

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI. 5

R.A. 4/2001

ORIGINAL APPLICATION NO.

OA 21/2000

... Mr. Louis Khyriem & Ors... Applicant.

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

30.1.01

Issue notice. Returnable by

6 weeks. List on 2.3.01 for Admission.

Member

Vice-Chairman

lm

2.3.01

List on 30.3.01 as prayed for by the learned counsel for the respondents.

Member

Vice-Chairman

pg

30.3.01

Mr A. Deb Roy, learned Sr.C.G.S.C for the respondents prays for some time to go through the matter.

List on 23.4.01 for further order.

Member

Vice-Chairman

pg

23.4.01

Heard Mr A.Ahmed, learned counsel for the applicant and also Mr A. Deb Roy, learned Sr.C.G.S.C for the respondents.

By this review application the applicant has sought for review of the order dated 22.12.2000 passed in O.A.

contd..

8-2-2001

Service of Notice issued to the respondents vide D.No. 469 dt. 9.2.2001

20.4.01

No reply has been filed.

23.4.01 21/2000 on the ground that these applicants though initially recruited in the North East Region, they were subsequently transferred and therefore their cases did not fall within the category of the others.

We have given our anxious consideration on the matter. Considering the facts and circumstances, more particularly the pleadings in the O.A. & we are of the opinion that it would not be appropriate to exercise the review power under Section 22(f) of the Administrative Tribunals Act 1985. The facts pleaded were duly considered and if the decision was made erroneously it cannot be corrected by way of review.

The application is accordingly dismissed. There shall however, be no order as to costs.

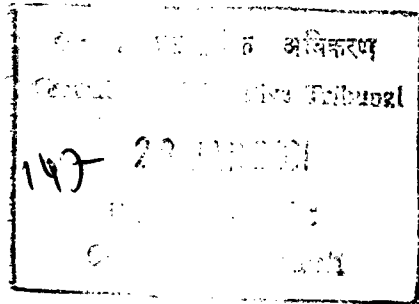
Member

Vice-Chairman

pg

NS  
24/4/2001

27.4.2001  
Copy of the order  
has been sent to the  
Office for study &  
then to the L/Adm.  
for the parties.  
JS



Filed by  
Dwijendra Nath Hajong  
Applicant  
(Adv. AHMED)  
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI.

REVIEW APPLICATION NO. <sup>42</sup> OF 2001  
IN ORIGINAL APPLICATION NO. 21 OF 2000.

IN THE MATTER OF:

A petition under Section 22(f) of the Central Administrative Tribunal Act, 1985 praying for review of the common Judgment and order dated 22-12-2000 passed by the Hon'ble Tribunal in O.A. No. 21 of 2000 along with other cases.

-AND-

- 1] Sri Louis Khyriem,  
Superintendent,  
National Sample Survey  
Organisation.
- 2] Dwigendra Nath Hajong,  
Superintendent,  
National Sample Survey  
Organisation..
- 3] Thaneswar Malakar,  
Superintendent,  
National Sample Survey  
Organisation. - Petitioners.  
Applicants.

## -Versus-

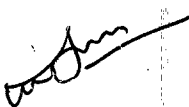
1. The Union of India,  
represented by the Secretary,  
Ministry of Planning, Department  
of Statistics, Shardar  
Patel Bhawan,  
New Delhi #110001.
2. The Director National Sample  
Survey Organisation, (Field  
Operation Division),  
Department of Statistics,  
Government of India, C-Block,  
3<sup>rd</sup> Floor, Pushpa Bhawan,  
Madangir Road,  
New Delhi-110062.
3. The Regional Assistant  
Director, National Sample  
Survey Organisation, (Field  
Operation Division) Meghalaya  
Region, Oak Land Road,  
Shillong-793001.

- Opposite Parties  
Respondents

The Humble petition of the  
above named petitioners:

MOST RESPECTFULLY SHEWETH:

1] That the petitioners as applicants  
filed the O.A. No. 21 of 2000 before this  
Hon'ble Tribunal praying for continuation of  
payment of Special Duty Allowance in short,



(S.D.A.) and also against stoppage and recovery of Special Duty Allowance vide Office Memorandum No. 128/Megh/99/1731-35 dated 09-11-99.

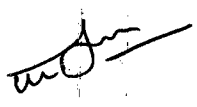
2] That the Hon'ble Tribunal was pleased to admit the Original Application No. 21 of 2000 on 21-01-2000 and also was to please to stay the impugned recovery of Special Duty Allowance until further orders.

3] That the above Original Application was finally disposed of by the Hon'ble Tribunal on 22-12-2000 with other 17 cases relating to payment and recovery of Special Duty Allowance.

4] That the applicant got the copy of the Judgment and Order dated 22-12-2000 passed in O.A. No. 21 Of 2000 on 03-01-2001 from the applicants' Office which was sent by the Hon'ble Tribunal's Registry.

