

2/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓
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E.P/M.A No.....

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CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 428/2000

... S.M. J. Ahmed & Ors. Applica

versus

Union of India & Ors Respondents.

For the Applicant(s) Mr. A. Ahmed,

For the Respondents. C.G. S.C.

NOTES OF THE REGISTRAR

DATE

ORDER

8.12.2000

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

This application is in form
b + not in the Corporation
Petition & R. 1. 1. 1. vide
M. P. R. C. F.
for Rs. 54
IPO/EC No. 77/072.
Dated..... 6.12.2000

MM
Dy. Registrar.

Heard Mr. A. Ahmed, learned
counsel for the applicant.

Application is admitted.
Call for the records. Issue
usual notices.

List the case for hearing
on 19.12.00 along with connected
case.

[Signature]
Vice-Chairman

Steps & Envelops
are filed

by
7.12.00

8073/12/2000
mk

19.12.00

Heard learned counsel for the
parties. Hearing concluded. Judg-
ment reserved.

Member

[Signature]
Vice-Chairman

22.12.00

Judgment delivered in open
Court. Kept in separate sheets.
Application is allowed.

[Signature]
Member

[Signature]
Vice-Chairman

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

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. 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 these} 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 ...

3

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.

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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 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.

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.

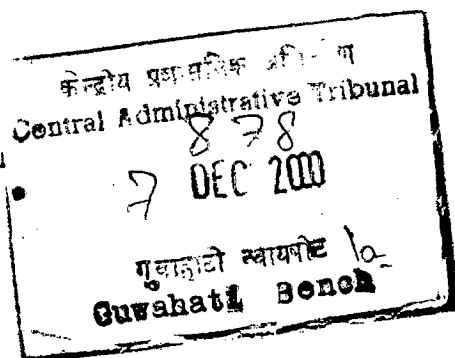
No order as to costs.

Sd/- VICECHAIRMAN
Sd/- MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO: 628 OF 2000.



Sri Tasiruddin Ahmed & others

..Applicants.

-Versus-

Union of India & Others.

.. Respondents.

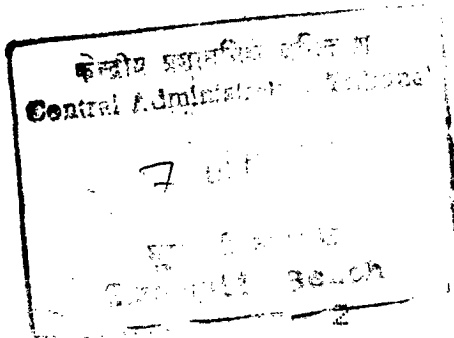
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Filed by

Advocate.

(ADCC AHMB)



Filed by
Tasiruddin Ahmed
Application
Hand
Chakrabarti
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

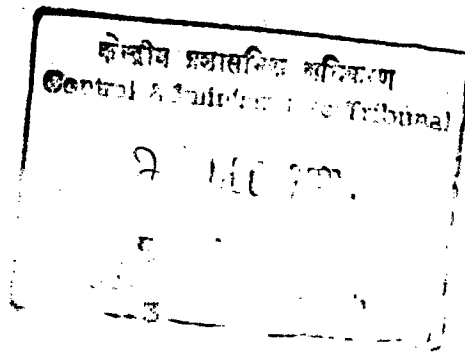
(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 628 OF 2000.

BETWEEN

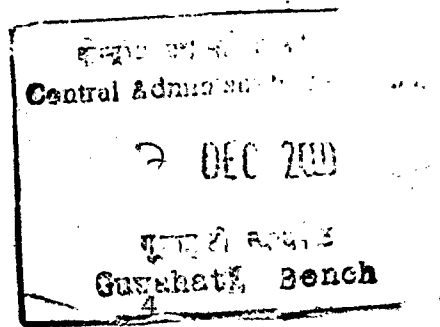
- 11 Sri Tasiruddin Ahmed,
Scientist-C
Employee Code No. 02364
- 21 Sri Dinesh Kumar Bhuiyan,
Scientist-C
Employee Code No. 02349
- 31 Sri Diganta Barman,
Senior System Analyst
Employee Code No. 1692
- 41 Sri Hemanta Kumar Saikia,
Scientist-D
Employee Code No. 1691
- 51 Sri Hiramani Goswami,
Scientist-C
Employee Code No. 2366
- 61 Kakuli Choudhury
Scientist-C
Employee Code No. 3628

