

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 42/2000

R.A/C.P No.

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SECTION OFFICER (Judl.)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 42/2000 OF 199

Applicant(s) *Moti Ram Bahadur and o/s.*

Respondent(s) *Union of India and o/s.*

Advocate for Applicant(s) *Mr. M. Chanda, Mrs. N.D. Gohain
Mr. G. N. Chakraborty.*

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

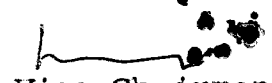
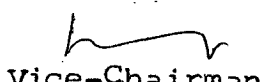
Notes of the Registry	Date	Order of the Tribunal
<p>Application No. 42/2000 Fees of Rs. 50/- Dated 28/2/2000 M. Chanda 11 - 2 - 2000</p>	<p>7.2.2000</p>	<p>187 applicants have approached this Tribunal with a prayer to allow them to join in this single application under the provision of Rule 4(5) (a) of the Central Administrative Tribunal (Procedure Rules 1987). permission is granted.</p> <p>Heard Mr M.Chanda, learned counsel for the applicants. The application is admitted. Issue usual notices.</p> <p>Mr Chanda prays for a direction to the respondents not recover the amount of Special (Duty) Allowance (SDA) which has already been paid to the applicants and also to continue to may payment of the said allowance. At this stage we direct that only the recovery may not be made until further orders.</p> <p>Fix it on 10.3.2000.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

Service of notices prepared and sent to D-Section for issuing of the same to the respondents through Regd. post with A/D.
vide D.Nos. 437 to 440

[Signature] Dtd. 14.2.2000
[Signature] 9/2/2000

Vv

② OA 42/2000

Notes of the Registry	Date	Order of the Tribunal
<p><u>9-6-2000</u> Written Statement has been filed by the respondents. <u>Done</u></p>	<p>10.3.00</p>	<p>L/O Adm 1-6.6.00. 15/11/00 10/11/00</p>
<p><u>27-12-00.</u> This case was not listed on 4-9-00 by mistake. Submitted & order on 11-1-01</p>	<p>6.6.00 11.1.01 pg 17.1.01</p>	<p>NO Bench. Adm 1-6.6.00. 4-9-00 15/11/00 10/11/00</p> <p>Written statement has been filed. Case is ready for hearing. List for hearing on 17.1.2001.</p> <p>K. Usharup Member</p> <p> Vice-Chairman</p>
<p>W/S has been filed on behalf of respondent No- 1 & 4.</p>	<p>pg</p>	<p>On the prayer of Mr M.Chanda, learned counsel for the applicant the case is adjourned to 22.1.2001.</p> <p>K. Usharup Member</p> <p> Vice-Chairman</p>
<p><u>34</u> 10.1.2001</p> <p>W/S has been filed</p> <p><u>34</u> 16/1/2001</p>	<p>22-1-2001</p>	<p>There was a reference. List it again on 12/1/2001. 15/11/00 10/11/00 22/1/01</p>

Notes of the Registry	Date	Order of the Tribunal
<p><u>21.3.2001</u></p> <p>Copy of the order has been sent to the D/Sec for issuing the order to the L/Advocate for the parties.</p> <p>VS</p>	<p>2.2.2001 (Shillong)</p> <p>nkm</p>	<p>Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman</p> <p>Hon'ble Mr K.K. Sharma, Administrative Member.</p> <p>It has been stated at the Bar that this case is squarely covered by the Judgment and Order rendered by this Bench in O.A. No.217 of 1998 and a host of such O.A.s disposed of on 22.12.2000. Accordingly, as was held earlier in the aforementioned O.A.s, the present applicants are not entitled for Special (Duty) Allowance, but the amount of Special (Duty) Allowance so far paid to the applicants shall not be recovered.</p> <p>The application is accordingly disposed of. No orders as to costs.</p> <p><i>K.K. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

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Notes of the Registry	Date	Order of the Tribunal
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95 : 4 FEB 2000
গুৱাহাটী বেঞ্চ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

Title of the Case : O.A. No. 42/2000
Sri Moti Ram Bahadur & : Applicants
Ors.

