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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 268/2000

R.A/C.P No.

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 268/2000 OF 199

Applicant(s) Sri Chandan Kanta Sinha.

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. J. L. Sakkar
Mrs. S. Sena.

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

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form and within time of F. of R. 50A deposited vide IPO BD No. 501286 Dated 12.9.2000</p> <p>18/9/2000</p> <p>20.9.2000</p> <p>Additional Annexures have been filed by the Learned Advocate for the Applicant at flap 'A' (Page Nos 46 to 64).</p>	<p>19.9.00</p> <p>pg</p> <p>21.9.00</p> <p>mk</p>	<p>Present : The Hon'ble Mr Justice D.N. Choudhury, Vice-Chairman.</p> <p>The applicant is allowed to annex the relevant documents connected with the application.</p> <p>List on 21.9.2000 for admission.</p> <p>Vice-Chairman</p> <p>Issue notice to the respondents. Returnable by 30.10.00.</p> <p>In the meantime, the direction for recovery of alleged excess S.D.A. already drawn shall remain suspended.</p> <p>List on 30.10.00 for admission.</p> <p>Vice-Chairman</p>

Notes of the Registry

Date

Order of the Tribunal

25/09/00 Notice prepared
and sent to Despatch
Section for crossing the
respondents No 1 to 4 vide
Despatch No 2032 to
2035 dtd 26/9/00


30.10.00

Heard Mr J.L.Sarkar, learned counsel
for the applicants and Mr B.S.Basumatary,
learned Addl.C.G.S.C for the respondents.

Application is admitted. No notice
need be sent.

List on 19.12.2000 for hearing along-
with other similar cases. The respondents
may in the meantime file written state-
ment.

Interim order shall continue.


Vice-Chairman

pg

25
31/10/2000

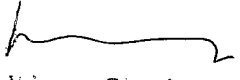
30-10-2000

Service copy sent
completed.

19.12.00

Heard learned counsel for the
parties. Judgement dictated in the open
court, kept in separate sheets. The
application is allowed. No order as to
costs.


Member


Vice-Chairman

trd

4.1.2001

Copy of the Judg
has been sent to MS
D/Sec for issuing MS
since to MS L/Admnstr
for the parties
H.J.

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. No.s. 268/2000 & of
269/2000

19.12.2000
DATE OF DECISION

Sri Chandra Kanta Sinha. (O.A. 268/2000)

PETITIONER(S)

Income Tax Gazetted Service Federation (O.A. 269/2000)

Mr. J.L.Sarkar & Mrs. M.S. Deka.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. B.S. Basumatary, Addl. C.G.S.C. (O.A. 268/2000)

ADVOCATE FOR THE
RESPONDENTS

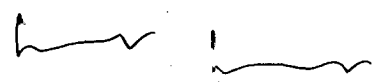
Mr. B.C. Pathak, Addl. C.G.S.C. (O.A. 269/2000)

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

THE HON'BLE MR. M.P. SINGH, MEMBER (A).

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

Judgment delivered by Hon'ble Vice-Chairman.



4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 268 of 2000

with

Original Application No. 293 of 1999.

Date of decision : This the 19th day of December, 2000.

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

Hon'ble Mr. M.P.Singh, Member (A).

O.A. No. 268 of 2000.

Sri Chandra Kanta Sinha
Deputy Commissioner of Income Tax
Jorhat Circle,
Jorhat

Applicant

By Advocate Mr. J.L.Sarkar and Mrs.S.C.Deka.

-versus-

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Commissioner of Income Tax,
Post Box No. 20,
Shillong-793001,
Meghalaya.
3. Central Board of Direct Taxed,
Through its Secretary,
North Block,
New Delhi-110001.
4. Commissioner of Income Tax
Guwahati,
Saikia Commercial Complex,
Srinagar, Guwahati-5.
G.S.Road, Guwahati-5.

..Respondents

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

O.A. No. 293 of 1999.

1. Income Tax Gazetted Service Federation,
North Eastern Region Unit,
Aayakar Bhawan, Uzan Bazar,
Guwahati-781 001.
Through the President of the said Federation.
2. Shri Timir Haran Chakraborty,
Income Tax Officer,
Aayakar Bhawan,
Uzan Bazar, Guwahati-781 001.

..Applicants

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

-versus-

Contd...

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Commissioner of Income Tax,
Post Box No.20,
Shillong-793001,
Meghalaya.
3. Central Board of Direct Taxes,
Through its Secretary,
North Block,
New Delhi-110001

..Respondents

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

.....

O R D E R (ORAL)


CHOWDHURY J. (V.C.).


Both the applications were taken up together for hearing since it involves common question of law and fact. The issue raised in these applications are related to grant of Special (Duty) Allowance. The matter was adjudicated upon between the parties. The Tribunal rendered its decisions on 31.8.1990 in O.A. No. 80 of 1990 declaring the applicants were entitled to SDA in terms of Govt. of India's O.M. dated 14.12.1983, and was modified from time to time and the respondents were directed to pay Special (Duty) Allowance with arrears due to the applicants within a specified period therein. The respondents went up to the Supreme Court challenging the legitimacy of the order of the Tribunal by filing Special Leave Petition. It has been stated that the said SLP was withdrawn on the statement of the learned Addl. Solicitor General that the respondents intended to file a Review Application before the Tribunal. Accordingly Review Application was filed and the same was registered as R.A. No. 39/91 (O.A. No. 80/90). The said Review Application was finally dismissed. The respondents filed a Misc. Application in the month of May 1993 seeking six months time to implement the judgement of the Tribunal dated 31.8.1990. It has been

Contd...

stated by the applicants that till now the direction of the Tribunal has not been given effect to. The order passed by the Tribunal has attained its finality. The entire matter was adjudicated upon by the Tribunal and thereafter the order was passed. Therefore there is not justification for not giving effect to the order of the Tribunal. We do not find any reason as to why the respondents did not comply the order of the Tribunal which has attained its finality. We now direct the respondents to comply with the judgement and order passed in O.A. No. 80 of 1990 on 31.8.1990 within a period of two monthis from today and thereafter submit its compliance. The impugned orders No. E-88/CIO/P&A/CIT/GHY/98-99/2132 dated 14.7.2000, F. No. E-35/SDA/CCIT/GHY/2000-01/ dated 12.7.2000 and No. E-88/P & A//CIT/GHY/98-99/3272 dated 25.8.2000 (Annexures - M, N and P to the O.A. No. 268/2000) are accordingly set aside.

The applications are accordingly allowed. There shall, however, be no order as to costs.


(M.P.SINGH)
Member(A)


(D.N.CHOWDHURY)
Vice-Chairman

trd

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

9

Original Application No.189 of 1996.

Date of Order: This the 27th Day of October 1998.

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

HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Shri K.C.Sharma & Others.

(All the applicants are working under the Deputy Assistant Director General(MS), Govt. Medical Store Depot, P.O. Gopinath Nagar, Guwahati-16 in different capacities as Group B, C & D categories). ... Applicant.

By Advocate Mr.J.L.Sarkar, Mr.M.Chanda

-Vs-

1. Union of India ,
(Through Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110011.
2. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.
3. The Deputy Assistant Director General(MS)
Govt. Medical Store Depot, A.K.Azad Road,
P.O.Gopinath Nagar,
Guwahati-781016. ... Respondents.

By Advocate Mr.S.Ali, Sr.C.G.S.C.

O R D E R

BARUAH, J. (VC):

In this application the applicants have challenged the impugned Annexure-5 letter dated 27-8-96, issued by the Deputy Assistant Director General, Ministry of Health & Family Welfare stopping the Special Duty Allowance on the basis of Annexure-3, office Memorandum dated.12-1-1996 issued by the Under Secretary, Government of India, Ministry of Finance, Department of Expenditure. They also seek certain directions. Facts are :-

The applicants are Group 'C' and 'D' employees of the Government Medical Store Depot at Guwahati in various capacities. The applicants used to receive Special Duty Allowance(SDA) pursuant to the judgment dated 8-2-91 passed by this Tribunal in O.A.No.208 of 1991. The respondents

contd/-

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in the said O.A. being aggrieved by and dissatisfied with the order of this Tribunal, approached the Supreme Court by filing SLP No.9381/92(Annexure 2 to the application. When the SLP was moved similar matters regarding SDA were pending before the Supreme Court. The Supreme Court after noticing the Special Leave Petition and passed the following order :-

"There is a delay of 347 days in filing this SLP for which there is no cogent explanation.

Learned counsel for the petitioners submitted that the point involved for decision on merits in this S.L.P is important and is also involved in some other pending SLPs, one of which is SLP(C)No.13710/87. In our opinion this cannot be a ground for condonation of the inordinate delay for which no cogent explanation has been offered by the petitioners.

I.A.No.1 for condonation of delay is rejected. Consequent the SLP is dismissed as time barred."



The aforesaid order dated 23-7-92 of the Supreme Court was passed after this Tribunal's order dated 8-2-91 in O.A.No.208/91. The applicants have been getting SDA on the basis of the order of this Tribunal. Meanwhile, the Supreme Court in its judgment delivered on 20-9-94 (in Civil Appeal No.3251 of 1993) held that the Central Government Civilian Employees who have all India transfer liability are entitled to receive of SDA, on being posted in any station in the N.E. 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 held that benefit of this allowance is available only to the officers transferred from outside the NE Region to this Region. This would not be violative of the provisions contained in the Article 14 of the constitution as well as the equal pay doctrine.

SB

contd/-

After the disposal of the aforesaid application by the Supreme Court, Annexure 3 order was issued by the Under Secretary, Government of India, Ministry of Finance, directing the department concerned to stop payment of SDA on the ground that the local employees were not entitled to get SDA. Pursuant to the said Annexure 3 O.M. dated. 12-1-1996, Annexure 5 order was issued. Hence the present application. In due course the respondent have entered appearance and have filed written statement. This Tribunal issued notice to the respondents to show cause as to why the present application should not be admitted. After the reply was filed, the application had been admitted. The respondents urged that the reply to the show cause might be treated as written statement. In the said reply the respondents have refuted the claim of the applicants. The respondents have submitted that in view of the order passed by the Supreme Court the applicants cannot claim any SDA.

We heard learned counsel for both sides. Mr.J.L. Sarkar learned counsel for the applicants submitted before us that in so far as the present case was concerned after dismissal of the SLP by Supreme Court as barred by limitation, the Tribunal's order dated 8-2-91 passed in O.A. No.208/91 became final. Mr.J.L.Sarkar further submitted that the Supreme Court has not passed any order nullifying the order passed by this Tribunal till now. This Tribunal had no authority to alter the same. Mr.Sarkar further submitted that the Supreme Court passed the order dated 23-7-92 in other cases stating that local candidates would

contd/-

JB

would not be entitled to get the SDA. But that would not affect the present case which reached its finality.