File



- 7] Hiranmayee Goswami,
Scientist-C
Employee Code No. 2325
- 8] Sri Manabendra Goswami
Scientific Officer, (S.B.)
Employee Code- 4085
- 9] Sri S. M. Shekh,
Scientific Officer, (S.B.)
Employee Code No. 03943
- 10] Sri Dipam Kumar Baruah,
Scientist/ Engineer (SB)
Employee Code No. - 2370
- 11] Sri Anuradha Barua,
Scientific Officer, (SB)
Employee Code No. - 04080
- 12] Bhaswati Duara,
Scientist-B
Employee Code No. 2373
- 13] Sri Gautam Choudhury
Scientist-C
Employee Code No. 2360
- 14] Sri Pranjal Bezbaruah,
Scientist-C
Employee Code No. 03694
- 15] Sri Arun Chandra Dutta,
Scientific Officer, (SB)
Employee Code No. 03945

7/11



- 161 Md. Asan Ali,
Lower Division Clerk
Employee Code No. 871
- 171 Sri Ramjyoti Choudhury
Upper Division Clerk,
Employee Code No. 2710
- 181 Moktab Ali,
Upper Division Clerk.
Employee Code No. 2713
- 191 Sri Chinmoy Bhattachariya,
Scientist-C
- 201 Sri Ajit Kumar Nath
Scientist-C
Employee Code No. 2718
- 211 Chandra Gupta Dutta Barua
Scientist-C
Employee Code No. 2356
- 221 Sri Sandip Paul
S/E Employee Code No. 4172
- 231 Seemantinee Sengupta
Scientist-C
Employee Code No. 02334
- 241 Dipankar Sengupta
Scientist-C
Employee Code No. 02709

- 25] Kavita Mazumder
Scientist-C
Employee Code No. 02326
- 26] Kabita Roy Das
Scientist-C
Employee Code No. 02365
- 27] Sri Gautam Khanikar
Scientist-B
Employee Code No. 02333
- 28] Sumitav Saikia
Scientist-C
Employee Code No. 02604
- 29] Naina Begum
Scientist-C
Employee Code No. 2606
- 30] Rubaiyat Ul Ali
Scientist-C
Employee Code No. 2605
- 31] Kailash Kalita,
Scientist-C
Employee Code No. 02352
- 32] Dibyajit Dutta
Scientist-C
Employee Code No. 2329
- 33] Anup Kumar Barua
Scientist-C
Employee Code No. 02351
- 34] Joydeep Shome
Scientist-C
Employee Code No. 02358
- 35] Upen Baishya, CCH
Employee code No. 00879

- Applicants.

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Guwahati, Assam

All the above named applicants are working under the Office of the Technical Director, State Informatics Officer, National Informatics Centre, (NIC), F-Block, Assam Secretariat, Guwahati-781006.

-Versus-

- 1] The Union of India, represented by the Secretary, Ministry of Information Technology, Electronics Niketan, 6, CGO Complex, New Delhi -110003.
- 2] The Director General National Informatics Centre, Head Quarter, New Delhi, Lodhi Road, A-Block, New Delhi- 110003.
- 3] The Technical Director, State Informatics Officer, National Informatics Centre, (NIC), F-Block, Assam Secretariat, Guwahati-781006.

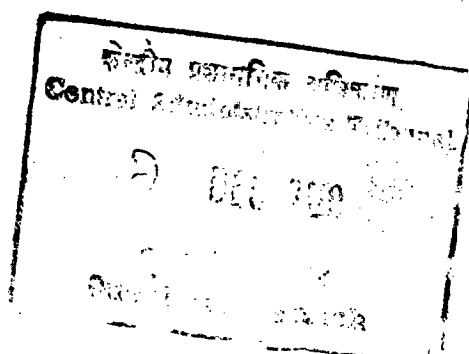
- Respondent

DETAILS OF THE APPLICATION:

- 1) PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is made against the impugned Order of recovery of payment of Special Duty Allowance in short, (S.D.A.), vide Office Memorandum No. 2(3)/97-P&V dated

7/12



12-05-2000 issued by the Respondent No. 2 at Annexure-D.

