

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 282/2000

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SECTION OFFICER (Judl.)

Salik
21/12/17

SH - 282/00

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

SUWAHATI BENCH: SUWAHATI. 5 (FORM NO. 4)
ORDER SHEET. (See Rule-42)

APPLICATION NO. 282/2000

Applicant(s) Rabinankar Seal ad on.

Respondents(s) Union of Indn and os.

Advocate for Applicant(s) Mr. A. Verma

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

Notes of the Registry

DATE

ORDER OF THE TRIBUNAL

22.9.00

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

Heard Mr A.Verma, learned counsel for the applicants and also Mr B.C.Pathak, learned Addl.C.G.S.C for the respondents.

Application is admitted. Issue usual notices.

List on 27.10.2000 for written statement and further orders. Meanwhile the respondents are directed not to make any recovery of SDA as per Memo No.Estt/DDM/SDA/96-7374 dated 1.7.2000 (Annexure-3) of the application until further orders.

Vice-Chairman

pg

27.10.00

Two weeks time is granted to the respondents to file written statement on the prayer of Mr.B.C. Pathak, learned Addl.C.G.S.C. for the respondents.

List on 13.11.00 for written statement and further orders.

Vice-Chairman

28/9/00 Notice returned and sent to Despatch Section for issuing the respondent No 1 to 4 vide G/No 2080 to 2083 dtd 3.10.2000

No. of 3 has been filed.

25.10.00

Memo of appearance not yet filed by the C.G.S.C.
12/11/2000

13.11.00

Four weeks time granted to the respondents to file written statement on the prayer of Mr B.C.Pathak, learned Addl.C.G.S.C.

List on 11.12.00 for order.


Vice-Chairman

pg.

11.12.00

List it for hearing along with connected matters on 19.12.2000. In the meantime, the respondents may file affidavit, if so advised.


Member


Vice-Chairman

mk

19.12.00

Heard learned counsel for the parties. Hearing concluded. Judgment reserved.


Member

Vice-Chairman

lm

22.12.00

Judgment delivered in open Court. Kept in separate sheets. Applications is allowed. No order as to costs.


Member


Vice-Chairman

lm

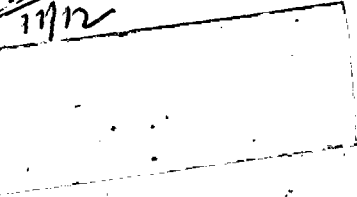
8-12-00

No WJs have been

filed.

lay

Notice duly served on
R.No 184 & 233 are advised
1/1/12



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO.149 OF 1999.

(AND 17 OTHER ORIGINAL APPLICATIONS)

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

Date of decision - December, 22, 2000.

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

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

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

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

- APPLICANTS

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

- Versus -

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

contd ...

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

- RESPONDENTS

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

J U D G M E N T

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

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




2. The cause of action, the issues raised and relief sought for in this O.A. are same as raised in O.A. No.217/98 (All India Central Ground Water Board Employees Association, North Eastern Region Central Ground Water Board, Tarun Nagar, Guwahati-5 and others - Vs - Union of India and others), (2) O.A. No.274/98 (Sri Dulal Sarma and others -Vs- Union of India and others), (3) O.A. No.18/99 (National Federation of Postal Employees Postmen and Gr.D - Vs - Union of India and others), (4) O.A. No.21/99 (Makhon Ch. Das and others - Vs - Union of India and others), (5) O.A. No.282/2000 (Rabi Shankar Seal and others - Vs - Union of India and others), (6) O.A. No.223/99 (Shri K. Letso and others - Vs - Union of India and others), (7) O.A. No.208/2000 (Krishanlal Saha and others - Vs - Union of India and others), (8) O.A. No.23/99 (Ordinance Mazdoor Union and another - Vs - Union of India and others), (9) O.A. No.24/2000 (Ramani Bhattacharyya - Vs - Union of India and others), (10) O.A. No.21/2000 (Sri Louis Khyriem and others - Vs - Union of India and others), (11) O.A. No.428/2000 (Sri T. Ahmed and others - Vs - Union of India and others), (12) O.A. No.297/98 (Biswajit Choudhury and others - Vs - Union of India and others), (13) O.A. No.380/99 (Smt. Sanghamitra Choudhury and others - Vs - Union of India and others), (14) O.A. No.296/98 (Dwijendra Kumar Debnath and others - Vs - Union of India and others), (15) O.A. No.187/98 (All Assam M.E.S. Employees Union and another - Vs - Union of India and others), (16) O.A. No.234/2000 (Gautam Deb and others - Vs - Union of India and others), (17) O.A. No.81/9900 (Sri Nitya Nanda Paul - Vs - Union of India and others) and (18) O.A. No.84/2000 (Subodh Ch Gupta and 56 others - Vs - Union of India and others). We, therefore, proceed to hear all the

cl

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

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

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

 wherein ...