On the rival contention of the parties it is now to be seen whether the applicants are entitled to get the SDA. This Tribunal cannot pass any order reviewing order passed earlier by this Tribunal as the Supreme Court had dismissed the SLP against the said order of the Tribunal. Therefore, we agree with the submissions of Mr. Sarkar that the applicants are entitled to get the SDA on the basis of the judgment passed by this Tribunal in O.A.208/91. In view of the above circumstances the Annexure 3 O.M. dated 12-1-96 shall not have any effect so far the present applicants are concerned, unless the Supreme Court reviews the order dated 8-2-91 passed by this Tribunal in O.A.No.208/91. Therefore, we set aside the Annexure 5 order. The applicants shall continue to get the SDA.

Application is accordingly disposed of. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Certified to be true Copy
प्रमाणित प्रतिलिपि

(Signature)
Section Officer (J)
आनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati-6
गुवाहाटी न्यायपीठ, गुवाहाटी-6

21/1/99

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12

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 others

By Advocates Mr J.L. Sarkar, Mr B.K. Sharma,Applicants
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. The Apex Court disposed of all the above 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



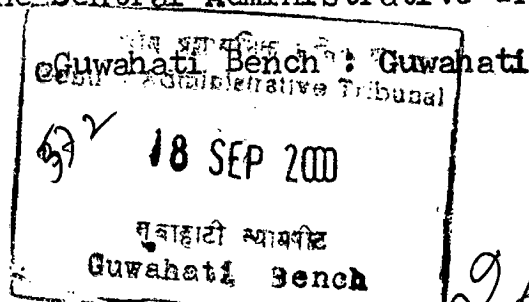
those persons who are not entitled to SDA also continued to draw SDA. However, as per the Apex Court's decision in aforesaid civil appeals those persons who belong to the North Eastern Region are not entitled to SDA. In the said civil appeals the Apex Court also held that the amount of SDA which has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

In the Central Administrative Tribunal



O.A. No. 268 / 2000

Filed by the Applicant
through J. D. Sen
Advocate
15-9-2000

Sri Chandra Kanta Sinha

... Chaimant

-VS-

Union of India & Others

... Respondents

I N D E X

Sl.No.	Annexure	Particulars	Page
1.	-	Application	1-14
2.	-	Verification	15
3.	A	Copy of the judgement in O.A. No.- 80/90	16-20
4.	B	Order of the Hon'ble Supreme Court dt. - 17.7.91	21-22
5.	C	Order of the Hon'ble Tribunal dt. 6.8.91	23-24
6.	D	Order of the Hon'ble Supreme Court dt. 11.9.91	25-26
7.	E & F	Copy of the letter dt.28.5.93 and mise petition of the Hon'ble CAT, Cuttack Bench.	27, 28-29
8.	G	Copy of the written statement sent by post to the Hon'ble CAT, Cuttack.	30-32
9.	H & I	Copies of the order dt.14.6.93 and 2.8.93.	33, 34
10.	J	Copy of the order dt.8.10.99	35
11.	K & L	Letter dt.31.5.2000/1.6.2000 & reply dt.7.6.2000.	36, 37-38 39
12.	M, N, O, P and Q.	Letter dt.14.7.2000, 12.7.2000 & dt.8.8.2000. 25.8.2000 & 8.10.99	40, 41, 42 43, 44 45

Signature.

In the Central Administrative Tribunal

Guwahati Bench : Guwahati

(An application U/S 19 of the Administrative Tribunal Act, 1985).

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Filed by in Applicant
through
15.7.2000
C. B.

O.A. No. 268 /2000.

Between

1. Sri Chandra Kanta Sinha
Deputy Commissioner of Income Tax.
Jorhat Circle,
Jorhat.

. . . . Applicant.

And

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Commissioner of Income Tax,
Post Box No. - 20,
Shillong - 793001, Meghalaya.
3. Central Board of Direct Taxes,
Through its Secretary,
North Block,
New Delhi - 110001.

Contd..2/-

4. Commissioner of Income Tax
Guwahati,
Saikia Commercial Complex, Srinagar
G.S. Road, Guwahati - 5.

.... Respondents.

1. Particulars for which the application is made :

The application is made praying for continuation of Special Duty Allowances (S.D.A) and non-recovery of S.D.A. paid after 20.9.94 and against the order dt. 31.5.2000, 1.6.2000 and dt. 12.7.2000^{and 25.8.2000} issued from the Office of the Commissioner of Income Tax, Guwahati - 5.

2. Jurisdiction :

The applicant declares that cause of action arose within the jurisdiction of this Tribunal.

3. Limitation :

That the present application has been filed within the prescribed period of limitation as per the CAT Act, 1985.

4. Facts of the case :

4.1. That the applicant is a citizen of India and is entitled to the rights and privileges guaranteed by the Constitution of India.

4.2. That the applicant was appointed as Inspector of Income Tax w.e.f. 1.9.67. He was promoted as Income Tax officer (Group B Service) w.e.f. 1.8.77 and again promoted to Group A Service as Assistant Commissioner of Income Tax (for short ACIT) w.e.f. 30.3.90, elevated to ACIT (Sr. Scale) w.e.f. 1.10.94 and redesignated as Deputy Commissioner of Income Tax (Rs. 10,000/- - 15,000/-) w.e.f. 1.10.98. The applicant is posted in the North Eastern Region and is entitled to payment of Special (Duty) Allowance (for short SDA) in terms of the Ministry of Finance Office Memorandum No. 20014/3/83 - E. IV dated 14.12.83 at the rates modified from time to time. SDA was paid to the employees of the Department Posted in N.E. region including the applicant but was subsequently stopped by the Department. Against the decision of the stoppage ~~the~~ and claiming grant of SDA the Income Tax Garretted Service Association filed an original application before this Hon'ble Tribunal which was registered as O.A. No. 80/90 in which ^{it} was decided that the members of the Association are entitled to SDA. *The applicant is a member of the Association. Membership is open to Gazetted officers, Group A, and Group B.*

Copy of the judgment in O.A. No. 80/90
is enclosed as Annexure - A.

4.3. That the respondents filed Special Leave petition, before the Hon'ble Supreme Court of India and Leave ~~hear~~ having been granted the petition was registered as Civil Appeal No. 2648/91. It is stated that the Hon'ble Supreme Court was initially pleased to pass an interim order staying the ~~opinio~~.

Contd . . . 4/-

operation of the judgment dated 31.8.90 in said O.A. No. 80/90. Later on the matter having been contested by the Association (as respondents before the Hon'ble Supreme Court), the Hon'ble Supreme Court was pleased to pass order dated 17.7.91 vacating the said order of stay of the operation of judgement in said O. A. 80/90.

Copy of the order of the Hon'ble Supreme Court dated 17.7.91 is enclosed as Annexure - B.

4.4. That the Association had filed a Miscellaneous application in the O.A. No. 80/90 before this Hon'ble Tribunal praying for payment of SDA in view of the stay order having been vacated by the Hon'ble Supreme Court. The Departments submitted during hearing that at least 90 days time should be granted. The Hon'ble Tribunal was pleased to Direct that the SDA with arrears should be disbursed ~~pealtively~~ positively by 31.8.91. But no payment has been ^{made} ~~same~~ in terms of the order. However applicant appellant was paid SDA w.e.f. 1.4.90, in his capacity for Group A officer.

Copy of the order of the Hon'ble Tribunal dated 6.8.91 is enclosed as Annexure - C.

4.5. That the Civil Appeal No. 2648/91 (against the judgement in O.A. No. 80/90) came up for hearing before the Hon'ble Supreme Court and the Union of India was allowed to withdraw the said Civil Appeal with permission to file Review Petition.

Copy of the order dated 11.9.91 of the Hon'ble Supreme Court is enclosed as Annexure - D.

4.6. That the respondents filed Review Application against the judgement in O.A. No. 80/90 which was registered as R.A. No. 39/91. The same R.A. was transferred to Hon'ble Cuttack Bench of the Tribunal and registered as T.A. 15/92 in that Tribunal. The said TA No. 15/92 was decided by the Hon'ble Cuttack Bench by order dated 26.3.93 holding that there was no merit in the review petition and the same was dismissed.

The applicant craves for the leave of the Hon'ble Tribunal to refer to the judgement in the review application during hearing of this application.

4.7. That after the said judgement in the Review application the respondents decided to Pay SDA to the members of the association/federation and informed the General Secretary of the Association by letter No. F.No.E-5/SDA/90-91/CT/4664 dated 28.5.93 issued from the office by the respondent no.2 enclosing a copy of the Misc. petition proposed to be filed by the Government before the Hon'ble CAT, Cuttack Bench. The paragraphs 2 and 3 of the said Misc. Petition read as under ;

"2. That in the said judgement and order the Hon'ble Cuttack Bench of the Central Administrative Tribunal had passed an order dismissing the Review petition and as such the petitioner is to pay the special duty to the members of the Income Tax Gazetted Services Association.

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3. That to implement the judgement and order dated 26.2.93 in Transfer Application No. 15/92 (PA 39/91 OA 80/90 a minimum period of six months is required" .

From the above it is explicit that the respondents had decided to make payments of SDA to the members of the Association/Federation. The Association sent through Postal services written statement to the said Misc. Petition, to the Hon'ble Cuttack Bench of the Tribunal praying for rejection of prayer to allow time making further delay in the matter. The Hon'ble Tribunal, was however, passed order before the receipt of the written statement.

Copy of the letter dated 28.5.93 and the copy of the Misc. Petition before the Hon'ble CAT, Cuttack Bench are enclosed as ANNEXURE - E and F respectively.

Copy of the written statement sent by post to the Hon'ble CAT, Cuttack Bench is enclosed as Annexure - 6.

4.8. That the Association received a copy of the order dated 14.6.93 in M.A. of 1993 in TA NO.15/91 from the RA No.39/91

Hon'ble ~~XXXXX~~ CAT, Cuttack Bench. The Hon'ble Tribunal was pleased to issue notice to show cause, and implementation of the judgment in review application was stayed till 2.8.1993 making it clear that prayer for grant of 6 (six) months time would be considered on 2.8.93. A copy of the order dated 14.6.93 was also sent to the General Secretary of the Association, and the

Advocates of the application. The ^{Association was} ~~applicants~~ were not in a position to send counsel, or engage a new counsel there, and were hopeful of justice in the facts and circumstances of the case. They received order dated 2.8.93 in the said M.A. 374/93 of the Hon'ble CAT, Cuttack Bench. By the said order time was extended till 30.10.93 to ~~the~~ implement the judgement and the next date fixed on 2.11.93. The ^{Association} ~~applicants~~ could not engage or send lawyer on that date also, but sent written argument by lawyer to the Hon'ble CAT, Cuttack Bench after giving two copies to the Counsel ^{of} by the applicant of Misc. Application at Guwahati. After this no order has been received by the Association. But the respondents are not making the payment in violation of the Hon'ble Tribunal's order. However as already stated the applicant has been paid SDA w.e.f. 1.4.90.

