

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 166/2000

R.A/C.P No.

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SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 166/2000

OF 199

Applicant(s) Blasenath Nath Deka and othersRespondent(s) N.O.P. & ors.Advocate for Applicant(s) Mr. J.L. SarkarMrs. S. DekaAdvocate for Respondent(s) C.G. S.C.

Notes of the Registry	Date	Order of the Tribunal
10/11/2000 8-5-2000 B 16/5/2000 Mr. Registrar VS 16/5/2000	17.5.2000	<p>Present : Hon'ble Mr.A.K. Misra, Judicial Member.</p> <p>Heard Mr.J.L.Sarkar, learned counsel for the applicant and considered the prayer relating to joint petition and for issuance of notice in the O.A. for relief. Joint petition by the applicants allowed.</p> <p>Issue notice to the respondents to show cause as to why the application should not be admitted. Returnable by 23.6.00.</p> <p>Considered the prayer for interim relief regarding staying operation of the impugned order issued vide letters dated</p>

16/2000
2

Notes of the Registry	Date	Order of the Tribunal
	17.5.00 CONTD	<p>dated 9.7.98, 18.8.98, 12.10.98, 22.9.98, 17.5.99 and 12.5.99. The operation of these orders has already been stayed in other similar O.As. Therefore, in view of the similarity in the present case, the operation of the abovementioned orders is hereby stayed.</p> <p>However, a condition is attached to the interim order that in case of payment of the allowance to the applicants in view of the stay of operation of the various orders it will not cause them to detain money in future if they are found not entitled to the same.</p>
24 - 5 - 2000 Notice prepared and sent to D.Section for issuing of the same to the respondents through Regd. post with A.P.D.		<p>Issue notice to the respondents to show cause as to why the interim order should not be made absolute.</p> <p>Returnable by 23.6.00.</p>
<u>25</u> Notice D.Nos. 1455 & 1457 std-25.5.2000		<p>List on 23.6.00 for consideration of admission.</p> <p>23.6.00</p>
<u>8/6/00</u> Order dtd. 8/6/00 issued to Sree J. L. Sarkar, Adv.	mk	<p>Member (J)</p>
Received: Adv. 8.6.2000.		
11 - 7 - 2000	23.6.00	<p>There is no Bench today, Adjourned to 12.7.00.</p> <p>12.7.00</p>
<p>① Service report are still awaited.</p> <p>② No. show cause has not been filed.</p>	12.7.00.	<p>Mr J.L.Sarkar, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents present. Written statement has not been filed. Application is admitted.</p> <p>List on 16.8.2000 for order before the Division Bench.</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.203 of 1998 and series.

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

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

The Hon'ble Mr M.P. Singh, Administrative Member

1. O.A.No.203/1998

Shri R.S. Pathak and 423 others

.....Applicants

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

- versus -

Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

2. O.A.No.207/1998

Shri Hemendra Nath Sharma and 24 others

.....Applicants

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

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

3. O.A.No.222/1998

Shri Bimal Kumar Chatterjee and 31 others

.....Applicants

By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mr S. Mukherjee.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

4. O.A.No.225/1999

Shri Subrata Kumar Dhar and 23 others

.....Applicants

By Advocates Mr M. Chanda, Mrs U. Dutta and
Mr G.N. Chakrabarty.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

O.A.No.268/1999

Shri V.S. Sarma and 86 others
By Advocates Mr B.K. Sharma and Mr S. Sarma.

.....Applicants

- versus -

The Union of India and Others
By Advocate Mr B.S. Basumatary, Addl. C.G.S.C.

.....Respondents

O.A.No.312/1999

Shri Keshab Choudhury and 67 others
By Advocates Mr D.K. Mishra, Mr A. Dutta and
Mr R. Agarwal.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....Respondents

O.A.No.372/1999

Smt Sunita Devi Bhuyan and 41 others
By Advocates Mr J.L. Sarkar and Mrs S. Deka.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr B.S. Basumatary, Addl. C.G.S.C.

.....Respondents

O.A.No.144/1999

Shri Arun Chandra Chanda and 19 others
By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mrs U. Dutta.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr A. Deb Roy, SR. C.G.S.C.

.....Respondents

O.A.No.194/1999

Shri Bidhan Chandra Roy and 20 others
By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs U. Dutta and Mr G.N. Chakrabarty.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

O.A.No.285/1999

Shri Samir Ch. Kar and 9 others
By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami and Mr G.N. Chakrabarty.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

11. O.A.No.379/1999

Shri M.R. Chakraborty and 78 others
By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mrs N.D. Goswami.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

12. O.A.No.442/1999

Shri A. Mahendra Kumar and 5 others
By Advocates Mr M. Chanda and N.D. Goswami.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

13. O.A.No.129/2000

Shri K. Bayan and 154 others
By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami and Mr G.N. Chakraborty.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

O.A.No.166/2000

Shri Bhabendra Nath Deka and 5 others
By Advocates Mr J.L. Sarkar and Mrs S. Deka.

.....Applicants

- versus -

The Union of India and others
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

15. O.A.No.168/2000

Dr Ajit Bora
By Advocates Mr B.K. Sharma and Mr S. Sarma.

.....Applicant

- versus -

The Union of India and others
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

16.

O.A.No.284/1999

Shri Gaj Bahadur Singh Thapa and 98 others

.....Applicants

By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami and Mr G.N. Chakrabarty.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

17.

O.A.No.109/2000

Dr Priya Kumar Singh and 6 others

.....Applicants

By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mrs N.D. Goswami and Mr G.N. Chakrabarty.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

18.

O.A.No.341/2000

Shri Pulak Chakraborty and 5 others

.....Applicants

By Advocates Mr B.K. Sharma and Mr S. Sarma.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

19.

O.A.No.345/2000

Dr Basab Ghosh and 2 others

.....Applicants

By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mr S. Ghosh.

- versus -

The Union of India and others

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

20.

O.A.No.425/2000

Dr Songkhongam Dimgel and 12 othersApplicants
 By Advocates Mr J.L. Sarkar, Mrs S. Deka and
 Ms T. Das.

- versus -

The Union of India and othersRespondents
 By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

21.

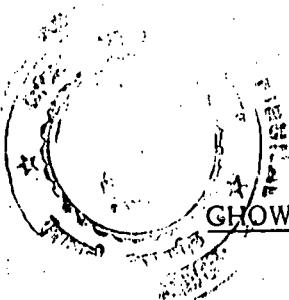
O.A.No.429/2000

Shri Bhupendra Nath Talukdar and 16 othersApplicants
 By Advocates Mr M. Chanda, Mrs N.D. Goswami and
 Mr G.N. Chakrabarty.

- versus -

The Union of India and othersRespondents
 By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....
ORDER (ORAL)


 GHOWDHURY J. (V.C.)

The admissibility of Special (Duty) Allowance is the main question in all these applications, and therefore, all these applications were taken up together for consideration. For the purpose of adjudication of this proceeding, however, we shall mainly refer to O.A.No.203 of 1998 as the lead case.