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

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


the clause ...

the clause in the appointment order relating to all India transfer liability. It is also stated that the Apex Court ~~also~~ added that the grant of this allowance only to the officers transferred from outside the region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Supreme Court further directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them. But a contradictory view has been taken in regard to recovery of the Special (Duty) Allowance from the applicants vide para 7 of the office memorandum dated 12th January, 1996. The relevant para 7 of the office memorandum dated 12th January, ¹⁹⁹⁶ is as follows :-

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

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

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

 considerable ...

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

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

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

"It appears to us that although the employees of the Geological Survey of India were initially appointed with an All India Transfer Liability, subsequently, Government of India framed a policy that Class C and D employees should not be transferred outside the Region in which they are employed. Hence All India Transfer Liability no longer continues in respect of Group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having All India Transfer Liability is not to be paid to such group C and D employees of Geological Survey of India who are residents of the Region in which they are

posted ...

posted. We may also indicate that such question has been considered by this Court in Union of India and others - Vs - S. Vijayakumar and others (1994) 3 SCC 649."

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

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



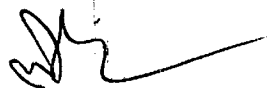
10. The question for consideration before us is as to whether the applicants are entitled for the payment of S.D.A. and if not, whether the recovery of the amount of S.D.A. already paid to them beyond 20.9.1994 is to be effected. The issue relating to the grant of S.D.A. has been considered and decided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

"We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 29.10.1986 which has been quoted in the memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1983 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining" the service of the competent officers for service in the North Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 Memorandum makes this position clear by stating that Central Government Civilian Employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North Eastern Region". This

aspect is made clear beyond doubt by the 1987 Memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the Office Memorandum of 1983 the subject was mentioned as quoted above is not be enough to concede to the submission of Dr. Ghosh."

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

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

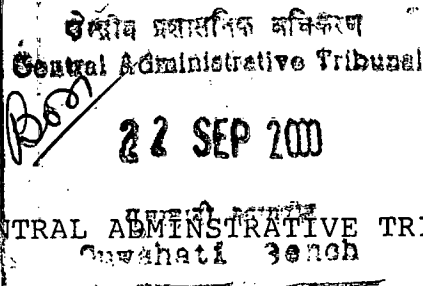


12. For the reasons recorded above, the O.A. is partly allowed and the respondents are directed that no recovery would be made by them of the amount of S.D.A. already paid to the applicants upto 31.1.1999. In case any amount on account of payment of S.D.A. has been recovered/withheld from retiral dues,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

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

No order as to costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

O.A. NO. 282 OF 2000

Shri Rabishankar Seal & others.....Applicants

VS

Union of India & others.....Respondents

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Filed by
Alok Verma
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Filed by:-
Alok Verma,
Advocate
22/9/2000.

(An application under section 19 of the Administrative Tribunal Act, 1985)

O. A. NO. 282 OF 2000

In the matter of :

1. Shri Rabishankar Seal F. O. (T) son of Late S. K. Seal.
2. Sri Pranab Bhowmik, J.T.O. son of Late P. N. Bhowmik.
3. Shri Golap Hazarika, P. A. son of Late K. Hazarika.
4. Sri Kumud Ch. Bora, Assistant son of Late Uttam Ch. Bora.
5. Shri Kumar Bharat Saikia, FO (T) son of Late Surendra Nath Saikia.
6. Shri Khira Pd. Saikia, FO (T) son of Late Lakhi ~~Saikia~~ Saikia.
7. Shri Nipul Suklya Baidya, FO(T) son of Late T. M. Suklya Baidya.

Applicants No. 1, 2, 3 and 4 are working at Doom Dooma and applicants No. 5, 6 and 7 are working at ~~Nagaland~~ Numaligarh, dist Golaghat. All are employees under Aviation Research Centre, Doom Dooma, dist Tinsukia, Assam.

- VS -

1. Union of India

Represented by the Cabinet Secretary,
Department of Cabinet Affairs, Bikaner
House, Shahjahan Road, New Delhi.

Rabishankar Seal.