Copies of the order dated 14.6.93 and 2.8.93 are enclosed as Annexure - H and I respectively.

4.9. That the applicant beg to state that after having deposed before the judicial ^U form of implementing the judgement and having judicial order extending time for ~~payment~~ paying SDA, the respondents are bound by Constitutional Law and Constitutional morality to Honour the judgement and pay SDA otherwise it would amount to violation of Constitution discipline, Respondents are also bound by the Principles of estoppel to decide in the negative the payment of SDA to the members of the applicant Association/Federation.

4.10. That it is stated that the applicant mentioned ^{is a member of the Association} above and was also office bearer for some period. The said Association has since been renamed as Income Tax Gagetled

Service Federation, North Eastern Region Unit. Aayakar Bhavan, Uzan Bazar, Guwahati, - 1. The applicant is the member of this Federation. The said federation has filed an original application before this Hon'ble Tribunal for payment of SDA to the members of the Federation with arrears and interest there on. The same application has been registered as O A No. 293/99 and is pending. In the said O A the Hon'ble Tribunal has been pleased to pass an interim order on 8.10.99 directing payment of SDA. The applicant is
 vs. The President of The Federation at Present

Copy of the order dt. 8.10.99 is enclosed
 as Annexure - J.

4.11. That the applicant begs to state that SDA has been paid to the employees of the NE Region for the difficulties and hazards inherent in N. F. Region. In some cases SDA has been paid on the basis of orders of courts and in many cases by the B Deptt. themselves. There are departments in the Central Govt. that SDA is paid to Gr. A and B Officers. There are also departments where SDA is paid by Department's own decisions to Gr. A officers only. It is stated that SDA is paid to the Gr. A officers posted in N F Region under the Respondent No. 2. As already stated the applicant was promoted to Gr. A service as Asstt. Commissioner of Income Tax w.e.f. 30.3.90 and presently he has been promoted as Deputy Commissioner of Income Tax w.e.f. 1.10.98 (Rs. 10,000-15,000). On his promotion to Gr. A. the applicant has been paid SDA w.e.f. 1.4.90.

It is stated that w.e.f. 1.4.90 he was posted at Shillong as OSD under Respondent No. 2 and was paid SDA by the office. At present he is posted at Jorhat and is drawing and disbursing officer and has been drawing SDA.

Contd ... 9/-

4.12. That the applicant received one communication 31.5.2000/1.6.2000 from the office of the Commissioner of Income Tax Guwahati -5. Under the said letter reference to a judgment dt. 20.9.94 of the Hon'ble Supreme Court and Ministry of Finance Circular dt. 12.1.96 has been referred to and it was also asked that SDA. to ineligible persons should be discontinued and that recoveries of SDA paid after 20.9.94 to ineligible persons should be made. Details from the applicant was also called for. In this connection the applicant begs to say that the entitlement of SDA of the members of the Association/Federation as discussed above has been finally decided by Judicial Pronouncement. The Finance Ministry's circular dt. 12.1.96 has also no application in the Case of the applicant. It is also stated that in cases where prayer for SDA was allowed by this Hon'ble Tribunal, and no SLP before the Hon'ble Supreme Court was filed or SLP was dismissed, SDA is being paid, and Hon'ble Supreme Court has also not been pleased to re-open past cases of grant of SDA even after their judgement dt.20.9.94 and declined to admit SLP. Such employees are being paid SDA. The finance Ministry O.M. dt. 12.1.96 is not applicable to such cases.

In other words the O.M. dt. 12.1.96 is not applicable to cases which have already been decided by Courts. Moreover, O.M. dt. 12.1.96 is not applicable to Gr.A officers of the Govt. of India. This O.M. dt. 12.1.96 is not, therefore, applicable to the applicant ^{and he} is not ineligible for SDA. The letter dt.31.5.2000/1.6.2000 issued by the respondent No.4 is not applicable in the case of the applicant. The applicant on receipt of the said letter dt. 1.6.2000 submitted his reply to the respondent No.4 on 7.6.2000 detailing the grounds of his entitlement of SDA.

~> ~~Reply to the same has not yet been received.~~

Copy of the letter dt. 31.5.2000/1.6./2000
and applicants reply dt. 7.6.2000 are
enclosed as Annexure - K & L respectively.

4.13. That the applicant has received letter dt. 14.7.2000 from the office of the respondent No. 4 asking him to stop drawal of SDA and to recover excess SDA drawn from 20.9.94. With this letter a letter dt. 12.7.2000 from the respondent No. 4 has been enclosed which contains the name of the applicant in Sl. No. (iii) stating that officers not posted to N. E. Region on transfer from outside the Region and who do not fulfil the eligibility criteria for drawal of SDA under memorandum dt. 12.1.96 should stop drawing SDA ^{and} enforce recovery of amount already paid after 20.9.94.

The applicant begs to state that the grounds of non entitlement as stated in the said letter dt. 12.7.2000 are extraneous and having support of no law. The case of the applicant has already been decided by Judicial pronouncement. In addition as an officer of the Group A Service also the applicant is eligible for SDA. SDA is ~~is~~ paid to Gr. A officers irrespective of the fact as to whether he/they has/have been posted to N. E. Region directly or posted on transfer from outside the Region. This policy also supports the case of the applicant under the law of equality. Isolating the applicant from other Gr. A officers would amount to hostile discrimination violative of Art. 14 & 16 of the Constitution of India. It is also stated that there are departments in the Govt. of India where SDA is paid to Gr. A and B officers without any nexus as to whether posted in N.E. Region directly or on transfer. The applicant has submitted his reply letter dt. ^{8.8.2000} ~~14.7.2000~~ to the respondent No. 4, ~~but he has not yet received any reply to the same.~~

Copy of the letter dt. 14.7.2000,
12.7.2000 & his reply dt. 8.8.2000 are
enclosed as Annexure M, N & O respectively

4.14. That the applicant has received letter dt. 25.8.2000 from the office of the respondent No. 4. This letter has been issued with reference to the applicant's letter dt. 8.8.2000. In the said letter dt. 25.8.2000 the respondent No. 4 has given a cryptic and evasive reply. The statement in the said letter dt. 25.8.2000 that the case cited by the applicant relates to Income Tax Officers Gr. B is not correct. It is stated that the applicant is the member of the said Association/Federation. Income Tax Officers Group B and promoted Group A Officers are members of the Association. Moreover as already stated above the respondents by their own decisions paid SDA to the applicant immediately he was promoted to Group A Officer w.e.f. 1.4.90. It is stated that Group A Income Tax Officers are paid S.D.A. and as such applicant was paid S.D.A. w.e.f. 1.4.90. The letter dt. 25.8.2000 is silent on this point. The O.A. 80/90 and 293/99 relate to Income Tax Officers, Gazetted, both Group A and B.

Copy of the letter dt. 25.8.2000 is

enclosed as Annexure p.

Copy of order dt. 8.10.99 in OA 293/99
is enclosed as Annexure Q.

4.15. That the applicant is eligible for payment of S.D.A. The order asking for stoppage of S.D.A. and recovery of alleged over payment is the result of non-application of

mind and non-consideration of orders of Hon'ble Courts/

5. Grounds for relief with legal Provisions :

5.1. For that the Applicant is entitled to payment of S.D.A as per Judicial Pronouncement.

5.2. For that applicant is entitled to SDA as Group A Officer.

5.3. For that the respondents have no power or jurisdiction to decide that member of the Association is ineligible for S.D.A.

5.4. For that the respondents having submitted before the court accepting the judgment without being aggrieved, and praying for extension of time for payment of S.D.A., it is not just and fair, to deny the payment.

5.5. For that the respondents are barred by the Principles of estoppel to say that applications are not to be paid S.D.A.

5.6. For that the delay in the payment of S.D.A, is violative of Article 14, 16, 21 and 300 A of the Constitution of India.

5.7. For that order for stoppage of S.D.A. is outcome of non-application of mind and arbitrary.

6. Details of remedies exhausted.

The applicant state that there is no remedy under any rule and this Hon'ble Tribunal is the only remedy.

7. Matter not filed or pending with any other Court.

The applicant declares that no other application/cases has been filed before any other Tribunal/Court regarding the relief in respect of which this application has been made, and that no such application is pending.

The applicant has narrated the earlier cases in O.A. No. 80/90 and consequent cases which have already been decided, and O. A. No. 293/99 which is pending.

8. Relief Sought For.

In view of the facts and circumstances in para 4 above the applicant prays for the following relief :-

8.1. The applicant should continue to get S D A.

8.2. The orders dt. 12.7.2000 and 14.7.2000, ^{and 25.8.2000} from the office of the respondent No. 4 (Annexure M and N) ^{and P} asking to stop drawal of SDA of the applicant and recovery of excess SDA from 20.9.94 be set aside and quashed.

8.3. Letter dt. 31.5.2000/1.6.2000 (Annexure- K) issued by the respondent No. 4 be set aside and quashed.

8.4. Cost of the case.

9. Interim order if any prayed for:

Pending final decision of the application, x applicant seeks the following interim relief -

✓ The orders dt. 12.7.2000 and 14.7.2000 ^{and 25.8.2000} (Annexure N and M) ^{and P} issued by respondent No. 4 and letter dt. 31.5.2000/1.6.2000 (Annexure - K) issued by respondent No. 4 be stayed/suspended.

The above interim relief is prayed for on the grounds narrated in para 5 above.

10. The application is made through Advocate.

11. Particulars of I.P.O.

I.P.O. No. : 26 502786
 Date : 12.9.2000
 Issued From & : Guwahati
 Payable at : Guwahati


12. Details of Enclosure .

As per Index.

Verification

VERIFICATION

I, Chandra Kanta Sinha, son of Late Mamini mohan Sinha, resident of Jorhat, aged about 56 years working as Deputy Commissioner of Income Tax. I am the applicant in the above case and have been authorised by the applicant No. 1 also to verify the contents of the application. I do ~~not~~ hereby verify that the statements made in paragraphs 1, 4, 6, 7, 8, 9, 10, 11 and 12 are true to my personal knowledge and those made in paragraphs 2, 3 and 5 are true according to legal advice and I have not suppressed any material facts.


(C.K. SINHA)

Jorhat.

Signature.

Date - 7.9.2000.