2. All the applicants are working in different capacities under the Director General, Assam Rifles. The applicants are civilian employees working under the Central Government. The Union Government, with a view to provide some incentives to the civilian employees of the Central Government in the States and Union Territories of the North Eastern Region, amongst others, granted Special (Duty) Allowance (SDA for short) to the employees having All India Transfer liability. The original scheme was introduced by O.M.No.II.20014/3/83/E.IV dated 14.12.1983. The Government of India by letter No.II.II011/1/84-FP.IV dated 3.3.1986

clarified the Government policy and accordingly the Director General, Assam Rifles, was informed by the aforesaid letter that personnel in Battalions of Assam Rifles would not be entitled to the concessions envisaged in the Ministry of Finance (Department of Expenditure) O.M. NO.20014/3/83-E-IV dated 14.12.1983. It also indicated that Assam Rifles personnel and civilian non-combatised officers/employees of Assam Rifles did not have All India Transfer liability and as such, the question of grant of SDA even in the case of civilian non-combatised officers/employees did not arise. It further mentioned that non-combatised civilian staff of Static formations such as officers of DG, IGP, DIGs and Range Headquarters of Assam Rifles would be allowed concessions as envisaged in the O.M. dated 14.12.1983 except SDA. The Government of India again had to deal with the matter pertaining to grant of SDA and Special Compensatory (Remote Locality) Allowance to the Assam Rifles personnel posted in the States and Union Territories of the North Eastern Region, Andaman and Nicobar Islands and Lakshadweep. Considering the subject the Government of India decided to sanction grant of certain allowances like SDA, Special Compensatory (Remote Locality) Allowance (SCA(RL) for short), etc. By order No.11011/1/84-FP.IV dated 2.2.1989, Annexure D, the sanction of the President granting the following allowances were indicated. The relevant part of the Notification is reproduced hereinbelow:

<u>Category of personnel entitled to allowance</u>	<u>Particulars of O.M.s regulating the allowance</u>
(1)	(2)
<ul style="list-style-type: none"> 1) <u>Special (Duty) Allowance</u> <ul style="list-style-type: none"> i) Combatised personnel (including Cadre officer) In battalions of Assam Rifles and the combatised personnel (including Cadre officers) in static formations (such as officers of DG, IGP, DIGs, Range HQrs, Training Centre etc.) and other units (Maintenance Groups, Workshops etc.) of Assam Rifles. 	Item (iii) in para 1 of Ministry E.IV dated 14.12.83 as amended from time to time, read with their O.M.No.II.20014/3/83-E.IV dated 29.10.86 and their O.M. No.II.20014/3/83-E.IV dated 15.7.88 and Min. of Fin. O.M. No.F.20014/16/86.E.IV/E-II(B) dated 1.12.88. (This is in modification of sanction issued in MHA letter No.II.27012/31/85-FP.II dated 6.4.87).

(1)

ii) Non-combatised civilian personnel (including officers) in battalions of Assam Rifles and static formations (such as offices of DG, IGP, DIGs, Range HQrs., Training Centre etc.) and other Groups (Maintenance Groups, Workshops etc.) of Assam Rifles.

(2)

Same as above. (This is in modification of the sanction issued vide item (3) of MHA letter No.11011/1/84-FP.IV dated 3.3.86).

(2)

(3)"

The above communication also indicated that the above allowances were not applicable to Army Officers/personnel on deputation to Assam Rifles. In pursuance to the aforesaid Government order the applicants were paid the SDA with effect from 7.11.1988. When the matter rested at this stage situation the Supreme Court rendered its decision in Civil Appeal No.3251 of 1993 alongwith analogous appeals on 20.9.1994, known as Union of India and others vs. S. Vijay Kumar and others reported in (1994) 28 ATC 598. In the said decision, the Supreme Court had the occasion to deal with the O.M.s dated 14.12.1983, 29.10.1986 and 20.4.1987 pertaining to grant of SDA to the Central Government employees working in the North Eastern Region having All India Transfer liability. The Supreme Court, in the aforesaid decision, held that the aforesaid three Notifications were applicable only to the persons specified therein, namely those persons who have All India Transfer liability on being posted to any station of the North Eastern Region from outside the region. Referring to the Notification dated 20.4.1987 the Supreme Court made the position clear that the allowance should not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. In the light of the above decision of the Supreme Court, the O.M.No.11(3)/95-E.II(B) dated 12.1.1996 clarified that the Central Government civilian employees who have All India Transfer Liability were entitled to SDA on being posted to any station in N.E. Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer liability. The aforesaid communication created some misgivings and in order to avoid the misgivings.....

misgivings, the Director General, Assam Rifles, the respondent No.3 herein, issued the Memorandum dated 6.6.1998, Annexure E. By the aforementioned communication the Ministry of Home Affairs was informed that SDA was one of the ten concessions/facilities extended to the Central Government civilian employees serving in the N.E. Region with effect from 1.11.1983 sanctioned under Ministry of Finance O.M. dated 14.12.1983. Subsequently, consequent to Fourth Central Pay Commission recommendations, the above concessions/facilities were modified and two more concessions were given with effect from 1.12.1988. It also mentioned that the Assam Rifles projected to the Ministry of Home Affairs for extension of the above concessions/facilities including SDA to the combatant and civilian employees of Assam Rifles on the analogy that all those concessions including SDA were available to the employees of other CPOs like BSF, CRPF etc. similarly situated in the N.E. Region. While grant of the above concessions to the combatant employees were turned down, all the concessions except SDA were sanctioned for civilian employees of Assam Rifles posted in static formations like Directorate General, Assam Rifles, Inspector General, Assam Rifles (North), Range Headquarters and Assam Rifles Training Centre and School with effect from 3.3.1986 under Ministry of Home Affairs letter No.II.11011/1/84PP 4 dated 3.3.1986, copy of which was endorsed, alongwith others, to the Pay and Accounts Office, Assam Rifles, Shillong and Ministry of Finance, Department of Expenditure (E.IV). Subsequently, all these concessions except SDA were also extended to the combatant employees of Assam Rifles with effect from 1.11.1986 vide Ministry of Home Affairs letter dated 4.4.1987. The communication further mentioned that consequent to change over of pay structure of Assam Rifles personnel from Army pattern to CPO, pattern from 1.1.1986 following Fourth Central Pay Commission recommendations. SDA on the analogy of other CPOs like BSF, CRPF etc. was also extended to both combatant and civilian employees of Assam Rifles with effect from 7.11.1988, with categorical mention of the civilian staff and officers of all static formations of Assam Rifles including Directorate General, Assam Rifles, vide Ministry of Home Affairs letter dated 2.2.1989. Para 4 of the letter dated 2.2.1989 laid down that the sanction of SDA for

the combatant and civilian employees of Assam Rifles was duly concurred by the concerned departments of the Ministry of Finance. The Pay and Accounts Officer, Assam Rifles, was passing the monthly bills of the civilian employees of Directorate General, Assam Rifles without any objection right from the time of sanction of SDA to Assam Rifles. However in the end of April 1998, the Pay and Accounts Officer, Assam Rifles, Shillong, intimated that SDA was not applicable to the civilian employees of DGAR, Shillong as per the Ministry of Finance O.M.No.11(3)95-E.II(B) dated 12.1.1996. The communication also clarified that the judgment of the Apex Court regarding non-entitlement of SDA to certain category of civilian employees was based on the general order sanctioning the ten concessions/facilities including SDA to civilians serving in the N.E. Region. SDA was sanctioned to the combatant and civilian employees of Assam Rifles on CPO analogy and that too, from a much later date, 7.11.1988, when the pay pattern of Assam Rifles personnel was made on the lines of CPO pattern after the Fourth Central Pay Commission recommendations. It was also mentioned in the communication dated 6.6.1998 that the Ministry of Home Affairs and the Ministry of Finance were fully aware of the general eligibility criteria for SDA, namely, conditions of appointments, posting, transfer, retention, exigency of service etc. of the civilian employees of static formations of Assam Rifles like DGAR, IGAR, etc. Keeping all these aspects in view, a separate and exclusive sanction was accorded by the Ministry of Home Affairs for grant of SDA to the combatant and civilian employees of Assam Rifles as mentioned earlier. The Director General accordingly intimated the view about the eligibility of SDA to the civilian employees of the Directorate General, Assam Rifles.

3. The above communication was, however, turned down by the Ministry of Home Affairs, by its communication dated 9.7.1998. The Association represented the matter to the Home Ministry by representation dated 13.8.1998, but the Ministry turned down the same. The Directorate General, Assam Rifles, by its communication dated 18.8.1998 informed that the Pay and Accounts Officer, Assam Rifles, advised for discontinuance

of SDA from the pay of August 1998 in respect of all the civilian

13 employees of DGAR and further advised that the SDA drawn from 20.9.1994 to till date was also to be recovered. Hence this application before this Tribunal challenging the legitimacy of the action taken by the respondents.