2. The Director General of Security
Block V (East) R. K. Puram,
New Delhi - 110066.
3. The Director
Aviation Research Centre Block V (East)
R. K. Puram,
New Delhi - 110066
4. The Deputy Director (Admn)
Aviation, Research Centre ~~Doom Dooma~~
Doom Dooma - 796151
Dist - Tinsukia (Assam)
..... Respondents

DETAILS OF APPLICATION

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

This application is made against the order of discontinuation of special Duty Allowance (for short SDA) and recovery of the SDA already drawn with effect from & 20.9.1994 issued under Memorandum No ESTT/DDM/SDA/96-7974 Dated 01/07/2000 issued by the Deputy Director (Assam), Aviation Research Centre Doom Dooma.

2. JURISDICTION

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

3. LIMITATION

The applicants declare that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

Rabi Shankar Seal

4. FACTS OF THE CASE

4.1. That the applicants are working in different capacities in the Aviation Research Centre (for short ARC), Doom Dooma, dist Tinsukia, Assam ~~at present~~ and at present applicants Nos 1, 2, 3 and 4 are posted at Doom Dooma dist Golaghat and applicants No. 5, 6 and 7 are posted at Numaligarh. The cause of action of the applicants is same and they are law paid employees and as such pray before this Hon'ble Tribunal to allow them to move this application jointly under Rule 4(5) (a) of the Central Administrative Tribunal (procedure) Rules, 1987.

4.2. That the Government of India, Ministry of Finance, Department of Expenditure granted certain improvements and facilities to the Central Government Civilian Employees of the Central Government serving in the states and Union Territories of North Eastern Region vide Office Memorandum No. 20014/3/83-IV dated 14-12-1983. In clause II of the said office memorandum special (Duty) Allowance was granted to Central Government Civilian Employees, who have all India Transfer Liability at the rate of Rs. 25% of the basic pay subject to ~~max~~ ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. The relevant portion of the office Memorandum dated 14. 12.1983 is quoted below :

(iii) Special (Duty) Allowance :

Central Government Civilian employee who have all India Transfer Liability will be granted a special (Duty). Allowance at the rate of Rs. 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North

Rabishankar Seal.

Contd... 4/P

~~Exempted~~

East Region. Such of these employees who are exempted from payment of Income Tax, will however not be eligible for the special (Duty) Allowance, special (Duty) Allowance will be in addition to any Special pay and for allowances already being drawn subject to the condition that the total of such special (Duty) Allowance plus special Deputation (Duty) Allowance will not exceed Rs. 400/- per month. Special Allowance like special Compensatory (Remote) Locality Allowance, Construction Allowance and project Allowance will be drawn separately.

An Extract of Office Memorandum dated 14-12-1983 and Office Memo dated 01-12-1988 are annexed hereto and the same are marked as Annexure - 1 & 2 respectively.

4.3. That the present applicants beg to state that they are saddled with All India Transfer Liability in terms of their offer of appointment and with this said liabilities they have received the offer of appointment and joined the service of the respondents. Be it stated that, they are liable to be transferred outside the North Eastern Region. Therefore, the applicants are in practice saddled with all India Transfer Liability and in terms of Office Memorandum dated 14-12-1983 they are legally entitled for grant of Special (Duty) Allowances.

4.4. That your applicants further beg to state that the payment of Special (Duty) Allowance has been granted to

Rab Shakti or Seal

the applicants as per eligibility and criteria mentioned in the Office Memorandum regarding payment of Special Duty Allowance.

4.5. That your applicants beg to state that suddenly Respondent No. 4 has issued Memorandum No. ESTT/DDM/SDA/96-7974 dated 01-7-2000 to revoke the Special Duty Allowance amount paid by Respondents to the applicants. After that the applicants have also filed representation against the stoppage and recovery of Special Duty Allowance from them before the Respondents No. 3.4.

Copy of Memorandum dated 1-7-2000
is annexed and marked as ANNEXURE - 3

4.6. That the applicants beg to state that the payment of Special (Duty) Allowance is made to the applicants with effect from 01-11-1983 or from the respective dates of their joining in this Department. The payment of Special (Duty) Allowance is made to the applicants only after full satisfaction of the Respondents and now the Special (Duty) Allowance was stopped by the Respondents without any reason and the Hon'ble Central Administrative Tribunal may be pleased to direct the Respondent to pay the special Duty Allowance to the applicants of the instant application and also may please to direct the Respondents not recover special Duty Allowance as paid earlier to the applicants by the Respondents.

4.7. That it has been decided by the Hon'ble Supreme Court ~~by the~~ as well as by this Hon'ble Tribunal that whatever amount has been paid by way of special Duty Allowance will not in any case or event be recovered.