Received
Aug 31
T.R.O.
5/11/90

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 80 of 1990.

Date of decision: The 31st day of August 1990.

1. Income Tax Gazetted Services Association,
North-Eastern Region.
(Through its General Secretary).
2. Shri J.C.Dey, General Secretary, Income Tax
Gazetted Services, Association, North-Eastern
Region, Shillong.

... Applicants.

Versus

1. Union of India (Through Secretary, Ministry of
Finance, Department of Revenue, New Delhi).
2. Commissioner of Income Tax, N.E. Region,
Post Box No. 20, Shillong.
3. Central Board of Direct Taxes, (Through its
Secretary) North Block, New Delhi-110 001.

.. Respondents.

For the applicants

... Mr. J.L. Sarkar, Advocate &
Mr. M. Chanda, Advocate.

For the respondents

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

C O R A M:

THE HON'BLE SHRI K.P. ACHARYA, VICE-CHAIRMAN
AND

THE HON'BLE SHRI J.C. ROY, ADMINISTRATIVE MEMBER

1. Whether reporters of local papers may be allowed to
see the judgment?
2. To be referred to the Reporters or not? No
3. Whether Their Lordships wish to see the fair copy
of the judgment?

- 17 -

J U D G M E N T

J.C.RGY.

This is an application from the Income Tax Gazetted Services Association, Northeastern Region and the General Secretary of the Association for grant of Special Duty Allowance (SDA for short) to the members of the Association. Shortly stated the facts of the case are that Government of India, Ministry of Finance in Office Memorandum No. 20014/3/83-E-IV dated 14.12.1983 granted, inter alia SDA at the rate of Rs. 25% of the basic pay, subject to a ceiling of Rs. 400/- p.m. to Central Government civilian employees who have all India transfer liability on posting at any station in the N.E. region. Following this order, the Income tax Group B officers were allowed to draw SDA from 1.11.1983 but the Central Board of Direct Taxes (respondent no. 3) in its letter dated 31.7.1987 (Annexure-B) decided to withdraw the allowance to Group B officers on the ground that they are not normally transferred throughout India. Subsequently recovery of the allowance already paid was also ordered but at the time of admission of this application on 24.5.1990 the Division Bench of this Tribunal, by an interim order, restrained ~~or xxxxx~~ such recovery. The applicants' claim is supported by a categorical statement made in paragraph 12 of the application that Group B ITOS carry all India transfer liability. For proving this liability they depend upon the guidelines issued by the Central Board of Direct Taxes enclosed as annexure D-1 of the application as also on an appointment letter of a directly recruited ITO class II in January 1969 (Annexure-D). They further strengthened

contd.2

2 :-

this argument by citing that the Central Board of Direct Taxes, maintains an ^{all-India} seniority list of Group B ITO's and promotion to the cadre of Group A ITO's are made with reference to this list. They further point out that the stopping of the allowance by the order at Annexure-B is arbitrary and whimsical as the considerations are not based on the ^{transfer} ~~liability~~ criteria laid down in the Ministry of Finance's order dated 14.12.1983. Elaborating this last named point, Mr. M. Chanda, the learned counsel for the petitioner pointed out that the reason for withdrawing the allowance after ^{this} ~~it~~ was enjoyed by these officers for nearly four years is that they are promoted from Inspectors on the basis of zone-wise ^{seniority} ~~cadre~~ and the Inspectors are recruited zone-wise. The other reason given in Annexure-B is that I.T.Os (Group B) are not normally outside their zone. transferred. The learned counsel argued that none of these criterion are the criteria laid down in Office Memorandum dated 14.12.1983.

After hearing the learned counsel for the petitioner we adjourned for a day as the learned ^{Addl.} Standing Counsel for the Central Govt. wanted time to file a written statement. On the next date however, he stated that the respondents will not file any written statement. However the learned Addl. C.G.S.C. argued the case. He tried to refute the contention of the petitioners that they have liability of transfer anywhere in India. He reiterated that normally Group B officers of the Income tax department are transferred only within the zone of allotment. But if the exigencies of the service so demanded they may be transferred outside the zone also. The learned counsel for the

contd.3

petitioner pointed out that all transfers are done in public interest and due to the exigencies of service.

The employer alone however is the judge whether the exigencies of service requires a transfer outside the region. In his opinion, therefore, the phraseology used in the appointment letter of a Group B officer in exhibit D really amounts to all India transfer liability for the employee. Mr. Sarma further tried to explain that the sentence occurring in the transfer guideline in respect of Group B and Group A officers (Annexure D-1) has to be read in the context of the promotion to Group A from Group B officers. After reading the full paragraph however, we are unable to accept this contention. In fairness Mr. Sarma accepted that the transfer guidelines shown in the Annexure D-1 of the petition is a faithful copy of the official guideline issued by the commissioner, Income tax, N.E. region, Shillong on 27.2.1985 based on the directions received from the Chairman, Central Board of Direct Taxes.

3. Here the controversy is limited to the question whether a group of officers who admittedly have liability to be transferred anywhere in India but are not normally transferred are entitled to this allowance. At a particular point of time in cases of similar nature the Guwahati Bench took the view that though there is an all India transfer liability imposed as one of the conditions of service in the case of such employees, yet if transfer liability not having been, in fact, enforced, the employees cannot claim any benefit under the said office memorandum. But the Calcutta Bench took

- 4 -

a contrary view in similar cases holding that such employees are entitled to the benefit under the said Office Memorandum irrespective of the fact as to whether such transfers had been effected or not. In order to resolve this controversy the Hon'ble Chairman constituted a Larger Bench and the Full Bench heard O.A.No. 16/88, O.A.17/88 and O.A.No.18/88 of the Calcutta Bench concluded that:

" We are of the opinion that when the condition of service imposed all India service liability and so long as that liability continues to exist and has not been revoked by an order of the competent authority, it is not open to the Government to deny the benefit of the Special (Duty) Allowance to any employee on the ground that the all India transfer liability has not been in fact enforced. "

The Full Bench judgment holds the ground ~~binding~~ and is ~~binding~~ on us. We have no doubt that the group of officers ~~have~~ ^{before us} liability to be transferred anywhere in India and that liability has neither ^{been} ~~revoked~~ and rescinded. It will be wholly unjustified to deny them the allowance merely on the grounds mentioned in the Govt. of India's letter dated 31.7.1987 (Annexure-B) and or to effect recovery of the allowance already paid contained in the order dated 5.7.1988 (Annexure-C). Consequently Govt. of India, Ministry of Finance's clarification dated 10.3.1988 (Annexure-E) also becomes liable for quashing.

We therefore quash all these three orders and dispose of the application by declaring that the applicants are entitled to SDA in terms of Govt. of India's letter dated 31.12.1983, and as modified from time to time and they shall be paid this allowance with arrears due to them within a period of 120 days from the date of receipt of a copy of this order. No order as to costs.

SD/-
VICE-CHADWAN
31.8.90

SD/-
MEMBER
31.8.90

Certified

Depy. Secy.
Govt. of India

17/8/90

THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 125 OF 1991
(Application for stay of order)

321866

IN THE MATTER OF

CIVIL APPELLATE NO. 2541 OF 1991

(Appeal by Special Leave granted by this Court's order dated the 6th day of May, 1991 in Petition for Special Leave to Appeal (Civil) No. 3023 of 1990 against the judgment and order of the Tax Tribunal, Gauhati (No. 100 of 1990) dated 11.11.1990)

Union of India
Secretary to the
Ministry of Finance,
Deptt. of Revenue,
New Delhi.

2. Commissioner of Income Tax,
N.E. Region,
Post Box No. 20
Shillong.

3. Central Board of Direct Taxes
(Through its Secretary)
North Block,
New Delhi-110001.

VERSUS

1. Income Tax Gazetted Services
Association, North Eastern Region,
(Through its General Secretary),

2. Shri J.C. Roy,
General Secretary,
Income Tax Gazetted Services Association,
North Eastern Region
Shillong

[Signature]
JUDGE (CIVIL)
Supreme Court of India

FOR THE PETITIONER/

HONORABLE THE CHIEF JUSTICE OF INDIA,
101, CHANDAN PALLE, CHANDAN PALLE,
101, CHANDAN PALLE, CHANDAN PALLE.

For the Respondent:

1. K.T.S. Tolst, Advocate,
Advocate General of India
(by Mr. K.T.S. Tolst and Mr. C.V. Rao,
Advocate for the Petitioner)
2. Mr. Shankar Choudhary, Advocate,
and Mr. P.L. Chatterjee, Advocate,
(Mr. J.R. Pandey, Advocate for the Respondent)

- 2 -

THE APPLICATION FOR STAY above-mentioned being called on for hearing before this Court on the 17th day of July, 1991. UPON hearing counsel for the parties herein while directing to list the case for final hearing alongwith the connected matters on 10th September, 1991 DOEN ORDER that this Court's order dated 20th February, 1991 passed in the interlocutory application No.2 in the matter granting stay of the operation of the judgment and order dated 31st August, 1990 of the Central Administrative Tribunal, Jharkhand Bench at Guwahati in O.A. No. 60 of 1990 continued by this Court's order dated 8th July, 1991 be and is hereby vacated.

AND THIS COURT DOEN FURTHER ORDER THAT THIS ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble Shri Rom Nath Mishra, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 17th day of July, 1991.

(C.L. CHAWLA)
DEPUTY REGISTRAR

38

ORIGINAL

FILED

1991

Sharma vs. SDA

RESPONDENT

Mr. J. L. Sarker

Mr. M. Chandra

Mr. G. Sharma Addl. C.G.S.C.

Order of the Court

6.8.91! In this petition a prayer has been made to direct the opposite parties in O.A. 80/90 to make immediate payment of SDA in view of the stay order having been vacated by the Hon'ble Supreme Court.

In O.A. 80/90 this court vide its judgment dated 31.8.90 directed payment of Special Duty Allowance to the petitioners in the said Original Application with arrears. The matter was carried to the Hon'ble Supreme Court and a stay order was obtained from the Hon'ble Supreme Court vide interlocutory application No. 1 of 1991 in connection with Special Leave to appeal (Civil No. 3828 of 1991). Hon'ble Supreme Court had stayed the operation of the judgment. Vide his order dated 28th February 1991 and vide order dated 17th July 1991 passed in interlocutory application No. 2 of 1991, the Hon'ble Supreme Court has vacated the stay order.

It is directed that opposite parties in O.A. 80/90 should disburse the amount to the petitioners in the said Original Application with arrears positively by 31st August 1991 failing which consequence of law would follow.