4. The respondents submitted their written statement and in their written statement, the respondents have not disputed about the Presidential order granting SDA with effect from 7.11.1988. It was also stated that in the written statement that the employees of the Central Government having All India Transfer liability serving in the States and Union Territories of the N.E. Region were granted SDA from 1983 onwards vide Government of India O.M. dated 14.12.1983. The orders of the President granting SDA to Assam Rifles with effect from 7.11.1988 was a distinct and a special order for Assam Rifles which was issued after a lapse of almost five years and after considering all the pros and cons of the eligibility criteria. The respondents further stated that the civilian employees of Assam Rifles were granted SCA from 1988 through a special order vide Government of India, Ministry of Home Affairs letter No.11011/1/84-FP.IV dated 2.2.1989. The O.M. dated 12.1.1996 was made operative till July 1988 and pay bill were duly passed by the Audit authorities, namely Pay and Accounts Office, Assam Rifles, Ministry of Home Affairs. In August 1998, the Pay and Accounts Officer, Assam Rifles intimated that SDA was not applicable to the civilian employees of the Directorate General, Assam Rifles as per Ministry of Finance O.M. dated 12.1.1996. The respondents also stated that the O.M. dated 12.1.1996 was applicable to civilian employees of Assam Rifles as per Ministry of Home Affairs letter dated 9.7.1998.

5. From the facts enumerated above it thus emerges that the Assam Rifles personnel were not covered by the O.M. dated 14.12.1983 and the subsequent O.M.s dated 29.10.1986 and 20.4.1987. By communication dated 3.3.1986 the Ministry of Home Affairs in clear terms stated that

Assam Rifles personnel and civilian non-combatised officers of Assam Rifles did not have All India Transfer liability and as such question of grant of SDA even in the case of civilian non-combatised officers/employees did not arise. The aforesaid communication was considered by the Ministry while taking a decision for grant of SDA, SCA(RL) to the Assam Rifles personnel posted in the States and Union Territories of N.E. Region, Andaman and Nicobar Islands and Lakshadweep. Conveying the sanction of the President for grant of the allowances to the personnel of Assam Rifles with effect from 7.11.1988, the Ministry took note of the earlier O.M.s dated 14.12.1983, 29.10.1986 and 1.12.1988. The O.M. dated 1.12.1988 was made in modification of the sanction issued by MHA letter No.II.27012/31/85-FP.II dated 6.4.1987. It thus appears that while granting SDA to the non-combatised civilian staff of the static formation of the Assam Rifles, the Ministry took note of its earlier O.M.s. The orders of the President granting SDA to Assam Rifles with effect from 7.11.1988 was mentioned as a distinct order. A ^{conscious decision} ~~concessus~~ was taken by the respondents by considering the service conditions of the personnel serving in the Assam Rifles. This order granting SDA is not relatable to the O.M.s dated 14.12.1983, 29.10.1986 and 20.4.87. The competent authority felt it appropriate for granting SDA knowing it that such civilian non-combatised officers and personnel of the Assam Rifles did not have All India Transfer liability, notwithstanding, the Government thought it wise to grant the same. The aforesaid direction of the authority has been passed in absolute terms and in the absence of any modification of the said order the respondents were not justified to refuse the benefit of the order dated 2.2.1989. The order dated 2.2.1989 was not the subject matter of the decision rendered by the Supreme Court in Vijay Kumar (Supra). In the circumstances we do not find any justification on the part of the respondents for refusing to grant SDA to the applicants which was earlier granted. Accordingly all such actions of the respondents refusing SDA to the applicants are quashed and set aside. In view of our decision we hold that the steps for recovery are also unjustified.

6. The application is accordingly allowed. If any recovery has already been made by virtue of the earlier action, the respondents are directed to refund the same forthwith to the applicants after examining the records.

No order as to costs.

Sd/ VICE CHAIRMAN

Sd/MEMBER (Adm)

TRUE COPY
অবিশিষ্ট

11/01/01
Section Officer (J)

অনুসন্ধান অধিকারী (সাধারণ শাখা)
Central Administrative Tribunal
গুৱাহাটী প্রশাসনিক অধিদল
Guwahati Bench, Guwahati-7
প্রাপ্তি প্রাপ্তি, প্রাপ্তি

*AKS
4/1/201*

7.5.2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL Guwahati Bench	
32	GUWAHATI BENCH : GUWAHATI 121 MAYA Q/000
Title of the Case : Guwahati Bench	
O.A. No. 166 /2000	

Sri Bhabendra Nath Deka & Ors

Applicants.

-Versus-

Union of India & Ors.

Respondents.

I N D E X

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4.	2	Copy of O.M. dated 12.1.96 issued by the Ministry of Finance, New Delhi.	19 - 20
5.	3	Copy of O.M. dated 3.3.86 issued by the Ministry of Home Affairs, New Delhi.	21 - 22
6.	4	Copy of circular dated 2.2.89 issued by the Ministry of Home Affairs New Delhi.	23 - 24
7.	5	Copy of letter dated 6.6.99 issued by the Directorate General, Assam Rifles. Shillong.	25 - 26
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Contd . . . 2/-

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Filed by :-

Shanti Devesh
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

O.A. No. 166 2000.

Filed by the Applicants
through : Sri Deka
7, 5, 2000
S/166

BETWEEN

1. Sri Bhabendra Nath Deka, U.D.A.
2. Sri N.N. Deb, Head Asstt.
3. Smt Anusree Deb, Sr. Teacher.
4. Smt. Sheema Okram, Sr. Teacher.
5. Sri Siddharth Shakhar, H/T.
6. Sri M. Mohan Singha, Hindi Typist.

... Applicants.

AND

1. The Union of India,
Through the Secretary to the
Government of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General,
Assam Rifles, Shillong.
3. The D.I.G.,
Manipur Range,
Assam Rifles,
C/O 99 APO.

... Respondents.

Details of Application :1. Particulars of the order against which the application is made

This application is made against the order of dis-continuation of Special (Duty) Allowance (for short) SDA and recovery of the SDA already drawn with effect from 20.9.94, issued under letter No. A/I-A/P-RS/98 dated 18.8.93 from the Directorate General, Assam Rifles, Shillong, C/O 99 A.P.O., and order dated 12.5.99 and 17.5.99.

2. Jurisdiction :

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

3. Limitation :

The applicant declares that the application is within the period of limitation under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case :

4.1. That the applicants are working in different capacities under the Director General of Assam Rifles and at present are posted at Manipur. Their cause of action is same and they are low paid employees and as such pray before this Tribunal to allow them to move this application jointly under Rule 4 (5) (a) of the Central Administrative Tribunals (Procedure) Rules, 1987.

4.2. That the Government of India has decided to give some incentive to the civilian employees of the Central Government civilian employees working in the States and Union Territories of North Eastern Region. The scheme amongst others granted Special (Duty) Allowance (for short SDA) to the employees having All-India Transfer Liability. The original Scheme was issued under Ministry of Finance O. M. No. II.20014/3/83/E.IV dated 14.12.1983. Those who are covered by the scheme dated 14.12.1983 were given SDA with effect from 1.12.1983 in terms of para 3 of the said O.M. The period and rate of payment was subsequently modified from time to time. The Central Government Civilian Employees posted in North Eastern covered by the said O.M. dated 14.12.1983 were paid SDA in terms of the said O.M. It is stated that there were employees who were not given SDA and who approached the Hon'ble Central Administrative Tribunal got SDA. Thereafter the same was taken up to the Hon'ble Supreme Court in a number of cases. The Hon'ble Supreme Court decided on the entitlement of SDA as laid down in the O.M. dated 14.12.1983.

An extract of the O.M. dated 14.12.1983 is annexed hereto and the same is marked as ANNEXURE - I.

4.3. That after judgment of the Hon'ble Supreme Court, the Government of India, Ministry of Finance issued O.M. No. II(3)/95-R/II(B) dated 12.1.96 by which the payment of SDA has been regulated in the manner as indicated in para 6 of that O.M. referred above.

Copy of the Memo dated 12.1.1996 is annexed hereto and the same is marked as Annexure - 2.