2) JURISDICTION OF THE TRIBUNAL

The applicants declares that the Subject matter of the instant application is within the jurisdiction of this Hon'ble.

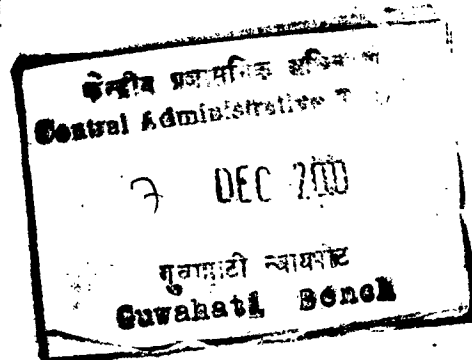
3) LIMITATION

The applicant further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4) FACTS OF THE CASE :

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

4.2 That your applicants beg to state that the National Informatics Centre's Head Quarter is at New Delhi. It is a Central Government Department under the Ministry of Information Technology. There are State Units in all the state Capital and Union Territory Head Quarters and the District Centres is more than 540 districts of India. The Department Employees a large numbers of efficient technical manpower at the NIC Head quarters a large number of application division exists



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which provide total Informatics supports to the Ministers and Departments of Central Government including Prime Minister's Office, Rastrapati Bhawan, Parliament House, etc. Apart from this, the Department also provides Informatics support to State Government and District Level by providing effective informatics support to the development, administration, revenue and also judiciary administration of the districts.

4.3 That your applicants beg to state that all the applicants are working under the Office of the Technical Director, State Informatics Officer, National Informatics Centre, (NIC), F Block, Assam Secretariat, Guwahati-781006. The applicants are working as the Scientist-C, Scientist-B, Scientist-D, Scientist Engineer, Senior System Analyst, Scientific Officer, Upper Division Clerk and Lower Division Clerk, etc.

4.4 That your applicants beg to state that as the grievances and reliefs prayed in this application are common, therefore, they pray for grant of permission under Section 4 (5)(a) of the Central Administrative Tribunal (Procedure) rules, 1987 to move this application jointly.

✓ 4.5 That the Government of India, Ministry of Finance, Department of Expenditure granted certain improvements and facilities to the Central Government Civilian Employees of

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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 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 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


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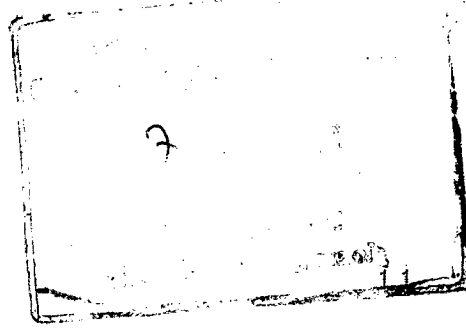
(Remote) Locality Allowance, Construction Allowance and Project Allowance will be drawn separately.■

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- A & B respectively.

4.6 That your applicants beg to state that with reference to the said Office Memorandum dated 14-12-83 and 01-12-88 the applicants have approached the appropriate authorities for payment of Special (Duty) Allowance in terms of Office Memorandum Dated 14-12-83 and 01-12-88 as the applicants fulfilled the criteria laid down in the Office Memo. Dated 14-12-83 and 01-12-88. They demanded for payment of Special (Duty) Allowance. Accordingly the authorities paid the Special Duty Allowance to the applicants.

4.7 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.

Annexure-C is the photocopy of one such transfer order issued to the applicants.

4.8 That your applicants beg state that the Respondents No. 2 issued the impugned Office Memo. No. 2(3)/97-P&V on 12-05-2000 by giving direction to the Respondent No.4 to recover the Special Duty Allowance from the applicants. The Special Duty Allowance amount, which has been paid to the applicants during the period from 1994 to 1997 have been ordered to recover. The applicants have approached the authority concerned not to make any recovery of Special Duty Allowance which has been paid by the authority. But the Respondents refused to give relief to the applicants as such the applicants have compelled to approach this Tribunal for seeking justice.

Annexure-D is the photo copy of Office Memorandum No. 2(3)/97 P & V dated 12-05-2000 issued by the Respondent No. 2.