-versus-

Union of India & Ors. : Respondents

I N D E X

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4	2	Letter dt. 18.1.96	22 - 24
5	3	Letter dt. 25.1.2000	25.

Date : 4.2.00

Filed by :
N.D. Goswami
Advocate

Filed by me applicant
N.D. Goswami
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

Original Application No. 42/2000

BETWEEN

1. Moti Ram Bahadur
2. Bam Bhola
3. Rameshwar Sah
4. Mohan Mahto
5. Shyam Bahadur
6. Narayan Dhobi
7. Nebu Lal
8. Shri Ram Sharma
9. Ram Chandër
10. Raise Miyan
11. K.Sahani
12. Rama Nand
13. Bajrangi Dhobi
14. Goyal Yadav
15. Kudrat Miyan
16. Asheshwar Mahto
17. Bhavishwar Sarma
18. Sital Rai
19. R.P.Mahto
20. R.N.Singh
21. Suresh Rai
22. Paltan Sharma
23. Harihar Thakur

Contd.....

Ram Padarth Mahto

24. Rabi Mahto
25. S.N.Rai
26. Lal Chand Ram
27. Jitan Bahadur
28. Dukha Singh
29. Brham Deo Mahto
30. Mahabir Rai
31. Mahabir Dhobi
32. Rama Rai
33. Nathuni Ram
34. C.D.Ram
35. ~~C.D.Ram~~ Jagam malh.
36. Joginder Dhobi
37. Jagan Bahadur
38. Shri Kant
39. C.D.Mandal
40. Anarash Rai
41. Harideo Singh
42. Beni Sahani
43. Peyare Lal Rai
44. Kailash Rai
45. Maharaj Rai
46. Prhalad
47. Jagdeo Rai
48. Beyash Rai
49. Bishnu Thakur
50. Upender Prasad
51. Jagdish Prasad
52. R.N.Sharma
53. Laxman Prasad
54. Kali Mullah
55. K. Yesu

Contd.....

Ram Padarth Mahto

56. R.R.Manjhi
57. Sukhdeo Mahto
58. Dashrath Rai
59. Sukhdeo Sah
60. G.P.Sarma
61. Nathuni Rai
62. G.S.Reddy
63. Brhamdeo Sah
64. Nanpat Mahto
65. Man Bahadur
66. Devender Jha
67. Bikarma Sah
68. Panna Lal Rai
69. R.P.Rai
70. Bhag Deo Rai
71. Jaddu Rai
72. ~~Jaddu Rai~~ Rick deo Dhabhi
73. Dhana Mahto
74. Jawahar Mahto
75. R.P.Mandal
76. Shanker Mandal
77. Sukh Deo Rai
78. Jogeswar Rai
79. Upender Mahto
80. Lalman Rai
81. Raghubansh Rai
82. Nakeswar Rai
83. Ramnath Sah
84. Dina Nath Rai

Contd.....

Ram Padarath Mahto

- 8.5. Gorakh Mahto
86. Nagender Rai
87. Latter Mahto
88. Kiran Karbi
89. Binda Sahni
90. Kunta Rai
91. Krishna Prasad
92. Jogeshwar Rai
93. Ram Chander Thakur
94. Hari Ram Singh
95. B.N.Thakur
96. Mohinder Mahto
97. Chhathu Thakur
98. Rajdeo Rai
99. Raise Ahmed
100. Lakho Sah
101. N.K.Mahto
102. Jawaher Rai
103. Nabo Nath
104. Lal Nath Pashwan
105. R.K.Gowamy
106. Prem Chandra Rao
107. M.C.Das
108. R.D. Harijan
109. M.D. Issmail
110. Bucho Mahto
111. Ram Sewak Ram
112. B.K.Thakur

Contd....

Ram Padarth Mahto

113. Peyariya Devi
114. Dashmi Harijan
115. Shiv Narayan Rai
116. Permila Devi
117. Dwarika Nath Rai
118. Ram Dhani Rai
119. Biran Rajbhar
120. Manik Choudhury
121. Bilashi Devi
122. Savitri Devi
123. Degan Rai
124. Lala Rai
125. Hari Chandra Mahto
126. J.N.Singh Rai
127. N.K.Prasad
128. Dulal Chandra Dey
129. Munjil Ali
130. K.C.Sharma
131. R.Tiwari
132. C.K.Deb
133. H.C.Deb
134. Sattan Mahto
135. Raj Deo Rai
136. Nagender Sah
137. Ramji Das
138. M. Appa Rao
139. Lakhan Rai
140. Bilash Mahto
141. Ranjit Barai
142. Madan Rai

Contd.....