4.4. That the Ministry of Home Affairs issued a letter to the Director General, Assam Rifles under No. II/11011/1/94-PP IV dated 3.3.86 informing that the personnel and Civilian non-combatised officers/employees were not entitled to SDA as envisaged in the O.M. dated 14.12.1983. Therefore the applicants were not paid SDA ~~internas~~ of the O.M. dated 14.12.1983.

A Copy of the O.M. dated 3.3.1986 is enclosed as Annexure - 3.

455. That the Govt. of India, Ministry of Home Affairs was seized with the matter of improving the conditions of the services of the Assam Rifles personnel particularly in the matter of grant of SDA and special Compensatory (Remote-Locality) Allowance to Assam Rifles personnel posted in the States and Union Territories of North Eastern Region, Andaman & Nicobar Islands and Lakshadweep and grant of Sikkim Compensatory Allowance. The President of India considering the peculiar conditions of service of the Assam Rifles employees accorded sanctions of some allowances, and SDA is one of such allowances sanctioned by the President. Other allowances sanctioned by the President are Special Compensatory Allowance (also called Special Compensatory (Remote Locality) Allowance) and Sikkim Compensatory Allowance). These allowances to the Assam Rifles personnel were granted by the President of India with effect from 7.11.88. As regards the non-combatised civilian employees, the sanction of the President indicated as under. The employees fall in this category.

Category of personnel
Entitled allowance

i) Special(Duty) Allowance

Combatised personnel
(including Cadre Officers)
in battalions of Assam Rifles
and the Combatised personnel
(including Cadre Office) in
static formations (such as
offices of DC, IGI, DIGs,
Range Hors, Training Centre
etc) and other units (Maintenance Groups, workshops etc),
of Assam Rifles.

Particulars of O.M.'s
regulating the allowance.

Item (III) in para 1 of
Ministry of Finance O.M.
No.II.200014/3/83 R. IV
dated 14.12.1983 as amended
from time to time, read with
their O.M. No.P.20014/3/83 R.
IV dated 29.10.86 and their
O.M.No. P.200014/1/3/83 E.IV
dated 15.7.99 and Min. of Fin.
O.M. No.P.20014/16/96. E.IV/E.II
/B dated 1.12.88. This is in
modification of sanction issued
in MHA letter No.II,27012/31/85
PP.II dated 6.4.87.

ii) Non-combatised civilian
personnel (including officers)
in battalions of Assam Rifles
and static formations (such
as offices of D.G., IGP, DIG,
Range Hors, Training Centre etc.
and other sgoup (Maintenance Groups
workshops etc), of Assam Rufles.

same as above. (This is modification of the sanction issued
vide item (3) of MHA letter No. 11011/1/84 PP.IV
dated 3.3.86)

This letter dated 2.2.1989 stipulated improvement in the condition of service of Assam Rifles employees and this decision is a clear and considered decision modifying earlier order by which your humble applicants were not given the said SDA. The decision to grant SDA to the applicants as sanctioned by the President of

India communicated to the Director General, Assam Rifles, Shillong by circular dated 2.2.1989 which is a distinct decision as regards the Assam Rifles employees and as such this is a special provision as regards the Assam Rifles only as distinguished from other Central Govt. Civilian Employees. Your humble applicants begs to state that this distinction has always been maintained and as such while SDA was paid to the other Central Government Civilian Employees by the O.M. dated 14.12.1983 Assam Rifles, employees were not embraces by the said O.M. It's is only with the sanction of the President of India as a peculier case of the Assam Rifles that the employees of the Assam Rifles are being paid SDA under the circular dated 2.2.1989. In this connection it is also partinent to mention that while the other civilian Central Government employees were paid SDA with effect from 1.11.83. Your applicants have granted the SDA for Assam Rifles with effect from 7.11.1988.

Copy of the circular dated 2.2.1989 is annexed hereto and the same is marked as Annexure - 4.

4.6. That the Pay & Accounts Office, Assam Rifles, Shillong was raising questions regarding payment of SDA to Your humble applicants. They were confused for the O.M. dated 12.1.1996 issued by the Ministry of Finance by which the SDA of the other Central Government Employees were regulated. A communication was made from the Director General, Assam Rifles, Shillong to the Joint Secretary, Ministry of Home Affairs explaining the entitlement of SDA to Civilian Employees of Director General, Assam Rifles, Shillong under letter No. A/I-A/242/98 dated 6.6.98.

This letter discussec in detailed the entitlement of SDA to the Civilian Employees of Director General, Assam Rifles and also the matter of objection by the Pay & Accounts Officer, Assam Rifles and to come to the following view, :

" In view of the position explained above, this Directorate is of the opinion that the concern of the Pay & Accounts Office (Assam Rifles) about the eligibility of SDA to Civilian employees or Directorate General Assam Rifles, Shillong, is not premised on the legal interpretation of extend Govt. orders cited above, which provide for a special dispensation to the non-combatised Civilian personnel (including officers) in units as well as static formations including this Directorate. This Directorate therefore maintain that drawal of SDA by the Civilian Employees of DGAR, Shillong is in order ".

Copy of the letter dated 6.6.1998 is annexed hereto and the same is marked as Annexure - 5.

4.7. That the Ministry of Home Affairs under their letter dated 9.7.98 while replying to the letter dated 6.6.98 of the Respondent No. 3, informed the letter that the proposal for grant of SDA to the Civilian Employees of Assam Rifles had been considered in the Ministry but the same had not been agreed it in view of the orders of the Ministry of Finance dated 12.1.86. The Respondent No. 3 therefore on 21.7.98 forwarded a copy of the said letter to the Pay & Accounts Office, Assam Rifles for information and necessary action.

Copy of the aforesaid letter dated
9.7.98 is annexed hereto as
Annexure - 6.

4.8. That thereafter by their letter dated 18.8.98, the Director General, Assam Rifles, Shillong had intimated the General Secretary, A.R. (Civil) Employees Association, DGAR, Shillong that Pay & Accounts Office, Assam Rifles had intimated that SDA should be discontinued from the pay of August, 1998 in respect of all the civilian employees of Director General, Assam Rifles. The Pay & Accounts Office, Assam Rifles had further stated that the SDA drawn from 20.9.94 to till date is also to be recovered.

Copy of the letter dated 18.8.98 is annexed hereto and marked Annexure - 7.

4.9. That the civilian of Assam Rifles are receiving SDA on the sanction of the President under order dated 2.2.89 with effect from 7.11.88 and not from 8983 like other Central Government Employees. It is humbly stated that there is no order modifying or cancelling the said order dated 2.2.1989. The Finance Ministry's letter dated 12.1.1996 in humble submission of the applicants had no application in the case of the present applicants. It is stated that the order in letter dated 12.1.96 applies only to cases who get SDA by order of Courts. Those who have been getting SDA by decision of Govt. of India, departments are not affected by this letter. For example Group A Officers of the Govt. of India posted in

North Eastern Region have been getting SDA irrespective of whether they have been appointed from outside N.E. Region or not. Those initially appointed in N. E. Region are also continuing to get SDA. They are not affected by letter dated 12.1.96. The applicants are getting SDA as per Govt. of India's decision and letter dated 12.1.96 is not attracted in their cases. The Assam Rifles civilian including the applicants from a sepearte class, as the Group A Officers also form a separate class and as such the matter of SDA for them has been dealt with seperately, and as such paid SDA.

4.10. That the Directorate General, Assam Rifles, Shillong had written another letter dated 20.9.98 to Joint Secretary (P) Ministry of Home Affairs, New Delhi clarifying thet total position of the entitlement of SDA to the Civilian Employees of Assam Rifles. It is humbly stated that the applicants are entitled ~~xx~~ to SDA and payment of SDA to them should be continued and no recovery should be made for payment of SEA.

Copy of letter dated 20.8.98 is annexed hereto and marked as Annexure - 8.