This order is passed after hearing by Mr. J. L. Sarker the learned counsel for the petitioner and Mr. G. Sharma, Addl. C.G.S.C who emphatically submitted that at least 90 days time should be granted. This submission by Mr. G. Sharma

contd..

of Addl. C.A.S.C. is overruled.

Copy of this order be made available to counsel for both sides and a copy be sent to the opposite parties in O.A. 80/90.

Sd/- K. P. Acharya

Vice-Chairman

TRUE COPY

Deputy Registrar (Judicial)
Central Administrative Tribunal
Guwahati Bench, Guwahati.

16/8/91

Annexure III

(12)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITIONS (C) Nos. 3091/91, 4703-86/91, 2151/90,
9446/90, 17150-82/90, 6378/90
4400/91, 8342/90, 17335/90,
11261/91, 10743-47/91, 9722/9
& 11827/91 & C.A. No 2648/91

The Union of India & Ors.

....Petitioners/Appellants

Vs.

Shri Joy Kanta Talukdar etc.

....Respondents

ORDER

All these special leave petitions and appeal preferred by the Union of India are allowed to be withdrawn as learned Addl. Solicitor General states that the Union of India intends to file review petitions before the Tribunals concerned. If the said review petitions are filed within a period of eight weeks from today, the tribunal not to dismiss the same merely on question of limitation and to dispose them of according to law. Stay in S.L.P. No. 9722/91 to continue for a period of eight weeks from today. Liberty to the petitioners to make appropriate applications for stay before the tribunal. In all other cases except S.L.P. No. 9722/91 it is directed that contempt proceeding for the non-compliance of the impugned orders not to be instituted or proceeded with for a period of eight weeks from today.

Contd..../2.

-2-

We do not express any opinion on the review petitions
or on the question of stay.

Sd/-

.....J
(M.H.KANIA)

Sd/-

.....J
(N.M.KASLIWAL)

Sd/-

.....J
(M.FATHIMA BEEVI)

NEW DELHI
11th September, 1991.

yy

Annexure E

F.NO.E-5/SDA/90-91/CT/ 4664
OFFICE OF THE COMMISSIONER OF INCOME TAX
NORTH EASTERN REGION : : : POST BOX NO. 20
SHILLONG-793001.

Dated: May 28, 1993.

To
Shri M. N. Das,
General Secretary,
I. T. G. S. A.,
Guwahati.

Sub:- Review Petition No.39/91
O.A. No. 80/90

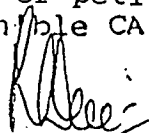
Union of India & Ors.

-Vs-

Income-tax Gazetted Services
Association and Ors.

.....

Please find enclosed copy of petition proposed to
be filed by the Government before the Hon'ble CAT, Cuttack Bench
for your kind information.



(R. DAS)
Assistant Commissioner of Income-tax, Hqrs.,
for Commissioner of Income-tax,
N:E:R., SHILLONG.
....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
CUTTACK

Misc. Petition No. /93

IN THE MATTER OF

Review Petition No. 39/91
O.A. 80/90

Union of India & Ors.

vs -

Income Tax Gazetted Services
Association & Ors.

Union of India represented by
Commissioner of Income Tax,
North Eastern Region,
Shillong Petitioner.

The petitioner named above
MOST RESPECTIFULLY SHEWETH :

1. That your humble petitioner is in receipt of the judgement and order in Transfer Application No.15/92 arising out of Review Petition No. 39/91 from the Cuttack Bench of the Central Administrative Tribunal.
O.A. 80/90
2. That in the said judgement and order the Hon'ble Cuttack Bench of the Central Administrative Tribunal had passed an order dismissing the Review Petition and as such the petitioner is to pay the Special Duty Allowance to the members of the Income Tax Gazetted Services Association.
3. That to implement the judgement and order dated 26.2.93 in Transfer Application No.15/92 (R.A. 39/91)
O.A. 80/90
a minimum period of six months is required.

It is therefore, prayed that this Hon'ble Tribunal would be pleased enough to admit this Misc. Petition and be pleased to allow six months time to implement the judgement and for this act of kindness, the petitioner shall ever pray.

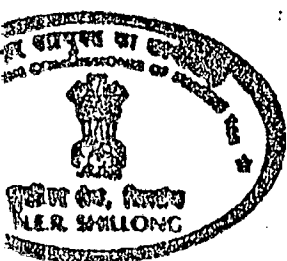
- (2) -

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

I, Shri R. Das, Asstt. Commissioner of
Income Tax, North Eastern Region, Shillong do
hereby solemnly affirm and declare as follows:-

that contents made in this Misc. Petition are
true to my knowledge and information and nothing
being suppressed.

I sign this verification at Shillong
on this Day of May, 1993.



Place . Shillong

Date -

Signature

आयकर सहायक आयुक्त (मुख्यालय)

Asstt. Commissioner of Income Tax (HQ)

शिलांग Shillong

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Misc. Petition No. / 93

IN

Review Petition No. 39/91
O.A. 80/80.

Union of India & Ors.

-Vs.-

Income Tax Gazetted Services,
Association & Ors.

(Written statement by the Respondents/Opposite Parties
in the Misc. Case).

The Respondent/Opposite Parties
in the above Misc. Petition.

Most Respectfully Sheweth :

1. That a copy of the petition filed by the Union of India & Ors. has been received the Opposite Parties i.e. the Income Tax Gazetted Service Association, and the contents thereof have been understood.
2. That in this connection it is stated that this is a case where during the pendency before the Hon'ble Supreme Court, the said Hon'ble Apex Court was pleased to vacate the initial stay order.

- 2 -

3. That the members of the Association have received Special (Duty) Allowance upto January, 1992.

4. That payment of S.D.A. was not made due to the Stay Order passed in the Review Petition filed by the Union of India & Ors.

5. That after the Review Petition has been dismissed by final Judgment on merits and the stay order passed in the Review application was vacated, the Misc. petitioners should have paid and continued to pay S.D.A. to the members of the Association.

6. That non-payment of S.D.A. is causing immense hardship to the members of the Association.

7. That it is a case where the Hon'ble Tribunal should be pleased to pass an order rejecting the prayer to allow any time for making further delay in the payment of S.D.A. to the members of the Association. It is further submitted and prayed that the Hon'ble Tribunal be pleased not to pass any order against the interest of the respondents in the M.P., without hearing the said respondents.

8. That the Misc. Petition deserves to be dismissed with cost.

...In verification

- 3 -

IN VERIFICATION

I, Suri..... son
of, aged about
. . . years, say that I am authorized to sign this
verification, and accordingly verify that the statements
made above are true to my knowledge.

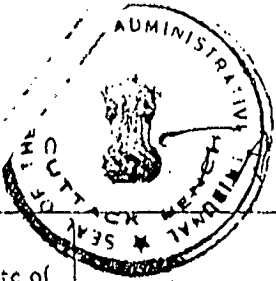
Page 11

15.8.88.

Signature
Young Tax General Services
Association, N.E. Region
TAX ASSOCIATION



Annexure #H



15/91 / R.A. 39/91

Date of Order

Order with Signature

14.6.93.

M.A. 374 of 1993.

I have heard Mr. G. Sharma, learned Standing Counsel. Cuttack Bench is now observing Summer Vacation. Mr. Sharma, learned Standing Counsel submitted that copy of the petition has been served on Mr. M. N. Das, General Secretary of the Association. Copy of the receipt has been maintained in the record. There is no appearance on the side of the Respondents in this misc. petition. Notice be issued to the respondents in this misc. petition to show cause by 30.7.1993 as to why this application will not be allowed. Implementation of the judgment in review application is hereby stayed till 2.9.1993. The prayer of Mr. Sharma to grant time for 6 months will be considered on 2.9.1993. Copy of this order be sent to Shri M. N. Das, General Secretary of the respondent association and since Mr. J. L. Sarkar was appearing for the applicants in O.A. 2880 of 1990, copy of this order be also sent to Mr. Sarkar, Advocate, Guwahati High Court, Guwahati. Copy of this order be made available to Mr. G. Sharma, learned Standing Counsel.

Sd/- K.P. Acharya
Vice-Chairman

TRUE COPY

[Signature]

Section Officer,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Annexure - I

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK



T.A. 15/92
R.A. 39/91

Union of India & ors ... Applicants
Vrs.

Income-Tax NER Service Assn. ... Respondents

Order dt. 2.8.93

M.A. 374/93

I have heard Mr. Gulab Sharma, learned Standing Counsel appearing for the applicants in the Review Application. Mr. Sharma prays for six months time more to implement the direction contained in the judgment.

There is no appearance from the side of the respondents. Time is granted till 30.10.1993 to implement the judgment.

Call on 2.11.1993 for further orders.

Sd. H. Rajendra Prasad
Member (ADMN)

COMPARED BY

TRUE COPY

Section Officer,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.

- 35

Annexure - J

E-TAX GAZETTED SERVICE ASSOCIATION

NORTH EASTERN REGION

Bhuban Road, Chaudhary Building

GUWAHATI-781001

(Affiliated to AIFITGSA New Delhi)

Phone : 41476

Date **8/4/93.**

To
The Commissioner of Income-tax,
North Eastern Region,
Post Box-20,
Shillong-793 001.

Sir,

Sub: Payment of Special Duty Allowance
to Group B Officers - regarding. -

.....

Consequent upon stay order passed by Central Administrative Tribunal, Cuttack Bench, the payment of Special Duty Allowance was stayed vide your telegraphic order dt. 3/2/92 and accordingly no payment of Special Duty Allowance is paid to Group B Officers working under your administrative charge.

In this connection your kind attention is hereby drawn to the Judgement dated 26/3/93 by the Central Administrative Tribunal, Cuttack Bench, Cuttack in TA No. 15 of 1992 by which Review petition filed by the Union of India against the original judgement dtd. 31.8.90 is dismissed and vacated the stay order passed earlier.

You are requested to pass necessary orders for payment of Special Duty Allowance to the officers including arrear at your earliest convenience.

In this context, it may be brought to you, kind notice that, the members of this Association are already put to financial hardship for depending the case before Supreme Court of India, New Delhi as well as in Cuttack for genuine cause. In view of drawal of the allowance by the Group B officers of most of the other Central Govt. Departments, the association request you kindly to consider the issue so that the members of this Association may not be put to further financial burdens for depending it cause before the highest Court of law.

Yours faithfully.

(M. N. Das)
General Secretary,
ITGSA :: NER :
Guwahati.

Copy to:

1) Sri P.S. Rastrapal, General Secretary, All India Federation of ITGSA, B-I, Khemank Chambers, Opp-Bahai Centre, Shahpur-Ahmedabad-380001 for information and necessary action.

(2) Copy to Com H. Chyone Joint Secy. General Secretary, ITGSA, NER, Guwahati, to pursue matter and also for information.