Ram Padarth Mahto

143. Dhiraj Rai
144. Mahesh Rai
145. Promod Mahto
146. Sita Ram Thakur
147. Ram Bali Pashwan
148. Ramaslok Rai
149. Tapeswar Mahto
150. Babu Ram Sharma
151. Vinesh Das
152. Babu Jan
153. Narul Haque
154. Budhin Dostidar
155. Chini Chand Bora
156. Hanif Ali
157. Lakbbir Singh
158. Hira Lal
159. Ram Sakhi Devi
160. Sukhmaya Rani
161. P. Laxmi
162. Pacho Devi
163. M.C.Das
164. G.C.Bharali
165. N.C.Kalita
166. D.D.Sharma
167. Mangal Sinha
168. Chandrika Ram
169. R. Narjory
170. J.C.Kakati
171. S.C.Das

Contd.....

Ram Padarth Mahto

172. Musafir Yadav
- 173 . K. Mahto
- 174 N.K.Srivastave
175. Yam Bahadur
176. Aashmd Khan
177. Ashok Singh
178. Md. Saleh Ahmed
179. Sita Ram Thakur
180. Harendar Kalita
181. Golak Chandra Soud
182. Anandi Prasad
183. P. Anjame Yallu
184. B. Tata Rao
185. G. Kam Raj
186. Ram Surat Ram
187. R. Tulshi

.... Applicants

-AND-

1. Union of India
(Through the Secretary to the Government
of India, Ministry of Defence,
New Delhi.
2. Commandant
131 CoY A.S.C. (Supp) Type F,
Narengi, Guwahati
C/o 99 APO
3. Joint Controller of Defence Accounts,
Government of India, Ministry of
Defence, Shillong-1.
4. Assistant Local Officer,
Office of the 313 COY ASC (Supp).
C/o 99 APO.

.... Respondents

Ram Sadartha Malito

DETAILS OF APPLICATION

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

The instant application is directed in respect of the Office Memorandum No. 11(3)/95-E.II (B) dated 12.1.1996 circulated under Ministry of Defence letter No. 4(19)/83-D (Civ.I) Vol. II dated 18.1.1996 and praying for a direction to the respondent not to ~~XXXXXX~~ make any recovery of Special (Duty) Allowance already paid to the applicants.

2. Jurisdiction of the Tribunal

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

3. Limitation

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

4. Facts of the Case

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

4.2 That the grievance relating to which the instant application has been filed in respect of the applicants has arisen out of the same cause of action. The applicants are all similarly situated and the reliefs sought for by

Ram Padarth Malto

them are also the same. Further, they have got common interest in the matter. Accordingly, the applicants have filed the instant application jointly. It is most respectfully prayed that the applicants may be permitted to join together in this application as provided for under Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

4.3 That all the applicants are serving under the cadre of Group 'C' & 'D' under the office of the Commandant 313 Coy, ASC(Supp) i.e. under the respondent No.2. The applicants fulfill all the conditions precedents for getting Special Duty Allowance is mentioned in the relevant circulars mention of which has been made in subsequent paragraphs to this application. Accordingly, all the applicants have been granted Special Duty Allowance eversince the said allowances was made applicable to the employees concerned working in the North Eastern Region.

4.4 That the Government of India, Ministry of Finance, Department of Expenditure, under the Office Memorandum dated 14.12.1983, issued under No. 20014/3/83-E.IV while granting certain facilities to the employees of the Central Government Departments also granted an allowances called as Special (Duty) Allowance. The applicants having fulfilled all the criteria laid down in the said O.M. were granted the said Special (Duty) Allowance which they have been enjoying till date. It will be pertinent to mention here that the applicants not only carry All India Transfer Liability as one of their service conditions but they have also got all India basis common seniority list,

Ram Padarth Malhotra

all India basis promotion zone, all India basis SAS Examination etc. unlike other employees of the Central Government organisation carrying merely a clause of All India Transfer Liability without fulfilling the other conditions precedents as laid down vide O.M. dated 14.12.1982 and 12.1.1996 mention of which has been made in subsequent paragraphs.