4.11. That the applicants state that thereafter the Ministry of Home Affairs under their letter No. 22013/2/98-PP.IV dated 22.9.98 and No. 22012/10/97-PP.V. dated 12.05.99 clarified that the Special Duty Allowance would not be admissible to the civilian employees of Assam Rifles and discontinuation thereof was applicable. It was also directed therein that the amount already paid to the civilian employees ~~be~~ recovered. After

passing of the said clarifications, the respondent No. 3 issued letter dated 12.10.1998 and 17.05.1999 informing passing of the aforesaid ~~xx~~ clarifications and it was further informed that the Directorate was in touch with the Ministry for restoration of the entitlement of SDA to civilian employees of Assam Rifles out come of which would be intimated separately. The applicants state that the clarification given by the Ministry vide letter dated 20.08.98 and 12.05.99 is arbitrary and the direction for recovery of the amount paid is unreasonable. Moreover, the decision of the respondent No. 3 to implement the said direction/clarification, as communicated through the letter dated 17.05.99 is unjustified. Therefore, the letter dated 22.9.98, 12.05.99 and 17.5.99 are liable to be set aside and quashed.

Copy of the aforesaid letter dated 22.09.98
12.10.98 and letter dated 12.05.99 and
17.05.99 are annexed hereto as Annexure -
9, 10, 11 and 12 respectively.

4.12. That the applicants state that the office Memorandum dated 12.1.96 has ~~xx~~ no bearing with the payment of Special Duty Allowance to them in as much as the same has been granted by the President of India through a separate circular dated 2.2.89 and it has got no link with O.M. dated 14.12.83, 12.1.86 or 22.7.98 through which SDA was granted to other Central Govt. Civilian Employees. Therefore the Hon'ble Tribunal may be pleased to declare that the O.M. dated 12.1.96 has got no relevance with the payment of SDA to the present applicants. The condition of service of applicants renders entitlement of SDA.

Copy of the communication dated 18.6.99 is enclosed as Anexure - 13.

4.13. That your applicants beg to state that some of the similarly situated employees of Assam Rifles, Shillong have also approached the Hon'ble Tribunal by way of filing of an original Application No. 207 of 1998 and the said Original Application is pending before the Hon'ble Tribunal. The said Original Application came up before the Hon'ble Tribunal on 26.8.98 for admission and the Hon'ble Tribunal was pleased to admit the said O.A. and was further pleased to stay the operation of the orders dated 9.7.98. Similar other O.A.S No. 225/99 and 328/99 and 372/99 have also been admitted with similar interim orders. Therefore the present applications pray before the Tribunal for a similar orders like that of O.A. 207 of 1998, 225 of 1999 and 328 of 1999 as the applicants are similarly situated and their grievances are also same against the same respondent. It is stated that more number of similar original applications are pending before this Hon'ble Tribunal and the similarly situated employees are paid SDA.

Copy of the order dated 26.6.98 passed in O.A. No. 225 of 1999 is annexed as Annexure - 14. and order dt. 28.4.2000 is annexed as Annexure - 15. *Adm.*

4.14. That similarly situated employees have also approached the Hon'ble Tribunal by way of filing of an O.A. 284/99. The Hon'ble Tribunal was pleased to pass an order dt. 3.9.99. Therefore they get the SDA as per Hon'ble Tribunal's order. But the present applicants could not approach the Tribunal and therefore not get the SDA.

Copy of the order dt. 3.9.99 passed in OA.284/99 is annexed as Annexure - 16. Adm.

4.15. That this application has been made bonafide and for the cause of justice.

5. Grounds for Relief(s) with Legal Provisions :

5.1. For that the applicants are entitled to SDA by Presidential Order dated 2.2.1989 which has not been cancelled or modified.

5.2. For that the Office Memorandum dated 12.1.96 has no application in the instant case of the applications.

5.3. For that the respondents themselves have paid SDA to the applicants with effect from 7.11.88 due to their entitlement, and there has not been any change in the order of the entitlement and as such they should continue to get the SDA.

5.4. For that the SDA has been sought to be stopped and recovery has been ordered without giving scope of explanation by the applicants which is violative of Principles of Natural Justice.

5.5. For that the payment of SDA received have already been spent by the applicants and there is no scope of refund of such amount.

5.6. For that non-payment of SDA already drawn shall cause ~~xx~~ undue hardship to the applicants which they have been paid SDA because of their entitlement.

5.7. For that non-payment and proposed recovery of SDA payments shall be violative of Article 14, 16 and 21 of the Constitution of India, being arbitrary.

5.8. For that the entitlement of Special Duty Allowance of the Civilian Employees of the Assam Rifles has no relevance with the clarification issued by the O.M. dated 12.1.1996 and as such there is no relevance to the order passed under letters dated 9.7.98, 12.10.98 as well as letters dated 22.9.98, 12.5.99 and 17.5.99 and the same are liable to be set aside and quashed.

6. Details of Remedy :

The applicants beg to state that there is no other remedy under any Rule. The application before the Hon'ble Tribunal is the only remedy.

7. Matter no Pending before any other Court :

The applicants further declare that they have not previously filed any application, writ petition or suit regarding the matter in respect of which the application has been made before any Court of Law or any other authority or any Bench of the Tribunal and/or any such application, Writ petition or suit pending before any of them. But similar application filed by other employees are pending before this Hon'ble Tribunal.

8. Relief(s) sought for :

Under the facts and circumstances of the case the applicants pray for the following relief(s).

8.1. That the O.M. dated 12.1.96 be declared as not applicable in case of the present applicants.

8.2. The payment of SDA to the applicants should be continued and no recovery of SDA should be made from the applicants.

8.3. The orders in letter dated 9.7.98 (Annexure - 7) and communication in order dated 18.8.98 (Annexure - 7) regarding non-entitlement of SDA to the applicants be set aside and quashed.

8.4. That the impugned orders passed under letter No. 22013/2/98-PP.V dated 22.9.98 (Annexure - 9) Letter No. A/I-A/242/98 dated 12.10.98 (Annexure - 10) Letter No. 22012/10/97 dated 12.5.99 (Annexure - 11) and Letter No. A/o-H/242/99 dated 17.5.99 (Annexure - 12) be set aside and quashed.

8.6. Costs of the Application.

8.7. Any other relief/reliefs to which the applicants are entitled to under the facts and circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

9. Interim Relief Prayed For :

During pendency of this application, the applicants pray for the following relief :-

9.1. That the letter dated 9.7.98 issued by the Ministry of Home Affairs, New Delhi and letter dated 18.8.98 issued by the Respondent No. 3 be suspended.

9.2. That the payment of SDA to the applicants be continued and proposed recovery of SDA drawn from 20.9.94, be stayed.

9.3. That the operation of the impugned letters dated 12.10.98 and 22.09.98 and letters dated 17.05.99 and 12.05.99 be stayed till disposal of this application.

The above interim relief are prayed on the grounds narrated in paragraph 5 this application.

10.

This application has been filed through Advocate.

11. Particulars of Postal Order :

i) I.P.O. NO.	:	OG 497172
ii) Date of Issue	:	8.5.2000
iii) Issued from	:	G.P.O. Guwahati
iv) Payable at	:	G.P.O. Guwahati.

12. Particulars of Enclosures :

As stated in the ~~index~~ Index.

Verification

VERIFICATION

I, Sri Bhabendra Nath Deka, Son of Sri
Ghanashyam Deka, resident of 7 Assam Rifles, Manipur,
District Thoubal, aged about 51 years, working as Upper
Division Asstt.(U.D.A.) in 7 Assam Rifles, Manipur say
that I am one of the applicants in the above case and
have been authorised by the other applicants to sign
this verification and accordingly I verify that the
statements made in paragraphs 1, 4, 6 and 12 are true
to my personal knowledge and those made in paragraphs 2,
3 and 5 are true to my legal advise and that I have not
addressed any material facts.

And I, sign this verification on this
5th day of May, 2000.