4.9 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

A handwritten signature or set of initials, possibly 'Mh', written in dark ink at the bottom left of the page.

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Respondents. Now the Respondents have issued the recovery order of Special (Duty) Allowance. As such, the act of the respondents is arbitrary regarding recovery of payment of Special Duty Allowance. As such, the Hon'ble Tribunal may be pleased to direct the Respondents not to make any recovery of any amount of the Special (Duty) Allowance which has been paid by the Respondents to the applicant.

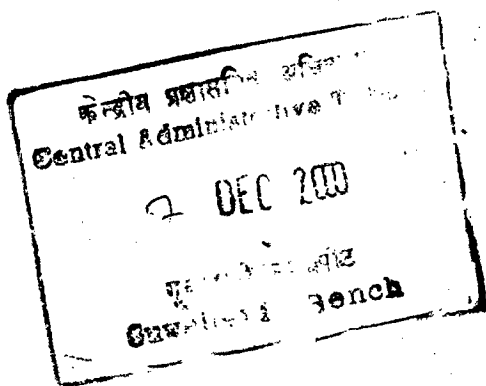
4.10 That your applicants beg to state that in other similar cases filed before the Hon'ble Central Administrative Tribunal, Guwahati Bench, the Hon'ble Tribunal directed the concerned authority not to make any recovery of Special Duty Allowance paid earlier.

Annexure-E is the photocopy of interim order passed in O.A. No. 21 of 2000 by the Hon'ble Tribunal.

Annexure-F is the photocopy of judgment and order passed by the Hon'ble Tribunal in O.A. No. 110/97.

4.11 That your applicants beg to state that the Respondents have already made some recovery from the applicants inspite of their representations and under the circumstances finding no other alternative the applicants approached this Hon'ble court for protection of rights and interests of the applicants through this Original Application and this

7/11



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Hon'ble Tribunal may be pleased to stay the impugned order of recovery issued under Office Memo. No. 2(3)/97-P&V dated 12-05-2000 as interim measure and further be pleased to set aside and quash the Office Memorandum dated 12-05-99 at Annexure-D.

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

4.13 That this application is filed bona fide and for the cause of justice.

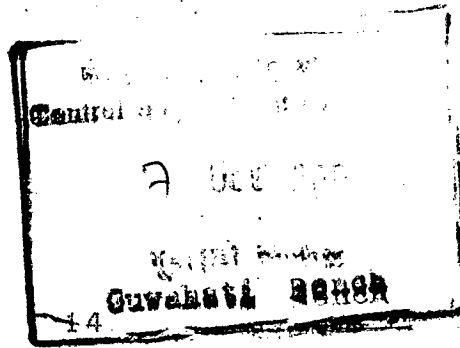
5) GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1 For that on the reason and facts which are narrated above the action of the Respondents is prima facie illegal and without jurisdiction.

5.2 sfied 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, there-fore, discontinuation and recovery of the Special (Duty) Allowance in terms of impugned Office Memorandum dated 12-05-2000 is Violative of the provisions and is liable to be set aside and quashed.

5.3 For that the action of the Respondents are mala fide and illegal and with a motive

Handwritten signature/initials



behind. As such, the impugned order of recovery is liable to be set aside and quashed.

5.4 For that the Respondents have paid the Special (Duty) Allowance to the applicants after being full satisfaction with their eligibility criteria. 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.

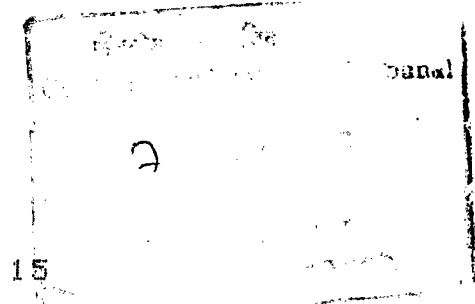
5.5 For that the payment of Special (Duty) Allowance was not obtained by the applicants by any fraudulent means but the Respondents after finding them eligible, paid the Special (Duty) Allowance to the applicants.

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

5.7 For that the order issued in terms of impugned Office Memorandum dated 12-05-2000 is without following any established procedure of rules and law.

5.8 For that in any view of the matter the action of the Respondents are not sustainable in the eye of law.

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The applicants crave leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of instant application.