A copy of the said O.M. dated 14.12.1983 is annexed as Annexure-1.

4.5 That your applicants beg to state that the respondents started paying Special (Duty) Allowance to the applicants after being found them eligible for grant of Special (Duty) Allowance (for shor SDA) and all the applicants drawn SDA either with effect from 1.11.83 or from their respective date of joining in service. As such the SDA was paid to the applicant by the respondents themselves. However the said SDA was suddenly stopped without any prior notice to the applicants with effect from August, 1996 but it is understood from a reliable source that the same has been stopped in terms of Ministry of Defence letter bearing No. 4(19)/83-D(CIB.I) Vol.II dated 18.1.1996 by which the O.M. No. 11(3)/95-E-II(B) dated 12.1.96 issued by the Ministry of Finance, was circulated in various offices of the respondents and following the above instructions of the Ministry of Finance the payment of SDA had been stopped without issuing any notice to the applicants with effect from August, 1996. In this connection it is stated that in the Office Memorandum dated 12.1.1996 it was stated that locally recruited employees are not entitled to

Ram Padarth Mehta

Special (Duty) Allowance which was circulated through letter dated 12.1.1996.

Copy of the letter dated 12.1.96 is annexed as Annexure-2.

4.6 That the authority on receipt of the letter dated 12.1.96 as well as the Office Memorandum dated 12.1.1996 stopped the payment of SDA however no attempt was made for recovery of the SDA as the same was paid by the respondents on their own after the applicants being found eligible for the said allowance. But suddenly the respondents now in the month of January, 2000 proposed to make recovery the SDA which was already paid by them and accordingly they have prepared the bills for recovery of SDA since September, 1994. But no notice was served to the applicants for illegal recovery of SDA without following the principle of natural justice. As such, finding no other alternative the applicants approaching this Hon'ble Tribunal praying inter alia for a direction to the respondents not to make any recovery of SDA which was already paid to the applicant by the respondents on their own.

4.7 That your applicants beg to state that the payment of SDA which was received by the applicants have already been spent and now if the recovery is made it will cause undue hardship to the applicants and after such long lapse the respondents are not entitled to make any recovery of SDA and this has already been settled by the Apex Court in various Judgements and Order.

Contd.....

4.8 That your applicants beg to state that the headquarter 101 area vide their letter bearing No. 10711/2/GS(SD) dt. 25.1.2000 directing the authorities including the office of the 313 COY (Supp), C/o 99 APO to submit details of the amount which was paid to the individuals ineligible persons on account of SDA beyond 20.9.1994 and after receipt of this letter the authority and also in view of the letter dated 18.1.1996, O.M. dt. 12.1.1996 the authority now preparing the bill for recovery of amount which is already paid to the applicants on account of SDA with effect from 20.9.94. Therefore it is a fit case for the Hon'ble Tribunal to interfere with to protect the rights and interests of the applicants directing the respondents not make any recovery of the amount which is paid as SDA to the applicants. It is also stated that the applicant received SDA after the respondents found found them eligible for drawal of such allowance, therefore they cannot make any recovery and that too without following the established procedure of law.

A copy of the letter dt. 25.1.2000 is annexed as Annexure-3.

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

5. Grounds for relief(s) with legal provisions

5.1 For that prima facie the impugned order is not sustainable and liable to be set aside and quashed.

Contd...