Rab Shankar Seal.

4.8. That your applicants beg to state that the Respondents had discontinued the payment of Special (Duty) Allowance to the applicants and also direction has been issued to recover the earlier payment of Special Duty Allowance paid to them by the Respondents. As such, finding no other alternative the applicants approached this Hon'ble Tribunal for protection of rights and interests of the applicants through this Original Application and this Hon'ble Tribunal may be pleased to stay the impugned order No ESTT/DDM/SDA/96-7974 dated 01-7-2000 as interim measure and further be pleased to direct the Respondents not to stop payment of SDA.

4.9. That your applicants submit that there is no other alternative remedy and the remedy sought for if granted would be just, adequate and proper.

4.12. That this application is filed bonafide and for the cause of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS.:

5.1. For that the applicants satisfied the criterion for grant of special (Duty) Allowance laid down in Office Memorandum dated 14-12-1983 and 01-12-1988 issued by the Government of India, Ministry of Finance, therefore, discontinuation of the special (Duty) Allowance is violative of the provisions and is liable to be set aside and quashed.

5.2. For that the action of the Respondents are malafide and illegal and with a motive behind. As such, the impugned order is liable to be set aside and quashed.

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5.3. For that the Respondents have paid the Special (Duty) Allowance to the applicants after being fully ~~satisfied~~ satisfied with the criteria and eligibility and also in terms of the Office Memorandum dated 14-12-83 and Office Memo. Dated 01-12-88 issued by the Ministry of Finance, Government of India.

5.4. For that the payment of special (Duty) Allowance was not obtained by the applicants by any fraudulent means but the Respondents after finding them eligible, paid the special (Duty) Allowance to the applicants.

5.5. For that the applicants are having practically, All India transfer liability. As such, they are legally ~~entitled~~ entitled to draw the special (Duty) Allowance as per Office Memorandum dated 14-12-83 and 01-12-88.

5.6. For that the order issued in terms of impugned Office Memorandum dated 01-7-2000 is without following any established procedure of rules and law.

6. DETAIL REMEDY EXHAUSTED :

That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Court under Section 19 of the Administrative Tribunal Act, 1985.

7. MATTERS NOT PREVIOUSLY FILED OR
PENDING BEFORE ANY OTHER COURT :

The applicants further declare that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this

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Hon'ble Tribunal nor any such, application, writ petition or suit is pendign before any of them.

8. RELIEF PRAYED FOR :

Under the facts and circumstances stated above in this application the of the applicants pray for the following relæefs :

8.1. That Hon'le Tribunal may be pleased to direct the Respondents to continue the special Duty Allowance to the Applicants.

8.2. That the Hon'ble Tribunal may be pleased to declare that the applicants are entitled to draw the special (Duty) Allowande in terms of Office Memo. No. 20014/3/83 E-IV dated 14-12-83 and Office Memorandum No. 20014/16/86 IV/E II (B) dated 01-12-88.

8.3. The impugned Office letter No. ESTT/DDM/SDA/96-7974 dated 1-7-2000 (at Annexure 3 issued by the Respondent No. 4 be set aside and quashed.

8.4. To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.

8.5. Cost of the case.

9. INTERIM ORDER PRAYED FOR :

Pending final decision of this application the applicants seek issue of the interim order :

9.1. That the Hon'ble Tribunal may be pleased to stay the order dated 1-7-2000 stoppage and recovery of SDA at Annexure - 3 and Direct the Respondents to pay special Duty Allowance continuously to the applicants.

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10. APPLICATION IS FILED THROUGH ADVOCATE.

11. PARTICULARS OF I.P.O.

I. P. O. No. : 2nd 502880
Date of Issue : 21. 9. 2000
Issued from : Guwahati - /
Payable at : Guwahati - /

12. LIST OF ENCLOSERS :

As stated in index.

. Verification.

R. G. Shankar Seal.

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

I Shri Rabishankar Seal son of Late S. K. Seal, FO (T), ARC Doom Dooma, dist Tinsukia, Assam aged about 51 years (applicant No. 1) of the application and as authorised to sign this verification on behalf of other applicants do hereby solemnly declare that statements made in paragraphs 4.2, 4.3, 4.4, 4.6 to 4.9 are true to my knowledge and those made in paragraphs 4.2, 4.5 are true according to legal advice and I have not suppressed any material facts.

And I sign this verification on this 22nd day of Sept. 2000.

Rabishankar Seal

DECLARANT