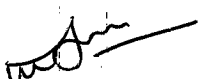
5] That the applicants beg to state that their case is not common with the leading case of the Common Judgment passed in O.A. No. 149/99 and others.

6] That your applicants beg to state that they have All India Transfer Liability in practical and they had served in different parts of India as Investigator and Assistant Superintendent in the National Sample Survey Organisation. Now all of them are posted in the North Eastern Region.



7] That your applicants beg to state that the applicants are entitled for Special Duty Allowance as per Office Memorandum No. 20014/2/83-E.IV dated 14-12-83 and 20-04-87, read with O. M. No. 20014/16/86 E. II(B) dated 1-12-88. This aspect has been clarified by the Cabinet Secretariat, Government of India, Office No. 20/12/99-EA-I-1799 dated 02-05-2000. In the said order para #B (IV) it has been stated that 'an employee hailing from N.E. Region, posted to N.E. Region initially but subsequently transferred out of N.E. Region but re-posted to the N.E. Region after some time serving in non-N.E. Region' are entitled to get Special Duty Allowance and the impugned recovery and stoppage of Special Duty Allowance was issued to applicants of the O.A. No. 21 of 2000 vide O.M. No. 128/Megh/99/1731-35 dated 09-11-99. But in the O.A. 149/99 the leading case of the said Common Judgment the impugned Office Order was issued on 12-01-1999. Hence, no recovery of Special Duty Allowance has also been ordered by the Hon'ble Tribunal up to 31-01-1999 on the basis of the impugned order passed by the Respondents of O.A. 149/99 the leading case of the impugned judgment.

Annexure-6 is the copy of the letter issued by the Cabinet Secretariat vide UD No. 20/12/99-EA-1-1799 dated 02-05-2000.



81 That the applicants submit that from the above facts and circumstances it is a fit case for review of the Common Judgment & Order dated 22-12-2000 passed in O.A. No. 21 of 2000 on the following amongst other

Grounds:

II For that there has been an error apparent on the records, <sup>d.f.c.</sup> resulting miscarriage of justice and as such, it is a fit case for reviewing the Common Judgment passed by this Hon'ble Tribunal.

III For that the applicants are practically scheduled with all India Transfer Liability and they were posted at different places of India. As such, they are entitled for payment of Special Duty Allowance.

IIII For that the applicants are entitled for payment of Special Duty Allowance as per Cabinet Secretariat, Government of India clarification dated 02-05-2000 in consultation with Ministry of Finance (Department of Expenditure).

IV For the Impugned order of Stoppage and Recovery of Special Duty Allowance to the petitioners by the Opposite parties on 09-11-99 not on 12-01-1999 as per Common Judgment

dated 22-12-2000 passed by this Hon'ble Tribunal in O.A. No. 21 of 2000.

VI For that the Opposite parties has mislead the Hon'ble Tribunal that the petitioners are not, entitled for continuation of payment of Special Duty Allowance and as such, it is a fit case for reviewing the Judgment and Order dated 22-12-2000 passed by the Hon'ble Tribunal.

Under the facts and circumstances stated above in this Review petition it is most respectfully prayed that the Hon'ble Tribunal may be pleased to admit this review application and call for the Records and after hearing the parties review the Impugned Judgment & order dated 22-12-2000 passed in Original Application No. 21 of 2000.

Further, it is prayed that pending disposal of the Review Petition operation of the Impugned Judgment & Order dated 22-12-2000 passed in Original Application No. 21 of 2000 may kindly be stayed.

And for this act of kindness your petitioner as in duty bound shall ever pray.

*mo*



## AFFIDAVIT

I Sri Dwijendra Nath Hajong, Superintendent, National Sample Survey Organisation, working under the Office of the Regional Assistant Director, National Sample Survey Organisation (Field Operation Division) Meghalaya Division, Oak Land Road, Shillong-1, Petitioner No. 2 of this instant application and as authorised to sign this affidavit on behalf of other petitioners do hereby solemnly affirm and declare as follows:

1] That I am the petitioner No. 2/ applicant No. 2 in the instant case and I am competent to swear this affidavit and I am also fully acquainted with facts and circumstances of the case.

2] That the statements made in this affidavit and in paragraphs No. 1, 2, 5, 6 are true to my knowledge and those made paragraphs No. 3, 4, 7 are true to my information and those made in the rest are my humble submissions before this Hon'ble Tribunal.

And I signed this affidavit on this the day 29th of January, 2001 at Guwahati.

Identified by me:

  
Advocate.

(Adil AHMED)

Dwijendranath Hajong  
Deponent

Solemnly affirm and swear before me by the Deponent who is identified by Mr. Adil Ahmed, Advocate.