Ram Padarth Mahit

- 5.2 For that under the circumstances, no recovery can be made from the applicants in respect of the payment made after 20.10.1994. If at all any recovery was to be made, same should have been done by the respondents immediately after 20.9.94. But instead they kept on paying the SDA to the applicants, but now by a stroke of pen has sought to recover the amount on account of SD^a paid after 20.9.94.
- 5.3 For that as pointed out above, the applicants satisfy the pre-requisite for grant of SD and accordingly they have also been paid the SDA on the strength of concerned O.M. Now the respondents on a mechanical application of the O.M. dated 12.1.1996 has sought to recovery the amount of SDA and discontinue the same which is arbitrary and illegal.
- 5.4 For that the respondent before recovery of SDA which is already paid to the applicant ought to have carried out the exercise as to who are the applicants to be termed as ineligible persons instead they have mechanical applied the O.M. dt 12.1.96 which was conveyed by letter ddt. 18.1.96 and have sought to recover the SDA already paid to them. ~~and further more xxxxxx~~
- 5.5 For that the respondents have failed to appreciate the order of the Hon'ble Apex Court in various judgements and orders that the amount of SDA is already been paid shall not be recovered.

Contd...

Ram Sadash Malhotra

5.6 For that the decision of recovery of SDA which is already paid to the applicant amounts to hostile discrimination in violation of the Article 14 and 16 of the Constitution of India.

5.7 For that the decision of recovery of SDA in respect of the applicant is not sustainable and liable to be set aside and quashed.

6. Details of remedies exhausted:

The applicants state that they have no other alternative remedy than to come under the protective hands of this Hon'ble Tribunal.

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

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

8. Reliefs sought for

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

Contd....

8.1 Hon'ble Tribunal Be pleased to set aside the impugned letter dated 18.1.1996 (Annexure- 2) issued by the Ministry of Defence on the basis of the O.M. dt. 12.1.1996 issued by the Ministry of Finance, Govt. of India, and further be declared that the respondents are not entitled to recover the amount of SDA which is paid to the applicants by the respondent on their own in the light of the various decisions of the Hon'ble Supreme Court as well as various decisions of this Hon'ble Tribunal.

8.2 Any other relief or feliefs to which the applicants may be entitled to and as may be deemed fit and proper by this Hon'ble Tribunal.

8.3 Costs of this application.

9. Interim order prayed for :

Pending disposal of the O.A., the applicants pray that the Hon'ble Tribunal be pleased to direct that the respondents are not entitled to recover the amount of SDA already paid to the applicants till disposal of this application.

10.
This application is filed through Advocate.

11. Particulars of the I.P.O.

- i. I.P.O. No. : 06 457 382
- ii. Date of Issue : 28.1.2000
- iii. Issued from : G.P.O., Guwahati.
- iv. Payable at : G.P.O., Guwahati.

12. List of enclosures

As stated in the Index.
....Verification

Ram Padarth Malto

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

I, Ram Padarth Mahto, son of Sri Shiw Pujon Mahto, aged about 51 years, working as Permanent Mazdoor, in the office of the 313 COY, (Supp), C/o 99 APO, one of the applicants, do hereby solemnly affirm and verify that the statements made in the accompanying applicant in paragraphs to to 4 and 6 to 12 are true to my knowledge, those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact. I am also duly authorised and competent to sign this verification on behalf of all the other other applicants.

And I sign this verification on this the 4th day of February, 2000.

Ram Padarth Mahto

Signature

No. 2001A/83-1V
Government of India
Ministry of Finance
Department of Expenditure

Annexure I

ANNEXURE I

New Delhi, the 14th December, 1983.

OFFICE MEMORANDUM

Subject:- 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 Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows:-

(i) Tenure of posting/deputation:

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc. in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training:
Should have special mention in Confidential Records.

Satisfactory performance of duties for the

prescribed tenure in the North East shall be given due consideration in the case of eligible officers in the matter of -

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North East.

A specific entry shall be made in the C.R. of all employees who rendered a full tenure of service in the North Eastern Region to that effect.

(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 per cent of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance :

1. Assam and Meghalaya

The rate of the allowance will be 5% of basic pay subject to a maximum of Rs. 50/- p.m. admissible to all employees without any pay limit. The above allowance will be admissible with effect from 1.7.1982 in the case of Assam.

2. Manipur

The rate of allowance will be as follows for the whole of Manipur :-

Pay upto Rs. 260/-	Rs. 40/- p.m.
Pay above Rs. 260/-	15% of basic pay subject to a maximum of Rs. 150/- p.m.

3. Tripura

The rates of the allowance will be as follows:-

DISTURBANCE AREAS

25% of pay subject to a minimum of Rs. 50/- and a maximum of Rs.150/- p.m.