6) DETAIL REMEDY EXHAUSTED:

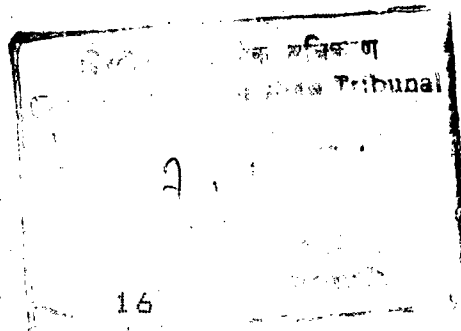
That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Court under Section 19 of the Administrative Tribunal Act, 1985.

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

The applicants further declares 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 Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8) RELIEF PRAYED FOR:

Under the facts and circumstances stated above your Lordships may be pleased to admit this petition and show cause as to why the impugned recovery order dated 12-05-2000 issued by the Respondent No. 2 should not be quashed and after hearing the parties your Lordships may be pleased to pass following reliefs:



8.1 That Hon'ble 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) Allowance 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 Memorandum vide No. 2(3)/97-P&V dated 12-05-2000 issued by the Respondent No. 2 directing recovery of Special Duty Allowance at Annexure-D may be set aside and quashed.

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

8.5 Cost of the application.

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 impugned order of recovery dated 12-05-2000 at Annexure-D.

10 . APPLICATION IS FILED THROUGH ADVOCATE.

11) PARTICULARS OF I.P.O./BANK DRAFT

I.P.O.No./~~Bank Draft~~: 66 771077

Date of Issue : 4.12.2000

Issued from : Guwahati

Payable at : Guwahati

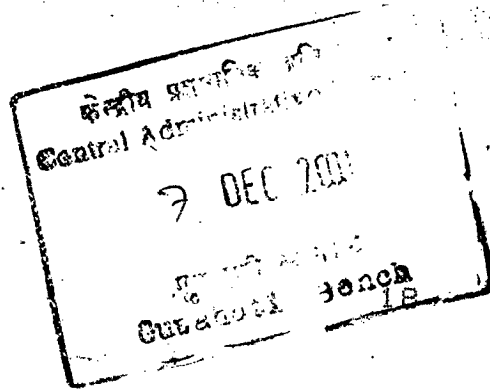
12) LIST OF ENCLOSURES:

As stated in index.

□ Verification.

2. 2. 2001

7/16



Verification

I Sri Tasiruddin Ahmed, Scientist-C, Employee Code No. 02364 working in Office of The Technical Director, State Informatics Officer, National Informatics Centre, (NIC), F Block, Assam Secretariat, Guwahati-781006 applicant No. 1 of this instant application and as authorised to sign this verification on behalf of other applicant and verify the statement made in accompanying application and in paragraph 4.4, 4.6 to 4.7, 4.9 are true to my knowledge and those made in paragraphs 4.5, 4.8,

4.10 are true to my information being matter of records and which I believe to be true and those made in paragraph 5 are true to my legal advise and I have not suppressed any material facts.

I signed this verification on this day 7th of December, 2000 at Guwahati.

Tasiruddin Ahmed

Declarant

No. 20014/2/83/E.IV
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE - A

New Delhi, the 14th Dec '83

OFFICE MEMORANDUM

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

The need for attracting and retaining the services of competent officers for service in the North Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and Administrative Reforms, to review the existing allowances & Administrative Refers, 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.
x x x x x x x x
- ii) Weight-age for Central deputation/training abroad and special mention in confidential Records.
x x x x x x x x
- iii) Special (Duty) Allowance :

Central Government civilian employees who have All India transfer liability will be granted a special (Duty) Allowance at the rate of 25 percent of basic pay subject to any a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempted from payment of income tax will, however, not

Contd..

Attested
[Signature]
Secretary

be eligible for this Special (Duty) Allowance. Will be Special (Duty) Allowance will be in addition to any special pay and per 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 Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

XXXXXXXX

XXXXXXXXXX

XXXXXXXXXXXX

XXXXXXXXXXXX

XXXXXXXXXX

50/- S.C. RAHULIK
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Attest
[Signature]
Shankar

21 - 17 - 21 -
25 - 23 -
Annexure-2 (Extract)

ANNEXURE - B

G.No. 20014/1/16/E.IV/E.II (9)
Govt. of India, Ministry of Finance
Department of Expenditure

New Delhi the 1 Dec 1986

OFFICE MEMO

Subject : Improvements and facilities for Civilian
employees of the Central Govt. serving in the
States of North Eastern Region, Andaman
Nicobar and Lakshadweep.