Sukumar Sarma  
Advocate

COURT CASE  
MOST IMMEDIATE

Cabinet Secretariat  
(E.A.I. Section)

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

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

2. The points of doubt raised by SSB in their UO No.42/SSB AI/99(18)-5232 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Department of Expenditure) and clarification to the points of doubt is given as under for information, guidance and necessary action :

- i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.
  - a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer Liability. ✓
  - b) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/ service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability. ✓
  - ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-E.IV dated 14.12.83 and 20.4.87 read with.

*Attache*  
*SC*  
*Admiral*

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

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

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

v) The MOF, Deptt. of Expdr. vide their VO No.11(3)/95-E.II(B) dated 7.6.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. For determination of the admissibility of the SDA to any Central Govt. Civilian employees having All India Transfer Liability will be by applying tests

In case the employee, hailing from NE Region is posted within NE Region he is not entitled to SDA till he is once transferred out of that Region.

(a) whether recruitment to the Service/Cadre/Post has been made on All India basis (b) whether promotion is also done on the basis of All India Zone of promotion based on common seniority for the service/Cadre/Post as a whole (c) in the case of SSB/DGS, there is a common recruitment system made on All India basis and promotions are also done on the basis of All India Common Seniority basis. Based on the above criteria/tests all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from NE Region or posted to NE Region from outside the NE Region.

Attd  
S R  
Admn

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

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

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

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

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

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

1. Shri R.S.Bedi, Director, ARC
  2. Shri R.P.Kurcel, Director, SSB
  3. Brig (Retd) G.S.Uban, IG, SFF
  4. Shri S.R.Mehra, JD (P&C), DGS
  5. Shri Ashok Chaturvedi, JS (Pers), R&AW
  6. Shri B.S.Gill, Director of Accounts, DACS
  7. Smt. J.M.Menon, Director-Finance (S), Cab. Sectt.
  8. Col. K.L. Jaspal, CIOA, CIA
- Cab. Sectt. No. 20/12/99-EX-II-1799 dated 2.5.2000

*Ats*  
*JS*  
*Adroit*

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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.

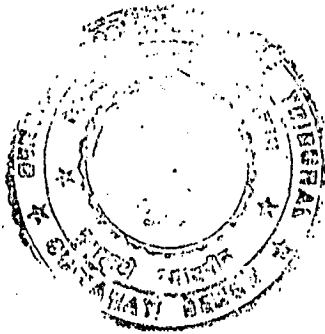
- RESPONDENTS

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

J U D G M E N T

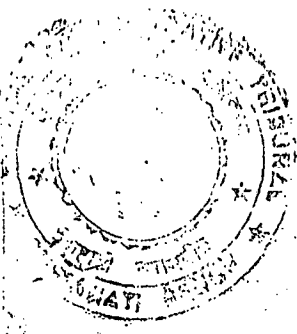
M.P. SINGH, MEMBER (ADMN.) -

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.



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Advocate

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 Soal 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.81/99 (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



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16

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. <sup>But</sup> The Respondent No.3 issued the impugned order dated 12th January, 1999

*wh*

wherein ...

*Attested*  
*Director*



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 <sup>also</sup> 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, <sup>that those</sup> 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 ...

sh

Attest  
[Signature]  
Annotate

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, <sup>1996</sup> 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."

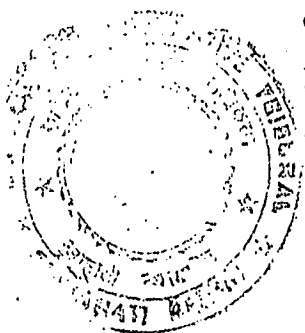
6. According to the applicants, the Hon'ble Supreme Court keeping in mind the possible hardship to the low paid employees directed not to make recovery of the S.D.A. which is already paid to the employees. After a lapse of

considerable ...

*[Handwritten signature]*  
A. H. Patel  
Secretary

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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Asst. Secy

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

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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 ...

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.



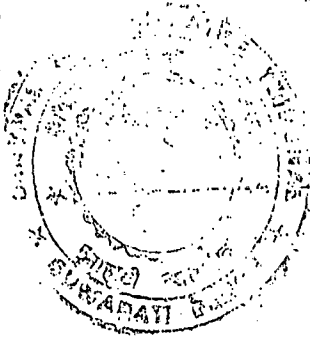
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12. For the reasons recorded above, the O.A. is partly allowed and the respondents are directed that no recovery would be made by them of the amount of S.D.A. already paid to the applicants upto 31.1.1999. In case any amount on account of payment of 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)



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प्रमाणित प्रतिलिपि

03/01/02

Section Officer (J)  
आनुमान अधिकारी (न्यायिक शाखा)  
Central Administrative Tribunal  
केन्द्रीय प्रशासनिक अदालत  
Guwahati Bench, Guwahati-8  
गुवाहाटी न्यायपीठ, गुवाहाटी-8

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