(b) Other Areas

- ci Pay upto Rs. 260/- Rs. 40/- p.m.
- ri Pay above Rs. 260/- 15% of basic pay subject to a maximum of Rs. 150/- p.m.

(will be no change in the existing rates of Special Compensatory Allowances admissible in Arunachal Pradesh, Nagaland and Mizoram and existing rate of Disturbance Allowance admissible in specified 2 of Mizoram.

(v) Travelling Allowance on first appointment :

In relaxation of the present rules (S.R. 105) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in case of journeys for taking up initial appointment to a post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 400 kms. for the Government servant himself and his family will be admissible.

(vi) Travelling Allowance for Journey on transfer:

In relaxation of orders below S.P. 115, if on transfer to a station in the North-Eastern region, the family of the Government servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. If the family accompanies the Government servant on transfer, the Government servant will be entitled to the existing admissible travelling allowance including the cost of transportation of the admissible weight of personal effects according to the grade to which the officer belongs, irrespective of the weight of the baggage actually carried. The above provisions will also apply for the return journey on transfer back from the North Eastern Region.

(vii) Reimbursement for transportation of personal effects

In execution of orders below S.R. 116, for transportation of personal effects on transfer between two different stations in the North-Eastern region, higher rate of allowance admissible for transportation in 'A' class cities subject to the actual expenditure incurred by the Government servant will be admissible.

(viii) Joining Time with leave

In case of Government servants proceeding on leave from a place of posting in North-Eastern region, the period of travel in excess of two days from the station of posting & outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) Leave Travel Concession

A Government servant who leaves his family behind at his old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North East to his home town or place where his family is residing and in the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North Eastern region. In case the option is for the latter alternative, the cost of travel for the initial distance (400 kms./150 kms.) will not be borne by the officer.

Officers drawing pay of Rs. 2250/- or above, and their families, i.e., spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance/Hostel Subsidy

When the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto class XII will be admissible in respect of

children studying at the last station of posting of the employee concerned or any other station where the children reside, without any restriction of pay drawn by the Government servant. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

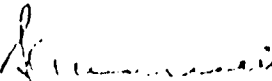
2. The above orders except in sub-para (iv) will also *mutatis mutandis* apply to Central Government employees posted to Andaman and Nicobar Islands.

3. These orders will take effect from 1st November, 1983 and will remain in force for a period of three years upto 31st October, 1986.

4. All existing special allowances, facilities and concessions extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North Eastern Region will be withdrawn from the date of effect of the orders contained in this office Memorandum.

5. Separate orders will be issued in respect of other recommendations of the Committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

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


(S.C. BHALIK)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

To,

All Ministries/Departments of the Government of India,
etc. etc.

Copy (with spare copies) to C.& A.G., U.F.S.C. etc.

.....

J.K.

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

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

3. It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the All India Transfer Liability of the members of any service/cadre or increments of any post/group of posts has to be determined by applying the 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 has been done on the basis of an all India common seniority list for the service/cadre/post in a whole. When clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not take 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/Departments against the Orders of the CAT.

6. The Hon'ble Supreme Court in their judgement delivered on 20.9.94 (in Civil Appeal no. 3251 of 1993) upheld the submissions of the Government of India that Central Government Civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

.....3/-

Attended

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

- 1) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived;
- 11) the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments were made after this date i.e. 20.9.94) will be recovered.
- 8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.
- 9. In their application to employees of Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.
- 10. Hindi version of this OM is enclosed.

- sd/ -

(C. B. Achandran)
Under Secretary to the Govt. of India.

013 coy Ase (S4P) - 25

Annexum - 3

Mukhyalaya 101 Area
Headquarters 101 Area
C/o 99 APD

10711/2/GS(SD)

Jan 2000

(As per Distr List att)

**REC OF SDA PAYMENT MADE TO IN-ELIGIBLE CAT
OF DEF CIV MADE BEYOND 20 SEP 1994**

1. Refer to controller of Defence Accts Guwahati, DO letter No. Pay/Tech/025/Vol-I dat 19 Jan 2000 (copy encl).
2. Please carry out physical verification of service record of all Def civ employees under your jurisdiction to ascertain the following :-
 - (a) Details of payment of SDA made to in-eligible categories of Def civ employees beyond 20 Sep 94.
 - (b) Total amt involved in respect of each.
 - (c) Period of payment.
 - (d) Circumstances leading to the payment of a particular Allice.
3. Please fwd above details by courier/fax/sig by 10 Feb 2000 without fail.