The undersigned is directed to refer to this
Ministry's G.O. No. 20014/1/03-E.IV dated 14th December,
1983 and 10th March, 1984 on the subject mentioned
above and to say that the question of making suitable
improvements in the allowances and facilities to Central
Government employees posted in North Eastern Region
comprising the States of Assam, Meghalaya, Manipur,
Nagaland, Tripura, Arunachal Pradesh and Mizoram has been
drawing the attention of the Govt. Accordingly the
President is now pleased to decide as follows.

- 1) xxxxxxxxxxxx
11) x x x x x x x

111) Special (Duty) Allowance.

The Central Govt. Civilian employees who have
all India transfer liability will be granted special
(Duty) Allowance at the rate of 12% of basic pay
subject to ceiling of Rs. 1000/- per month on posting
to any station in the North Eastern Region. Special
(Duty) Allowance will be in addition to any special
pay and/or deputation (Duty) allowance already being
drawn subject to the condition that the total of such
allowance will not exceed Rs. 1000/- p.m. Special
allowance like special compensatory (Remote locality)
Allowance, Construction Allowance and Project Allowance
will be drawn separately.

The Central Govt. civilian employees who are
members of Scheduled Tribes and are otherwise eligible
for the grant special (Duty) Allowance under this para
and are exempted from payment of Income Tax under the
Income Tax Act will also draw Special (Duty) Allowance.

xxx xxxxx
xxx xxx

Attested
[Signature]
Advocate

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- 22 -

ANNEXURE - C
21(B)

86

No.13(2)/91-P&V
Government of India
Planning Commission
National Informatics Centre

A-Block, GO Complex
Lodi Road, New Delhi-3.

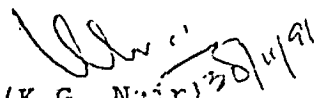
November 30, 1991

OFFICE ORDER

Shri Rubaiyat Ul Ali, District Informatics Officer (Employee Code No.2605), NIC North Cachar Hills District, Assam is hereby transferred to NIC Headquarters on existing terms and conditions of his appointment with immediate effect and until further orders.

2. Shri Rubaiyat Ul Ali will be eligible for TA/DA, Joining time as per normal rules.

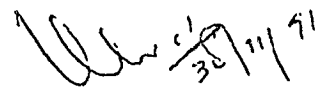
3. Shri Rubaiyat Ul Ali should obtain relieving order from State Informatics Officer Assam State Unit, Guwahati by producing no due certificate from all concerned. On arrival at NIC Headquarters, New Delhi Shri Rubaiyat Ul Ali will report to Shri M. Moni, Additional Director.



(K.G. Nair) 30/11/91
Joint Director

Copy to:

1. Accounts Officer, Pay and Accounts Office, NIC Hqrs., New Delhi.
2. Cash & Accounts Section, NIC Hqrs., New Delhi
3. DDO, NIC Assam State Unit, Guwahati
4. Shri Rubaiyat Ul Ali, District Informatics Officer
5. Shri M.Moni, Additional Director
6. SIO, NIC Assam State Unit, Guwahati
7. All Sections and Divisions at NIC Hqrs., New Delhi
8. Personal file/probation file/Guard file
9. Notice Board

10. MC (ER) BBSR


(K.G. Nair)
Joint Director

Attested

Signature

No.2(3)/97-P&V
Government of India
Ministry of Information Technology
National Informatics Centre
A-Block, CGO Complex, Lodi Road, New Delhi-110 003.

ANNEXURE - D

May 12, 2000

OFFICE MEMORANDUM

Subject: Grant of Special (Duty) Allowance for Civilian Employees serving in the States of North Eastern Region - reg.