(B N DEKA)

SIGNATURE

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

New Delhi, the 14th Dec '83

OFFICE MEMORANDUM

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

The need for attracting and retaining the services of competent officers for service in the North Eastern Region comprising the States of Assam, Nagaland, Manipur, Nagaland and Mizoram has been engaging the attention of the Government for sometime. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and Administrative Reforms, to review the existing allowances and Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Control 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

XXXXXXXXXXXXXXXX

ii) Weightage for Central deputation/training abroad and special mention in confidential Record.

XXXXXXXXXXXXXX

iii) Special (Duty) Allowance

Central Government civilian employees who have All India transfer liability will be granted a special (Duty) Allowance at the rate of 25 percent of basic pay subject to a ceiling of Rs. 400/- per month on posting to any

-18-
-19-
-20-
-21-
-22-
-23-
-24-
-25-
-26-

Annexure A (Contd.)

station in the North Eastern Region. Such of the employees who exempted 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 will not exceed Rs. 400/- p.m. Special Allowance like Special Compensation (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

xxx x x xx x xx

x x x x x

x xxxxxxxxx

xxxxxx x x x

Sd/- M. A. MAULIK

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

COPY

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

New Delhi, the 12th Jan : 1996.

OFFICE MEMORANDUM

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

1. The undersigned is directed to refer to this Department's O.M. No 20014/3/83-EIV dated 14.12.83 and 29.4.88 read with O.M. No. 20014/16/86.E. IV/E. II(B) dated 1.12.88 on the subject mentioned above.

2. The Government of India vide the abovementioned 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 29.4.1987 that for the purpose of sanctioning "Special Duty Allowance" the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. I.e. whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common Seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the pay concerned is liable to be transferred anywhere in India, do not make him eligible for the grant of SDA.

4. Some employees working in the NE Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment letter 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 Administrations/Departments against the Orders of the CAT.

Contd... 2/-

6. The Hon'ble Supreme Court in their judgement delivered on 20-9-93 (in civil appealing no 3251 of 1993) upheld the submission of the Government of India that Central Government civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to all India Transfer Liability. The apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

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

i) The amount already paid on account of SDA to the ineligible persons on or before 20-9-94 will be waived &

ii) The amount paid on account of SDA to ~~inmim~~ ineligible persons after 20-9-94 (Which also includes these cases in respect of which the allowances was pertaining to the period prior to 20-9-94 but payment were given after this dated 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/-xx (C Balachandran)

Under Secy. to the Govt. of India.

Ministries/Departments of Govt. of India, etc.

Copy (with endorsement list), UPSC etc. as per standard

NO.II.11011/1/84-FP.IV
Government of India/Bharat Sarkar
Ministry of Home Affairs/Girh Mantralaya.

- 23 -

New Delhi, the 3-3-86.

To . . .

The Director General,
Assam Rifles,

Sub:- Allowance and facilities for civilian employees
of the Central Government Serving in the States
and Union Territories of North Eastern Region-
Improvement there-of.

Sir,

I am directed to refer to the correspondence
resting with your letter No. A/IV-(C)/1-64/8 dated
8th November, 1985 on the subject noted above and to
say that the matter has been examined in detail in
consultation with the Ministry of Finance. The following
decisions have been taken :-

1. The Personnel in Bns. of Assam Rifles will not
be entitled to the concessions envisaged in the
Ministry of Finance (Dept. of Expr.) O.M.No. 20014/
3/83-E-IV. dated 14.12.1983 as they move in
organised group and have back-up support.
2. The Assam Rifles personnel & Civilian non-
combatised Officers/employees of Assam Rifles
do not have All India Transfer liability and
as such, the question of grant of special
(duty) Allowance even in the case of civilian
non-combatised officers/employees does not
arise.
3. Non-combatised civilian staff of static
formations such as offices of DG, IGP, DIGs
and Range Headquarters of Assam Rifles may
be allowed concessions envisaged in the
Ministry of Finance O.M. dated 14.12.83 referred
to above (except special (duty) allowance)
subject to the condition that they move as
individuals and do not have back-up support.

2. This issues with the concurrence of the
Integrated Finance Division vide their Dy.No. 705/86-
Fin.III, D.F. dated 24.02.1986.

Yours faithfully,

SJ/ XXX
(P. VIJAYARAGHAVAN)
DEPUTY SECY. TO THE GOVT. OF INDIA.

XXX/24

.... 2/-

22-2
100
No. II. 11011/1/84-FP. IV. New Delhi, the 3-3-86.
Copy to :-

1. Pay & Accounts Office, Assam Rifles, Shillong
2. A. S., Assam Nagaleys, etc., Shillong.
3. Finance III, Ministry of Home Affairs.
4. Ministry of Finance, Dep't. of Expenditure
(E.IV. Branch).

5. Liaison Officer of Assam Rifles, New Delhi.

6. 10 copies.

sd/ xxx

(P. VIJAYARAGHAVAN)
DEPUTY SECY. TO THE GOVT OF INDIA.

Copy 23

Annexure - 4

No. 11011/1/84-FP.IV
Government of India
Ministry of Home Affairs

New Delhi, dated the 2nd Feb'89

To

The Director General
Assam Rifles
Shillong-793011

Subject : Grant of special (Duty Allowance and Special Compensatory (Remote Locality) Allowance to Assam Rifles personnel posted in the States and Union Territories of north eastern region, Andaman & Nicobar Islands and Lakshadweep-Grant of Sikkim Compensatory Allowance Sanction regarding.

Sir,

I am directed to convey the sanction of the President to the grant of the following allowances to the personnel in Assam Rifles with effect from 7.11.1980 :-

Category of personnel entitled to allowance

(1)

Combatised personnel (including Cadre Officers) in battalions of Assam Rifles and the combatised personnel (including Cadre Officers) in static formations (such as offices of DG, IGP, DIGS, Range MUs, Training Centre etc.) and other units (Maintenance Groups, workshops etc.) of Assam Rifles

Non combatised civilian personnel (including Officers) in battalions of Assam Rifles and in static formations (such as offices of DG, IGP, DIGS, Range MUs, Training Centre etc.) and other units (Maintenance Groups, Workshops etc) of Assam Rifles

(2) Special Compensatory Allowance (Also called as Special Compensatory (Remote Locality) Allowance)

Category of personnel as mentioned against item 1(1).

Particulars of O.Ms regulating the allowance

(2)

Item (iii) in para 1 of Ministry of Finance O.M. No. II/20014/3/83-E.IV dt 14/12/83 as amended from time to time, read with their O.M. No/20014/3/83-E.IV/II dated 29/10/86 their O.M. No. II/20014/3/83-E.IV dated 15/7/88 and Min of Fin.O.M. No.F. 20014/16/86.E.IV/E-II(B) dated 1/12/88. (This is in modification of sanction issued in MHA letter No. II. 27012/31/85-FP.II dated 6/4/87)

Same as above - (This is in Modification of the sanction issued vide item (3) of para 1 of MHA letter No. 11011/1/84-FP.IV dated 3/3/86).

Same as indicated against items 1(1) above. Ministry of Finance O.Ms No. 20014/6/86-E.IV dated 23/9/86 and 27/4/87 (Meghalaya) No. 20014/7/ (Assam) No. 20014/10/86-E.IV dated 23/9/86 and 22/4/87 (Tripura)/No. 20014/2/86-E.IV dt 23/9/86 and 16/4/87 (Nizoram) No. 20014/9/86-E.IV dt 23/9/86 and 22/4/87 (Mizoram) and 16/4/87 (Chattisgarh) No. 20014/7/86-E.IV dt 23/9/86 and 22/4/87 (Arunachal Pradesh) also refer. (This is in modification of MHA 1 letter No. 27012/31/85-FP.II dt 6/4/87).

..... 2/-

22/9

(3) Block in Compensation Allowance

Combatized as well as non-combatized personnel (including officers) in Assam Rifles posted in Sikkim.

Ministry of Finance O.M.N. 20014/8/86-E.IV dated 23/9/86 and 22/4/87.

2. With effect from 7/11/88, the Assam Rifles personnel who were in receipt of special compensatory Field Area Allowance (as in the Army) will cease to draw the same.