भारत सरकार

आयकर आयुक्त का कार्यालय

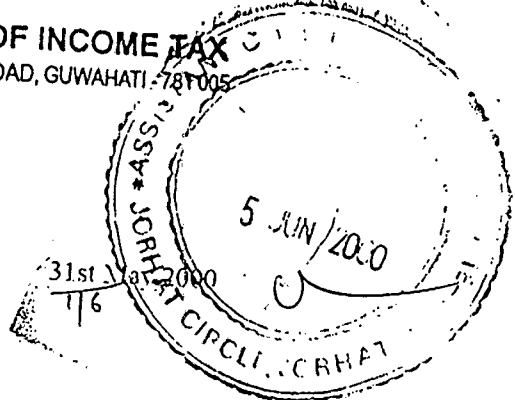
सर्विस कर्पोरेट कॉम्प्लेक्स, ग्रीनगर, जी. एस. रोड, गुवाहाटी - ७८१ ००५

GOVERNMENT OF INDIA

OFFICE OF THE COMMISSIONER OF INCOME TAX

SAIKIA COMMERCIAL COMPLEX, SREENAGAR, G. S. ROAD, GUWAHATI - 781005

फैक्स Fax : 0361-569791
दूरभाष Phone : 569733 (EPABX)
E-mail - cit_ghy@asm.nic.in



No.E-88/CIO/P&A/CIT/GHY/98-99/1102-23

To
All DDOs under the charge of
Commissioner of Income-tax, Guwahati
CCIT, Circle - Jorhat, Jorhat

Sub : Special Duty Allowance for Central
Govt. Servants posted to N.E.R. - Reg.

Please refer to the above mentioned subject.

2. As per Hon'ble Supreme Court's judgement delivered on 20.9.94 as reiterated in Government of India, Ministry of Finance (Department of Expenditure)'s O. M. No. 11(3) 195-E-II(B), dated 12.1.96, only the following category of Central Government civilian servants are entitled to grant of SDA :-

i) Government servants having All-India transfer liability (i.e. if the recruitment to the post is made on All-India basis and also if the promotion to the post is made on the basis on an All-India common seniority.

AND

ii) Such Government servants are transferred and posted to any station in the N.E.R. from outside the region.

In view of the above, it is amply clear that the Government servants who do not fulfil BOTH the above criteria/conditionalities, are not entitled to SDA.

3. Further, as per Apex Court's above judgement and Government of India's aforesaid O.M., SDA already paid to the ineligible persons on or before 20.9.94 shall stand waived. But SDA paid to the ineligible persons after 20.9.94 (even if the SDA pertains to the period prior to 20.9.94 but payments were made after 20.9.94) shall have to be recovered.

4. In spite of the above judgement and O.M. it is observed by the Department of Expenditure that some Departments/Offices have been continuing payment of SDA to their otherwise ineligible employees posted in N.E.R. and in some cases the payment of SDA is still being continued on the plea that applications filed by the employees before CAT/COURT are pending. The Department of Expenditure has opined that the judgement of the Apex Court has the effect of law throughout India and hence, no payment of SDA to ineligible persons should have been continued.

Contd Pg 2

Amended
Dm
Bdr

Contd -

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOME TAX
SAIKIA COMMERCIAL COMPLEX SREENAGAR G.S.ROAD, Guwahati-781005.

-2-

5. It is therefore, amply clear that if any payment is made to any ineligible person after 20.9.94 such payment being irregular, the same has to be recovered and it must be ensured that no payment of SDA is made to ineligible after 20.9.94. Who do not fulfil the above two conditions of eligibility, I am directed to request you to recover the amount of SDA paid after 20.9.94 to any ineligible persons.
6. I am directed to request you to furnish the following details :-
- a) Whether any S.D.A. is being paid to ineligible persons who do not fulfil the above two conditions.
 - b) Whether any SDA has been paid to any ineligible persons who do not fulfil the above two conditions of eligibility after 20.9.94. If so whether the amount so paid has been recovered and the name of the Officer who authorised the payment of such SDA.
 - c) Name of the Officers who are being paid SDA alongwith the dates from which such SDA is drawn.
7. The report on the above matter should reach this office on or before 9.6.2000 positively.

This should be treated as MOST URGENT and on TOP PRIORITY.

Sd. Sachindra Das

income-tax Officer. Headquarters
For Commissioner of Income-Tax, Guwahati.

*Amesha
Sachin
Dh.*

F.No.B-3/DCIT/JRT/2000-01/ 207
OFFICE OF THE DEPUTY COMMISSIONER
OF INCOME TAX: CIRCLE, JORHAT

Dated, Jorhat the 7th June 2000

To
The Commissioner of Income Tax
Saikia Commercial Complex
Sreenagar, G.S. Road
Guwahati-785 005

Sub:-Special Duty Allowance for Central Govt.
Servants Posted to N.E.R.-Regarding-

Ref:-C.I.T.'s No. E-88/CIO/P&A/CIT/GHY/
98-99/1102-23 dated 1.6.2000

Kindly refer to above.

The report called for vide C.I.T.'s letter cited above is
furnished below. As I happen to be the Drawing and Disbursing Officer I am furnishing the report
as per details mentioned hereunder:-

- A) That I have been paid S.D.A since 1.4.1990, since my promotion to the rank of Assistant Commissioner of Income Tax on 30.3.1990. At that time I was posted in the establishment of C.I.T., N.E.R., Shillong. Since then I have been drawing the S.D.A. Later on I was transferred to Dibrugarh, from Dibrugarh to Tinsukia and from Tinsukia to Jorhat. In all these postings I happened to be the drawing and disbursing officer and I continued to draw the S.D.A.

In this connection it is brought to your kind notice that, the matter of entitlement of S.D.A. to the officers of this Department was espoused by the Income Tax Gazetted Officers Association, N.E.R. before the Central Administrative Tribunal, Guwahati Bench vide O.A No.80/90. The honble C.A.T. delivered its judgment on 31.8.1990 and upheld the entitlement. SLP was filed before the Honorable Supreme Court by the Deptt. which was also withdrawn and a Review Petition was filed by the Deptt. before the Honorable C.A.T. The said Review Petition was also dismissed vide CAT's judgment and order dated 26.3.1993. In view of the same the entitlement of S.D.A in my case, in my humble submission, still continues.

Again O.A. No. 293/99 has also been filed by the Income Tax Gazetted Services Federation N.E.R unit before the C.A.T. Guwahati Bench, which is pending. The Honorable Tribunal has also passed an Interim order on 8.10.1999 directing that the payment of S.D.A be continued.

- B) As above.
C) C.K. SINHA Since 1.4.1990.

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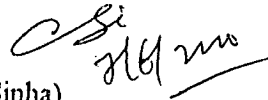
-39-

2 -

53

I am submitting the above facts and position as I happen to be my own drawing and disbursing Officer.

Necessary instruction may kindly be issued in this respect.



(C.K. Sinha)

Deputy Commissioner of Income Tax
Circle, Jorhat

- 40 -

Annexure - M

SPEED POST

54



24/7/00

भारत सरकार

आयकर आयुक्त का कार्यालय

सेकिया कमर्शियल कॉम्प्लेक्स, श्रीनगर, जी. एस. रोड, गुवाहाटी - ७८१ ००५

फैक्स Fax : 0361-569791
दूरभाष Phone : 569733 (EPABX)
E-mail - cit_ghy@asm.nic.in

GOVERNMENT OF INDIA

OFFICE OF THE COMMISSIONER OF INCOME TAX

SAIKIA COMMERCIAL COMPLEX, SREENAGAR, G. S. ROAD, GUWAHATI - 781 005

No.E-88/CIO/P&A/CIT/GHY/98-99/ 2132

14th July, 2000.

To
Shri C.K. Sinha,
Deputy Commissioner of Income-tax,
Circle-Jorhat,
Jorhat

Sub : Payment of SDA to ineligible officers after
20-9-94 - Recovery thereof - Matter Reg.

Please find enclosed copy of CCIT, Guwahati's letter dated 12th July, 2000 on the above mentioned subject.

In this connection, I have been directed to request you to stop drawal of SDA forthwith and also to ensure recovery of excess SDA drawn by you from 20.9.94 till date. You are also requested to send a compliance report to this end immediately.

PLEASE TREAT THIS MATTER AS MOST URGENT.

(Sachindra Das)

Income-tax Officer, Headquarters,
For Commissioner of Income-tax, Guwahati

Encl : As stated

Attended
J. Sinha
D. Sinha

-41-

Annexure - N



3246

मुख्य आयकर आयुक्त का कार्यालय (उ.पू.क्षेत्र) गुवाहाटी
साकिया कमर्शियल कॉम्प्लेक्स, श्रीनगर, जी. एस. रोड, गुवाहाटी - ७८१ ००५

भारत सरकार

फैक्स/Fax : (0361) 226110
दूरभाष/Phone : (0361) 226100
E-mail - cit_ghy@asm.nic.in

GOVERNMENT OF INDIA

OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX, (NER) GUWAHATI

SAIKIA COMMERCIAL COMPLEX, SREENAGAR, G.S. ROAD, GUWAHATI - 781 005

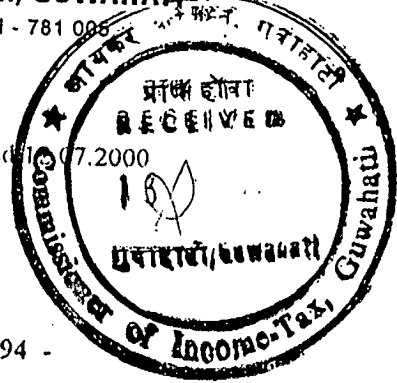
F.No.E-35/SDA/CCIT/GHY/2000-01/

dated 07.2000

To

- 1) The Addl. CIT, Range-I, Guwahati.
- 2) The JCIT, Jorhat Range, Jorhat.

Subject : Payment of SDA to ineligible officers after 20.9.94 -
Recovery thereof - Matter regarding -



It has come to our knowledge that the following officers of this N.E. Region who were NOT posted to this N.E. Region on transfer from outside the Region and who do not fulfil the eligibility criteria for grant/drawal of SDA, as spelt out in Govt. of India, Ministry of Finance (Deptt. of Expenditure)'s O.M.No.11(3)/95-E.II(B) dated 12.01.1996 (which reiterated Hon'ble Supreme Court Judgement in Civil Appeal No. 3251 of 1993 dated 20.9.94), drew/are still continuing to draw Special Duty Allowance even after the Apex Court Judgement dated 20.9.94, in contravention of the Govt. of India's aforesaid O.M. Dated 12.01.96 :-

- i) Shri G.C.Das, DCIT(promotee), ----- Drew SDA from 21.09.94 to 31.05.95
Inv.Circle-I, Guwahati.
- ii) Shri S.P.Sutradhar, ACIT(Promotee)- Drew SDA from 01.08.96 to 31.05.97
(since retired).
- iii) Shri C.K. Sinha, DCIT (Promotee), - Continuing to draw SDA from 21.09.94
Circle Jorhat, Jorhat. to till date.