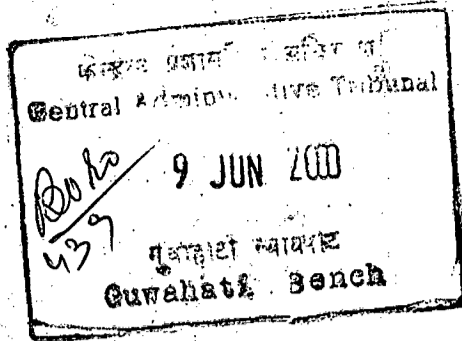
(Avtar Singh)
Lt Col
GSO 1
for Col GS

Encls : As above

Internal

A Branch :
Q Branch : - for info alongwith a copy of ibid DO letter.
ST Branch :
Med Branch :

yadav/*



CD 26

Filed by -
Col. Ashok Prehar
through - CAS RDT,
@ Ashok Prehar
Addl. C.S.C., Cd
26/6/00

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

O A No 42 of 2000

Moti Ram Bahadur &

Others

Vs

Union of India & Others

WRITTEN STATEMENT FOR AND ON BEHALF OF
RESPONDENT NOS 1, 2, 3, AND 4

I, Sri Colonel Ashok Prehar, Commandant, 313 Coy ASC (Sup), Narangi, Guwahati do hereby solemnly affirm and state as follows.

1. That I am the Commandant of 313 Coy ASC (Sup), Narangi, Guwahati and I have been impleaded party Respondent No 2 in the instant Original Application. I have received a copy of the said Original Application, gone through the same and understood the contents thereof. I have been authorised by the Union of India and other Official Respondents to represent them in this case by way of filing written statement and taking necessary steps etc. As such I am competent to verify and file this written statement for and on my own behalf as well as for and on behalf of all other Respondents.

2. That this answering Respondent does not admit any of facts, statements, allegations and averments made in the original application save and except those have been specifically admitted hereunder in this written statement. Further the statements those which are not borne on record have also been categorically denied.

3. That as regards the contents of paragraphs 1,2,3,4.1 and 4.2 of the original application, it is stated that the same are matters of record. Nothing is admitted beyond record.

4. That as regards the contents of paragraph 4.3 of Original Application this answering Respondent respectfully states that the averments made in the paragraph is not correct. In fact, Ministry of Finance vide O.M. No.20014/3/83-E IV Dt.20.4.1987 had observed, "instances had been brought to the notice of the government where Special Duty Allowance (SDA) had been allowed to Central Govt. employees serving in NER with the fulfillment of condition of India transfer liability. The Ministry had held mere clause in the appointment order as is done in the case of almost all posts in the Central Secretariate etc to the effect that the persons concerned is liable to be transferred anywhere in India does not make him eligible for the grant of SDA. On the basis of aforesaid O.M.Dt,20.4.87 Hon'ble Supreme Court in the judgement Dt.20.9.94 passed in

Civil Appeal No.3251 of 1993 (Union of India-Vs-S. Vijay Kumar and others) had held that residents of North Eastern Region were not entitled to SDA even if their appointment letter contained a clause for All India transfer liability". As such The Govt. of India while following the judgement passed by the Hon'ble Supreme Court Dt.20.9.94 issued a memorandum in the Ministry of Finance vide No.11.(3)/95-E.II(B) Dt.12.1.96 there by stating that the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 i.e. the date on which judgement was delivered by the Apex Court will be waived and payments made after this date will be recovered.