3. The above sanctions are not applicable to Army Officers/para-military personnel on deputation to Assam Rifles.

4. This issue with the concurrence of the Ministry of Finance vide M.O.D. No. 5(72) E. dated 7/11/88 and F.89/AM(1)/89 dated 13/1/89 and Integrated Finance Division of this Ministry vide their Dy. No. 4744/HO/88 dated 7/12/88.

Yours faithfully,

Sd/- XXX
(M.M. Sharma)

Deputy Secretary to the Government of India

No. 11011/1/84-FP.IV dated New Delhi, the 2nd Feb 89.

Copy to :-

1. The Pay & Accounts Office, Assam Rifles, Shillong.
2. The Accountant General, Assam Meghalaya, etc. Shillong.
3. Finance -III, Ministry of Home Affairs.
4. Ministry of Finance, Deptt of Expenditure (E.III Branch).
5. Ministry of Finance, Deptt. of Expenditure (E.IV Branch).
6. Liaison Officer, Assam Rifles, New Delhi.
7. 20 Spare copies.

Sd/- XXX
(M.M. Sharma)

Deputy Secretary to the Government of India

Annexure 5

Government of India,
Ministry of Home Affairs,
Directorate General Assam Rifles,
Shillong-793011.

No.0/1-A/242/93

Dated: 6 June, 93

Shri O.P. Orya,
Joint Secretary (F),
North Block,
Ministry of Home Affairs,
New Delhi.

ENTITLEMENT OF SPECIAL DUTY ALLOWANCE TO
CIVILIAN EMPLOYEES OF DBAR, SHILLONG.

Sir,

1. I am directed to state that Special Duty Allowance (SDA) is one of the ten concessions/facilities extended to the Central Govt. civilian employees serving in North Eastern Region with effect from 01 Nov. '83 sanctioned under Ministry of Finance OM No. 20014/3/93 E. IV dated 14.12.83 enclosed at Annexure I. Subsequently, consequent to 4th Central Pay Commission recommendations, above concessions/facilities were modified and two more concessions were given with effect from 01 Dec. '88 under Ministry of Finance OM No. 20014/16/86/E. IV/E. II(B) dated 01 Dec. 88 attached as Annexure II.

2. The Assam Rifles projected to the Ministry of Home Affairs for extension of the above concessions/facilities including SDA to the combatant and civilian employees of Assam Rifles on the analogy that all those concessions including SDA were available to the employees of other CPOs like BSF, CRPF etc similarly situated in the North eastern Region. While grant of the above concessions to the combatant employees were turned down, all these concessions except SDA were sanctioned for civilian employees of Assam Rifles posted in static formations like Directorate General Assam Rifles, Inspector General Assam Rifles (North), Range HQs. and Assam Rifles Training Centre and School with effect from 3 March 86 under Ministry of Home Affairs letter No. II.11011/1/84PP 4 dated 3 March '86 (Annexure III attached) copy endorsed, alongwith others to Pay and Accounts Office (Assam Rifles), Shillong and Ministry of Finance, Deptt. of Expenditure (E. IV). Subsequently, all these concessions except SDA were also extended in the combatant employees of Assam Rifles with effect from 01 Nov. '86 under Ministry of Home Affairs letter No. II.27012/31/85/PP. II dated 04 April '87 (Annexure IV).

3. Consequent to change over of pay structure of Assam Rifles personnel from Army pattern to CPO, pattern from 01 Jan 86 following Fourth Central Pay Commission recommendations. SDA on the analogy of other VPOs like BSF, CRPF etc. was also extended to both combatant and civilian employees of Assam Rifles with effect from 07 Nov. 88 (with categorical mention of the civilian staff and officers of all static formations of Assam Rifles including Directorate General Assam Rifles) under Ministry of Home

3 Affairs letter No. 11021/1/84-PP.IV dated 02 Feb 89 (attached us Annexure-V). Para 4 of the said letter lays down that the sanction of SDA for the combatant and civilian employees of Assam Rifles was duly concurred by the concerned departments of the Ministry of Finance, viz. P.III and AS(F) Branches. Copy of above original sanctioning letter of Ministry of Home Affairs was also endorsed to Pay and Accounts Office, (Assam Rifles), Shillong and also to Ministry of Finance, Department of Expenditure, E.III and E.IV Branches.

4. The Pay & Accounts Officer (AR) has, therefore, been obligatorily passing the monthly bills of the civilian employees of Directorate General Assam Rifles, Shillong without any objection right from the time of sanction of SDA to Assam Rifles. However, in end April '98, Pay & Accounts Officer (Assam Rifles), Shillong has intimated that SDA is not entitled to the civilian employees of DGAR, Shillong citing Ministry of Finance (Department of Expenditure) OM No. 11(3) 95-E.II(B) dated 12 Jan '96 (copy attached as Annexure VI).

5. The Judgement of the Apex Court regarding non-entitlement of SDA to certain category of civilian personnel is based on the general order sanctioning the ten concessions/facilities including SDA to civilian serving in the North-eastern region, vide Ministry of Finance OM No. 20014/3/93-E.IV dated 14 Dec '83 (Annexure I) refers) and its subsequent modification. SDA was sanctioned to the combatant and civilian employees of Assam Rifles on CPO analogy and that too, from a much later date (07 Nov. '88), when the Pay pattern of Assam Rifles personnel was made on the lines of CPO pattern after Fourth Central Pay Commission recommendations. It may also be appreciated that the Ministry of Home Affairs as well as Ministry of Finance were fully aware of the general eligibility criteria for SDA vis-a-vis the conditions of appointments, posting, transfer, retention, exigency of service etc. of the civilian employees of static formations of Assam Rifles like DGAR, IGAR, Range HQs. and Training Centre. Keeping all these factors in view, a separate and exclusive sanction was accorded by the Ministry of Home Affairs for grant of SDA to the combatant and civilian employees of Assam Rifles (Annexure-V refers).

6. In view of the position explained above, this Directorate is of the opinion that the concern of the Pay & Accounts Office (Assam Rifles) about the eligibility of SDA to civilian employees of Directorate General Assam Rifles, Shillong is not premised on a logical interpretation of extant Govt. orders cited above which provided for a special dispensation to the non-combatant civilian personnel (including officers) in units as well as static formations including this Directorate. This Directorate therefore, maintains that grant of SDA by the civilian employees of DGAR, Shillong is in order.

7. The above proposal/reference has been vetted by the Financial Adviser, North Eastern Council.

8. The Ministry is requested to kindly issue a clarification on the subject.

Yours faithfully,
SD/-

(S J R Sharma)

Major General
Dy. Director General Assam Rifles,
for Director General.

Encl: As above.

Ans
J P
J P
Ans

27

COPY

Annexure - P 6
Annexure - P 6
49

No. IL-22013/2/98-M.V
Government of India
Ministry of Home Affairs
MACHAN

Pg. 29

New Delhi, dated 9-7-98

To

Director General,
Assam Rifles,
Shillong - 793011

Subject : Entitlement of Special Duty Allowance to
Civilian employees of DGAR Shillong.

Sir,

I am directed to refer to your letter No. A/L-A/242/98
dt. 6.6.98 on the above mentioned subject and to say that the
proposal has been considered in the Ministry, but the same has
not been agreed to in view of the orders of Ministry of
Finance dated 12.1.98. (12.1.98).

12.1.98.

Yours faithfully,

Scd/-xx
(Mirmala Dev)
Dask Officer

Copy to LOAR, North Block, New Delhi.

28

28

20/ Annexure - 07 - US
Mahanidhihalaya Assam Rifles
Directorate General Assam Rifles
Shillong - 793011

Annexure - 7

A/I-A/PERS/98/

18 Aug 98

Shri P.S. Panchal
General Secretary
Vishwa Seva (Civil)
Employees Association
Directorate General Assam Rifles
Shillong

ENTITLEMENT OF SPA TO THE CIVILIAN
EMPLOYEE OF DIRECTORATE GENERAL ASSAM RIFLES SHILLONG

Re: your letter No. A/I(A)/PERS/129 dated
12 Aug 98.