2. The payment of SDA and the authorisation for such payment to the aforesaid ineligible officers in violation of the Govt. of India's aforesaid instructions, were highly irregular. The CCIT desires you to take necessary action to STOP payment of SDA to the ineligible officer(s) forthwith and to enforce recovery of the amount already paid after 20.9.94 from the aforesaid two serving officers and to send a compliance report to this end.

3. As regards the retired Govt. Servant, it is for the ZAO, CBDT, Shillong to take action for recovery of the amount of SDA already paid after 20.9.94 to him.

(A.M. SANGMA)

Addl. Commissioner of Income-tax, Hqrs.,
for Chief Commissioner of Income-tax,
Guwahati

(Contd...Page...2)

Amended
Pm.
Dm.

20.9.99

(Page - 2)

Memo.No.E-35/SDA/CCIT/GHY/2000-01/ 3233-36

Dated 12.07.2000

73

Copy to :-

- 1) The CIT, Guwahati, for information. This has reference to his letter No. E-88/P&A/CIT/GHY/97-98/1772 dated 4/5.7.2K. He is requested to cause an enquiry and to fix the responsibility of the officer concerned who had authorised such wrong and irregular payment of SDA to the ineligible officers, in violation of the Govt. of India's extant instructions & at the same time NOT enforced recovery of the amount of SDA already paid after 20.9.94, from the ineligible officers, and to send a report to this end, in the matter. He is further requested to monitor the recovery of the over drawal of the SDA.
- 2) The ZAO, O/O the Principal Chief Controller of Accounts, CBDT, Dhankhti, Shillong - 793 003, for information and necessary action in the above matter.
- 3) Field Pay Units, Guwahati/ Dibrugarh for information and necessary action.

(A.M. SANGMA)

Addl. Commissioner of Income-tax, Hqrs.,
for Chief Commissioner of Income-tax,
Guwahati.

8.7.20

*Amelio
San. Don.*

F.-Per/SDA/2000-01/ 588

Dated, Jorhat the 8th August 2000

To
The Commissioner of Income Tax
Saikia Commercial Complex
Sreenagar, G.S. Road
Guwahati-785 005

Sub:-Special Duty Allowance for Central Govt.
Servants Posted to N.E.Region-Drawal thereof-

Ref:-C.I.T.'s No. E-88/C-10/P&A/CIT/GHY/98-99/
2132 dated 14.7.2000.

Kindly refer to C.I.T.'s letter No. Cited above whereby I
have been directed to stop drawal of S.D.A. forth with and ensure necessary recovery of excess
S.D.A drawn by me.

However from the C.I.T.'s letter cited above it appears that
the points mentioned by me in my letter B-3/DCIT/JRT/2000-01/207 dated 7.6.2000 have not
been considered.

Once again I want to reiterate what have been mentioned in
that letter and also want to draw your kind attention to the fact that on my promotion to group 'A'
Service I have been granted S.D.A as in the case of other Group 'A' officers as a matter of policy.
I may mention here again that in the latest O.A.No 293/99 filed by I.T.G.S.F. in which I am also a
member, the Honble C.A.T has passed an interim order to the effect that the payment of S.D.A be
continued. In view of the present order of the C.A.T which holds the field, I am entitled to draw
S.D.A till that order is negatived by a higher court of law. For C.I.T.'s kind perusal, I am enclosing
my letter dated 7.6.2000, referred to above.

This matter is therefore brought to your kind notice for
considering my case in the light of C.A.T.'s interim order in O.A. 293/99. The fate of my
submission may kindly be intimated.

[Signature]

[Signature]
8/8/00

(C.K.Sinha)

Deputy Commissioner of Income-tax, circle, Jorhat



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भारत सरकार

आयकर आयुक्त का कार्यालय

सैकिया कमर्शियल कॉम्प्लेक्स, श्रीनगर, जी. एस. रोड, गुवाहाटी - ७८१ ००५

GOVERNMENT OF INDIA

OFFICE OF THE COMMISSIONER OF INCOME TAX

SAIKIA COMMERCIAL COMPLEX, SREENAGAR, G. S. ROAD, GUWAHATI - 781 005

फैक्स Fax : 0361-568791
दूरभाष Phone : 569733 (EPABX)
E-mail - cit_ghy@asm.nic.in

No.E-88/P & A/CIT/GHY/98-99/ 3272

25th August, 2000

To
Shri C. K. Sinha,
Deputy Commissioner of Income-tax,
Circle-Jorhat,
Jorhat, Assam

Sub :- Special Duty Allowance (SDA) for
Central Govt. Servants posted in
N.E. Region - Matter Regarding -
.....

Please refer to your letter under F.No. Rer/SDA/2000-01/588, dated 8.8.2000 on the above mentioned subject.

2. The Hon'ble Supreme Court vide its judgement dated 20.9.94 in Civil Appeal No. 3251 of 1993 has clearly demarcated the categories of Central Government Servants posted in N.E. Region who are eligible to draw SDA. The Govt. of India, Ministry of Finance (Department of Expenditure) vide its O.M.No. II (3)/95-E, II (B), dated 12.1.96 reiterated the Apex Court's order. And, as per the above O.M. you are not entitled to draw SDA and SDA drawn on or after 20.9.94 should be refunded.

3. ^{not} The case cited by you relates Income-tax Officers, Group-B and is, therefore, applicable to you.

4. In view of above, I am directed to request you to STOP drawing SDA forthwith and to ensure recovery of SDA drawn by you from 20.9.94 onwards.

5. The compliance report may be sent to this office immediately.

(Sachindra Das)

Income-tax Officer, HQrs.,

For Commissioner of Income-tax, Guwahati

*Amended
Sachindra Das*

- 45-

FORM NO. 4

(See Rule 42)

Annexure - Q

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 293/99

OF 199

Applicant(s) *Income Tax Gazetted Service*

Federation and ors.

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

Advocate for Applicant(s) *Mr. J. L. Sarkar, Mrs. S. Deka.*

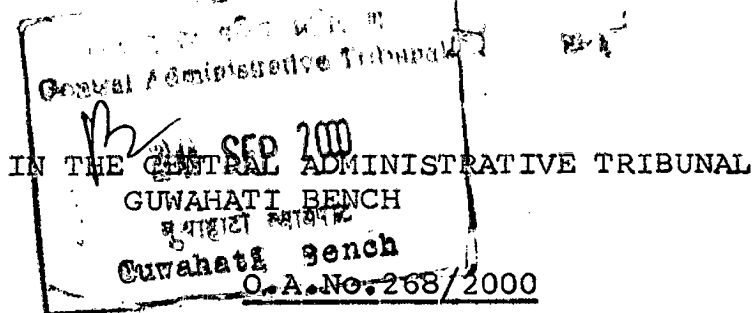
Advocate for Respondent(s)

C. G. S. C.

Date	Order of the Tribunal
8.10.99	<p>Heard Mr J.L. Sarkar, learned counsel for the applicants. Mr B.C. Pathak, learned Addl. C.G.S.C. informs that till now he has not received any instructions. The application is admitted.</p> <p>Mr Sarkar prays for an interim order to allow the applicant to draw SDA. Mr Pathak submits that he has no instructions. Issue notice to the respondents returnable by four weeks.</p> <p>List it on 19.11.99. Meanwhile the respondents shall pay SDA to the applicants as per the judgment.</p>

Sd/-VICECHAIRMAN

Alleged
112
12/11/99



60
Filed by:-
S. D. Datta
Advocate
20-9-2000

Sri C.K.Sinha ... Applicant.
-Vs-
Union of India ... Respondents.

Additional Annexures.

Counsel of the applicant hereby files the following documents as Annexures of the O.A. to be treated as the part of the application. (Annexures and page numbers are continuation from original).

	<u>Particular</u>	<u>Page</u>
Annexure - R.	Extract of the O.A. dt.14.12.83 regarding S.D.A.	46-47
Annexure - S	O.M. dt. 12.1.96	48-49
Annexure - T	Order dt. 7-9-95 of the Hon'ble S.C.in C.A.8208-8213	50-51
Annexure -U	Order dt.17.2.97 of the Hon'ble S.C. in C.A. 1572 of 1997	52-56
Annexure- V	Order dt.27.10.98 in O.A.No.189/96 and order dt. 26.6.98 in O.A. No 97/97	57-60 61-63
Annexure-W	Certificate of the Income Tax Gazetted Service Federation regarding membership of the applicant.	64. 64

S. D. Datta,
Advocate

No.20014/3/83/E.IV
 Government of India
 Ministry of Finance
 Department of Expenditure

New Delhi, the 14th Dec'83

OFFICE MEMORANDUM

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

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

- i) Tenure of posting/deputation
 x x x x x x x x x x
- ii) Weightage for Central deputation/training abroad and special mention in Confidential Records.
 x x x x x x x x x x
- 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 a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Such of those employees who exempted from payment of income tax will however, not be eligible for this Special (Duty) Allowance. Special (Duty)

Contd.. .

3
Allowance will in addition to any special pay subject and pre deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

x x x x x x x x

x x x x x x x x

x x x x x x x x

SD/- S.C. MAHALIK

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

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

New Delhi, the 12th Jan 1996.

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's O.P. No. 20014/3/67-EI V dated 14.13.83 and 20.4.88 read with O.P. No. 20014/16/86.E.IV/E.II(B) dated 1.12.88 on the subject mentioned above.

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

3. It was clarified vide the above mentioned OM dt 20.4.87 that for the purpose of sanctioning "Special Duty Allowance" the "All India Transfer Liability" of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

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

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministries/Department 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) uphold the submission 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

Contd...2..

been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

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

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

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

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

10. Hindi version of this OM is enclosed.

Sd/- xx xx xx
(C. Balachandran)

Under Secy to the Govt. of India

All Ministries/Departments of Govt of India, etc.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 8208-8213
(Arising out of SLP Nos. 12450-55/92)

Union of India & Ors. - Appellances
-versus-
Geological Survey of India - Respondents
Employees' Association & Ors.

ORDER

Delay condones

Leave granted

Mr. P.K. Goswami, learned senior counsel appears for Geological Survey of India Employees' Association and Mr. B.K. Nandy, Advocate, appears for the other respondents in all the matters.

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

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Annexure-6 (contd.)

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Others Vs. S. Vijay Kumar & Others (1994) (3) SCC 649).

