruitment system made on All India basis and promotions are also done on the basis of All India Common Seniority basis. Based on the above criteria/tesus all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from NE Region or posted to NE Region from outside the NE Region.

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Secretary
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vi) Based on point (iv) above, some of the units of SSS/DGS have authorised payment of SDA to the employees hailing from NE Region and posted within the NE Region while in the case of others, the DACS have objected payment of SDA to employees hailing from NE Region and posted within the NE Region irrespective of the fact that their transfer liability is All India Transfer Liability or otherwise. In such cases what should be the norm for payment of SDA i.e. on fulfilling the criteria of All India Recruitment Test & to promotion of All India Common Seniority basis having been satisfied are all the employees eligible for the grant of SDA.

vii) Whether the payment made to some employees hailing from NE Region and posted in NE Region be recovered after 20/9/1991 i.e. the date of decision of the Hon'ble Supreme Court and/or whether the payment of SDA should be allowed to all employees including those hailing from NE Region with effect from the date of their appointment if they have All India Transfer Liability and are promoted on the basis of All India Common Seniority List.

It has already been clarified by MoF that a mere clause in the appointment order regarding All India Transfer Liability does not make him eligible for grant of SDA.

The payment made to employees hailing from NE Region & posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employees hailing from NE Region and posted in NE Region be recovered from the date of payment or after 20th Sept. 94 whichever is later.

3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1349 dated 11.10.99 and Ministry of Finance (Expenditure)'s I.D. No. 1204/E-II (B)/99 dated 30.3.2000.

Sd/-
(P.N. THAKUR)
DIRECTOR (SR)

In Office
1. Shri R.S. Bedi, Director, ARC
2. Shri R.P. Kureel, Director, SSB
3. Brig (Retd) G.S. Uban, IG, SFF
4. Shri S.R. Mehra, JD (P&C), DGS
5. Shri Ashok Chaturvedi, JS (Pers), RAW
6. Shri B.S. Gill, Director of Accounts, DACS
7. Smt. J.M. Menon, Director-Finance (S), Cab. Sectt.
8. Col. K.L. Jaswal, CIOA, CFA
G.O. Sectt. U/ No. 20/12/99-Expenditure dated 2.5.2000