5. That as regards the contents of paragraph 4.4 of the Original Application this answering Respondent respectfully states that as has been explained in the immediate preceding paragraph that as per the term of judgement Dt.20.9.94 the applicants are not entitled SDA in as much as all the applicants belong to the North Eastern Region and they are not posted to North Eastern Region by way of transfer from the outside NE Region. It is pertinent to mention here that while following the aforesaid judgement of the Apex Court the payment of SDA

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had to be stopped to fulfill the Constitutional Mandate. The office memorandum issued in the Ministry of Finance Dt.12.1.96 is only the outcome of the judgement Dt.20.9.94 passed by the Apex Court in CA No 3251/93. Under this facts and circumstances no notice to the applicants for stoppage of further payment of SDA in their monthly salary bills and recovery of the excess payment on account of SDA after 21.9.94 till August 1996 in terms of the aforesaid O.M.Dt.12.1.96 as alleged by the applicants. In the context the relevant portion of the aforesaid judgement Dt.20.9.94 passed by the Hon'ble Supreme Court is reproduced herein below for ready reference :-

The stand of the Union of India, however, is that this OM dated.14.1.83. it is read alongwith what was stated subsequently in office memorandum dt.20.4.87, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North East Region (NER) carrying the aforesaid service condition and not

to those who were residents of this Region. The office memorandum of 1987 has clearly stated that the allowance 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.

We have duly considered the rival submission and are inclined to agree with the contention advanced by the learned Addl. Solicitor General for two reasons, first is that a close perusal of the two aforesaid memoranda, alongwith what was stated in the memorandum dt. 29.10.1986 which has been quoted in the memorandum dt.20.4.1987, clearly shows that allowance in question was meant to attract persons outside the NER 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 NER. mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining thereby 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 claims the allowance depending upon the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Govt. Civilian employees who have All India Transfer liability would be granted the allowance on posting to any station to the NER'. 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 memoranda of 1983 the subject was mentioned as quoted above is not be enough to concede the submission of Dr. Ghosh, counsel for the respondents".

6. That as regards the contents of paragraphs 4, 6, 4. 7 and 4. 8 of the Original Application this answering Respondent respectfully states that the plea of the application that they have already spent SDA granted to them paid beyond 20.9.94 onwards as such recovery cannot be made is of the judgement of the Hon'ble Supreme Court dt. 20.9.94 SDA paid to the non eligible Central Govt Civilians employees after 20.9.94 has become over payment and such over payment is treated as Govt . dues as such said Govt. dues standing against the applications is liable to be recovered. The contentions of the application of the applicants that the Govt of India are not entitled to recover such over payment is not tenable in the eye of law as because an illegal action cannot be perpetuated by another illegal action. It is pertinent to further state here that in terms of the judgement passed by the Hon'ble Supreme Court in Civil Appeal No 1572/97 that the SDA paid to the non eligible personnel with effect from 21.9.94 onwards is liable to be recovered.

Be it further stated that aforesaid overpayment SDA to the non -eligible Central Govt. employees has become over burden to the Govt. Exchequer, as such recovery of such over payment is only the way out to lessen the over burden on Govt.Exchequer. Thus the applicants' allegations that the government once finding them eligible for granting SDA paid the same and such payment cannot be recovered has no legal basis. As such the Original Application is not tenable in the eye of law and liable to be dismissed.

7. That as regards the grounds mentioned in Paragraphs 5(5.1 to 5.7) of the Original Application this answering Respondents respectfully submits that the same are misconceived, baseless and not tenable in the eye of law.

8. That as regards the contents of paragraphs 6 and 7 of the Original Application this answering Respondent does not make any comments.

9. That as regards the contents of paragraphs 8 and 9 of the Original Application this answering Respondent respectfully submits that since the present application has no merit and not tenable in the eye of law as such the applicants are not entitled any relief including interim relief as prayed for. Thus the Original Application is liable to be dismissed.

VERIFICATION

I, Sri Colonel Ashok Prehar son of Major SR Prehar (Retd), Commandant , 313 Coy ASC (Sup), Narangi , Guwahati do hereby solemnly affirm and state that the statements made in this verification including those have been made in paragraphs *K- 1, 2, 3* of the written statement are true to the best of my knowledge and belief and those have been made in paragraphs *R- 4, 5, 6* are true to my best information which have been derived from the records and the rests are my humble submission before the Hon'ble Tribunal.

AND I verify and sign this verification this the day of , 2000.

Ashok Prehar

DEPONENT