A number of queries were received regarding grant of Special (Duty) Allowance (SDA) for Civilian employees serving in the States of North Eastern Region. The matter was taken up with Ministry of Finance and the clarifications given by the Ministry of Finance, Department of Expenditure, E.II(B) and the judgement of Hon'ble Supreme Court, are reproduced below for guidance:

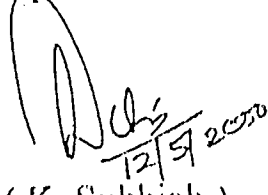
(A) Special Duty Allowance would not be admissible on transfer made on personal basis. This will also not be given in case of initial posting in North Eastern Region. Special Duty Allowance will be admissible only if the condition of All India Transfer Liability is fulfilled and the officer concerned is posted to North Eastern Region from outside that region, as clarified by the Ministry of Finance, in their OM No.11(3)/95-11(B) dated 12.1.96.

(B) The Hon'ble Supreme Court in their judgement delivered on 20.9.1994 (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 North Eastern Region from outside the region and Special Duty allowance 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.

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Answer to

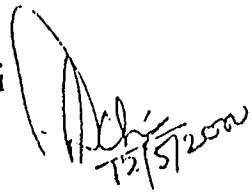
- 24 -

2. All officers/staff posted in North Eastern Region, are requested to keep the above instructions in view for strict compliance. Special Duty Allowance if any paid to ineligible employees after 20.9.1994 may be recovered from such employees immediately and a compliance report sent to the undersigned latest by 30.6.2000.


(K. Subbiah)
Director

Copy forwarded for information and necessary action to:

1. Pay and Accounts Office, NIC Hqrs., New Delhi.
2. DDO, NIC Hqrs., New Delhi/DDOs of NIC Assam & West Bengal State Units
3. SIO, NIC West Bengal State Unit, Calcutta
4. SIO, NIC Assam/Meghalaya/Tripura/Arunachal Pradesh/Mizoram/Manipur/Nagaland/Sikkim
5. All DDGs/PS to DG(NIC)/AFA
6. State Coordinator, NIC-North Eastern Region
7. All Divisions/Sections at NIC Hqrs., New Delhi
8. Guard File/Notice Board


(K. Subbiah)
Director

Atte
Signature

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.


OF 199

Applicant(s)

Respondent(s)

Advocate for Applicant(s)

Advocate for Respondent(s)

Notes of the Registry	Date	Order of the Tribunal
	21.1.2000	<p>Present : Hon'ble Mr Justice D.N.Baruah, Vice-Chairman</p> <p>Hon'ble Mr G.L.Sanglyine, Administrative Member.</p> <p>Application is admitted. Issue usual notice.</p> <p>List on 21.2.2000 for written statement and further orders.</p> <p>Mr A.Ahmed, learned counsel for the applicants prays for an interim order. Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents opposes the prayer. Recovery of Special Duty Allowance shall not be made until further orders.</p>

Sd/-VICECHAIRMAN
Sd/MEMBER (A)

Certified to be true Copy

25/1/2000

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- 26 -
- 16 -
ANNEXURE - F
UP

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.15 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 D.K. Sharma,Applicants
Mr M. Chanda, Mr A. Ahmed, Mr S. Sarma and
Mr H.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.

.....
A. K. Choudhury
A. K. Choudhury

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-4-

O R D E R

HARUHAN, 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/US.W-IV dated 14.12.1981, 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 issued 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

Advocate

12 - 12 - 28 ✓

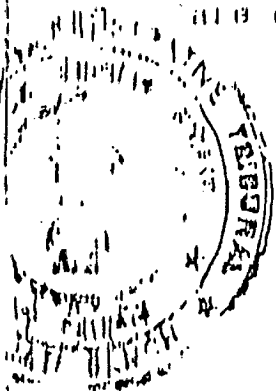
Those persons who are not entitled to SDA also continued to draw SDA. However, as per the Apex Court's decision in aforesaid civil appeals those persons who belong to the North Eastern Region are not entitled to SDA. In the said civil appeals the Apex Court also held that the amount of SDA which has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

1. 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/- Vice-Chairman

Certified to be true Copy
प्रमाणित प्रतिलिपि


Section Officer (J) 20/8/98
राष्ट्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
राष्ट्रीय प्रशासनिक न्यायालय
New Delhi Bench, New Delhi-110001
नया दिल्ली बेंच, नया दिल्ली-110001

Attested
[Signature]
Secretary