Accordingly, the impugned order is set aside, we however direct that the appellant will not be entitled to recover any part of payment of special duty allowance already made to the concerned employees. Appeals are accordingly disposed of.

New Delhi

September 7, 1998

cc/- G.N. Ray,

cc/- S.D. Majumdar

160619

Certified to be true

Assistant Registrar (Judicial)

5-3-1997

Supreme Court of India

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1572 OF 1997
(Arising out of SLP (C) No. 14088 of 1996)

Union of India & Ors. etc.

Versus

... Appellants

B. Prasad, B.S.O. & Ors. etc.

... Respondents

WITH
CIVIL APPEAL NOS. 1573-1576, 1577, 1578-1579, 1580-1585/37)
(Arising out of SLP (C) Nos. 17236-39, 14104, 15141-42,
15740, 25108-10 of 1996, SLP (C) No. 4396/96 (CC-
5040/96) and SLP (C) No. 4398/96 (CC-6860/96))

O R D E R

Leave granted. We have heard learned counsel
for the parties.

These appeals by special leave arise from the
various orders passed by the Central Administrative
Tribunal, Gauhati Bench in different matters. The main
order was passed on 17.11.1995 in RA No. 4/95 in OA
No. 49/89.

The Government of India have been issuing
orders from time to time for payment of allowances and

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facilities for civilian employees of the Central Government servants working in the States and Union Territories of the North-eastern region. It is not in dispute that Special Duty Allowance was ordered by the Government @ 25% of the basic pay subject to a ceiling of Rs.400/- per month on posting on any station in the North-eastern region. Subsequently, the Government have been issuing orders from time to time. In the proceedings dated April 17, 1995, Government modified the payment of the Special Duty Allowance and Special Compensatory (Remote Locality) Allowance as under:

"The newly defined Field Area Civilian employees, serving in the newly defined Field Area will continue to be entitled to Special Compensatory (Remote Locality) Allowance and other allowances as admissible to Defence Civilians, as hitherto, under existing instructions issued by this Ministry of Defence Civilian employees in the newly defined Field Area. Special Compensatory (Remote Locality) Allowance and other allowances not concurrently admissible along with Field Service Concessions."

It is contended by Mr. P.P. Malhotra, learned senior counsel appearing for the Union of India, that the view taken by the Tribunal that they are entitled to both, is not correct and that they would be entitled

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to either of the allowances. Shri P.P. Rao, learned senior counsel appearing for some of the respondents has contended that those civilian employees working in the defence service at various stations in the North-eastern region were given Special Duty Allowance with a view to attract the competent persons and the persons having been deployed, are entitled to the same and the amended concessions would be applicable to those employees who are transferred after April 17, 1975. All those who were serving earlier would be entitled to both. Shri Arun Jaitely, learned senior counsel appearing for some of the respondents has drawn our attention to the distinction between Field area and Modified Field area and submitted that in cases where civilian employees are supporting the field defence persons deployed for the border operational requirements facing the immense hostilities, they will be denied the payment of both allowances while the personnel working in the Modified Field Area, in other words, in barracks, will be entitled to double benefit of both the allowance. This creates hostile discrimination and unjust results.

Having regard to the respective contentions, we are of the view that the Government having been

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extending the benefit of payment of Special Duty Allowance to all the defence employees working in the North-eastern region as per the orders issued by the Government from time to time as on April 17, 1995, they are entitled to both the Special Duty Allowance as well as Field Area Special Compensatory (Remote Locality) Allowance. The same came to be modified w.e.f. that date. Therefore, irrespective of the fact whether or not they have been deployed earlier to that date, all are entitled to both the allowances only upto that date. Thereafter, all the personnel whether transferred earlier to that or transferred from on or after that date, shall be entitled to payment of only one set of Special Duty Allowance in terms of the above modified order.

As regards the payment of Special Duty Allowance to the defence civilian personnel deployed at the border area for support of operational requirement, they face the imminent hostilities supporting the army personnel deployed there. Necessarily, they alone require the double payment as ordered by the Government but they cannot be deprived of the same since they are facing imminent hostilities

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in hilly areas risking their lives as envisaged in the proceedings of the Army dated January 13, 1994. But the Modified Field Area, in other words, in the defence terminology, "barracks" in that area is a lesser risking area; hence they shall not be entitled to double payment. Under these circumstances, Mr. P.P. Malhotra is right in saying that the wording of the order requires modification. The Government is directed to modify the order and issue the corrigendum accordingly.

The appeals are disposed of accordingly. It is made clear that the Union of India is not entitled to recover any payments made of the period prior to April 17, 1995. No costs.

Sd/-
.....J.
(K. RAHASWAHY)

Sd/-
.....J.
(G. T. NANAVATI)

NEW DELHI;
FEBRUARY 17, 1997.

S.O

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Annexure - V

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.189 of 1996.

Date of Order: This the 27th Day of October 1998.

HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN
HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Shri K.C.Sharma & Others.

(All the applicants are working under the Deputy Assistant Director General(MS), Govt. Medical Store Depot, P.O. Gopinath Nagar, Guwahati-16 in different capacities as Group B,C & D categories). ... Applicant.

By Advocate Mr.J.L.Sarkar, Mr.M.Chanda,

-Vs-

1. Union of India ,
(Through Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110011.
2. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.
3. The Deputy Assistant Director General(MS)
Govt. Medical Store Depot, A.K.Azad Road,
P.O.Gopinath Nagar,
Guwahati-781016. ... Respondents.

By Advocate Mr.S.Ali, Sr.C.G.S.C.

O R D E R

BARUAH, J. (VC):

In this application the applicants have challenged the impugned Annexure-5 letter dated 27-8-96, issued by the Deputy Assistant Director General, Ministry of Health & Family Welfare stopping the Special Duty Allowance on the basis of Annexure-3, office Memorandum dated.12-1-1996 issued by the Under Secretary, Government of India, Ministry of Finance, Department of Expenditure. They also seek certain directions. Facts are :-

The applicants are Group 'C' and 'D' employees of the Government Medical Store Depot at Guwahati in various capacities. The applicants used to receive Special Duty Allowance(SDA) pursuant to the judgment dated 8-2-91 passed by this Tribunal in O.A.No.208 of 1991. The respondents

contd/-

in the said O.A. being aggrieved by and dissatisfied with the order of this Tribunal, approached the Supreme Court by filing SLP No.9381/92(Annexure 2 to the application. When the SLP was moved similar matters regarding SDA were pending before the Supreme Court. The Supreme Court after noticing the Special Leave Petition and passed the following order :-

"There is a delay of 347 days in filing this SLP for which there is no cogent explanation.

Learned counsel for the petitioners submitted that the point involved for decision on merits in this S.L.P is important and is also involved in some other pending SLPs, one of which is SLP(C)No.13710/87. In our opinion this cannot be a ground for condonation of the inordinate delay for which no cogent explanation has been offered by the petitioners.

I.A.No.1 for condonation of delay is rejected. Consequent the SLP is dismissed as time barred."

The aforesaid order dated 23-7-92 of the Supreme Court was passed after this Tribunal's order dated 8-2-91 in O.A.No.208/91. The applicants have been getting SDA on the basis of the order of this Tribunal. Meanwhile, the Supreme Court in its judgment delivered on 20-9-94 (in Civil Appeal No.3251 of 1993) held that the Central Government Civilian Employees who have all India transfer liability are entitled to receive of SDA, on being posted in any station in the N.E. 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 held that benefit of this allowance is available only to the officers transferred from outside the NE Region to this Region. This would not be violative of the provisions contained in the Article 14 of the constitution as well as the equal pay doctrine.

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After the disposal of the aforesaid application by the Supreme Court, Annexure 3 order was issued by the Under Secretary, Government of India, Ministry of Finance, directing the department concerned to stop payment of SDA on the ground that the local employees were not entitled to get SDA. Pursuant to the said Annexure 3 O.M. dated. 12-1-1996, Annexure 5 order was issued. Hence the present application. In due course the respondent have entered appearance and have filed written statement. This Tribunal issued notice to the respondents to show cause as to why the present application should not be admitted. After the reply was filed, the application had been admitted. The respondents urged that the reply to the show cause might be treated as written statement. In the said reply the respondents have refuted the claim of the applicants. The respondents have submitted that in view of the order passed by the Supreme Court the applicants cannot claim any SDA.

We heard learned counsel for both sides. Mr.J.L. Sarkar learned counsel for the applicants submitted before us that in so far as the present case was concerned after dismissal of the SLP by Supreme Court as barred by limitation, the Tribunal's order dated 8-2-91 passed in O.A. No.208/91 became final. Mr.J.L.Sarkar further submitted that the Supreme Court has not passed any order nullifying the order passed by this Tribunal till now. This Tribunal had no authority to alter the same. Mr.Sarkar further submitted that the Supreme Court passed the order dated 23-7-92 in other cases stating that local candidates would

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would not be entitled to get the SDA. But that would not affect the present case which reached its finality.

On the rival contention of the parties it is now to be seen whether the applicants are entitled to get the SDA. This Tribunal cannot pass any order reviewing order passed earlier by this Tribunal as the Supreme Court had dismissed the SLP against the said order of the Tribunal. Therefore, we agree with the submissions of Mr. Sarkar that the applicants are entitled to get the SDA on the basis of the judgment passed by this Tribunal in O.A.208/91. In view of the above circumstances the Annexure 3 O.M. dated 12-1-96 shall not have any effect so far the present applicants are concerned, unless the Supreme Court reviews the order dated 8-2-91 passed by this Tribunal in O.A.No.208/91. Therefore, we set aside the Annexure 5 order. The applicants shall continue to get the SDA.

Application is accordingly disposed of. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Alleged
J.P.M.
S.W.

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 others

By Advocates Mr J.L. Sarkar, Mr B.K. Sharma,Applicants
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.)

AB

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. The Apex Court disposed of all the above 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

LETTER OF AUTHORISATION

I, C. K. Siva
 (name and designation) being a member of Income-tax Gazetted Services Federation, Branch Unit : North Eastern Region hereby authorise deduction of annual subscription of Rs. 120/- (Rupees One Hundred Twenty) only for 1995-96 (Year) from my salary and authorise its payment to Income-tax Gazetted Services Federation.

Signature : C. K. SivaName : (C. K. SIVA)Designation : ACITTO BE FILLED IN BY THE FEDERATION

It is certified that Sh./Smt. C. K. SIVA ACIT

_____ is a member of Income-tax Gazetted Services Federation, Branch Unit North Eastern Region.

[Signature]
 Signature of authorised
 Office Bearer

File in 17.04.96
 30/5/96
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Approved
 [Signature]
 [Signature]