This PAO AR has intimated that SPA should be discontinued from the pay of Aug 98 in respect of all civilian employees of Directorate General Assam Rifles, Shillong. The PAC AR has further stated that the SPA drawn from 20 Sep 94 to till date is also to be recovered.

3. For information please.

(P.S. Pawat)
Lt Col.
A/I(A)

R
28

Tel No. 705009

Bharat Sarkar
Government of India
Grih Mantralaya
Ministry of Home Affairs
Mahanideshalaya Assam Rifles
Directorate General Assam Rifles
Shillong - 793011

A/1-A/242/98/310

20 Aug 98

Shri O P Arya
Joint Secretary (P)
North Block
Ministry of Home Affairs
New Delhi - 110001

ENTITLEMENT OF SPECIAL DUTY ALLOWANCE TO
CIVILIAN EMPLOYEES OF DGAR, SHILLONG

Sir,

1. I am directed to refer to your letter No. II.22013/2/98-PF.V dated 09-7-1998 and to state that the proposal for eligibility of SDA to civilian employees of Directorate General Assam Rifles, Shillong was taken up vide this Directorate letter No. A/1-A/242/98 dated 06 Jun 1998 but not agreed to in view of Ministry of Finance order No. II(3)/95-E.II(B) dated 12 Jan 1996.

2. After careful examination of Ministry of Finance Order dated 12 Jan 1996, a doubt has arisen in regard to applicability of the said order to the civilian employees of Directorate General Assam Rifles, Shillong. The civilian employees of Directorate General Assam Rifles were granted SDA from 1988 onwards vide MHA's order No. II.11011/1/84-FP.IV dated 01 Feb 1989, whereas employees of the Central Government serving in the States and Union Territories of NE Region were granted the said allowance from 1983 onwards. The allowance was discontinued for other employees from 20-9-1994 under the Ministry of Finance Order dated 12 Jan 1996. Since the civilian employees of Directorate General Assam Rifles, Shillong were granted SDA from 1988 onwards, the orders of the Ministry of Finance letter dated 12 Jan 1996 were not made operative till date.

3. Now, the Pay and Accounts Officer (Assam Rifles) has intimated this Directorate to stop payment of SDA to the civilian employees from the month of Aug 98 and also to recover the SDA drawn by them since 20-9-1994.

4. It may be seen that while ceasing SDA to the civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region with effect from 20-9-94, the Ministry of Finance has not made any reference of the MHA's order No. II.11011/1/84-FP.IV dated 01 Feb 1989 in their letter dated 12 Jan 1996. The civilian employees of this Directorate were granted SDA after lapse of 5 years ie. from 07-11-1988 and were being allowed to draw the said allowance by the PAO (AR) even after receipt of Ministry of Finance letter dated 12 Jan 1996. With the

Contd to . . . 2/-

28/-30-

PAO's decision to recover the SDA drawn by civilian employees since 20 Sep 1994, the serving and retired employees of this Directorate will be adversely affected and undergo financial loss and mental harassment. Since the MHA's Order No. II.11011/1/84-FP.IV dated 01 Feb 1989 has not been cancelled/modified or superseded by the MHA till date and there is no reference of the said order in the Ministry of Finance order dated 12 Jan 1996, orders for refund of entire amount drawn since 1994 needs to be reviewed.

5. In view of the above, you are requested to examine the MHA's order No. II.11011/1/84-FP.IV dated 01 Feb 1989 and review the applicability of SDA to civilian employees of this Directorate.

Yours faithfully,



(S J B Sharma)
Major General
Deputy Director General
Ansam Rifles
for Director General

You are requested to liaise with the MHA and obtain a clarification on this matter at the earliest.

It is requested that no deduction/recovery on SDA to civilian employees of this Directorate may please be made till final decision on this clarification is received from MHA.

For info please.

2. PAO (AR)
Laitumkhrah
Shillong

East Branch
DGAR

Idrees

-31-

15/23

Annexure - 12/9

No. 22013/2/98-FY.7
Government of India
Ministry of Home Affairs

New Delhi dated 22nd Sept, 1998

To

Director General
Assam Rifles
Shillong- 793011.

Sub:

Intitlement of Special Duty Allowance to
Civilian Employees of RAIF, Shillong.

Sir,

I am directed to refer to your letter No.
A/I-3/242/98/310 dated 20th Aug 1998 on the subject cited
above and to say that it has already been intimated to
your vide court letter dated 9.7.98 that Special Duty -
Allowance is not admissible to the civilian employees
of Assam Rifles in view of the orders of Ministry of
Finance dated 12.1.1996. Therefore, the amount already
paid to the employee is to be recovered.

Yours faithfully,

sd/- Nirmala Dev

(Nirmala Dev)
Deputy Officer
22/9/98.

22/9

6/27-28

Annexure - 10.

Tele Po. 705076

Moharibesbalya Assam Rifles
Director to General Assam Rifles
Shillong - 793 011

A/I-A/242/98

12 Oct '98.

List 'B'

List 'B'

List 'C'

List 'E'

List 'F'

MEMORANDUM - OFFICIAL DUTY ALLOWANCE TO
CIVILIAN EMPLOYEES OF EGAT, SHILLONG.

1. Reference Ministry of Finance letter No.11(3)-E-II (3) dated 12 Jan 96 (Copy enclosed).
2. The admissibility of Special Duty Allowance (SDA) to the civilian employees of EGAT, Dg. HQs and units etc was under query based on an observation raised by IAO, Assam Rifles, Shillong. The Ministry has now clarified the admissibility under their letter No. 22013/2/98-FF.7 dated 22 Sep 98 and IAO letter No. P.13(1)-E-II(3)/98 dated 23 Aug 98, copies of which are enclosed herewith for information and necessary action by all concerned.
3. This letter, however, is in touch with the Ministry for restoration of the entitlement of SDA to civilian employees of Assam Rifles, outcome of which will be intimated separately.

sd/- R. S. Pawat
Lt. Colonel
AG(3)
for DR Assam Rifles.

Enclo : As above.

Copy to :

List 'B'

List 'C'

Gen. Secy, Assam Rifles (Civil) Employees Association,
Shillong - 11.

- 33 -

ANNEXURE 2 11

25

No. 22012/10/97-PF.V

Government of India

Ministry of Home Affairs

To

New Delhi dated 12th May, 1999

Director General
Assam Rifles
Shillong - 793011

Subject: Entitlement of Special Duty Allowance to
Civilian Employees of Assam Rifles.

Sir,

I am directed to refer to your fax message No.
T.11018/27/99-Legal dated 3.5.99 on the subject cited above
and to say that the orders of the Ministry No. M.T.22013/2/98-
PF-V dated 9-7-98 regarding discontinuation of the Special
Duty allowance is applicable for all the civilian employees
of the Assam Rifles.

Yours faithfully,

sd/-xxxx
(Nirmala Devi)
Desk Officer

*Ans
22
AD 27/5/99*

-34-
- 36 -
ANNEXURE - 12.

Bharat Sarkar
Government of India
Grih Mantralaya
Ministry of Home Affairs
Mahanideshalaya Assam Rifles
Directorate General Assam Rifles
Shillong - 11

A/I-H/242/99

17 May 99

List 'A'
List 'B'
List 'C'
List 'E'
List 'F'

ENTITLEMENT OF SPECIAL DUTY ALLOWANCES
TO CIVILIAN EMPLOYEES OF ASSAM RIF

1. Ministry of Home Affairs letter No. 22012/10/97-PF.V dated 12 May 99 and No II.22013/2/98-PF.V dated 09 Jul 98 regarding discontinuation of the Special Duty Allowances are fwd herewith for necessary action please.
2. As per Ministry's above quoted letters, civ employees of Assam Rifles are not entitled Special Duty Allowances.
3. Fmn HQs/Units are requested to take action accordingly.
4. However, this Dte, is in touch with Ministry for restoration of the entitlement of SDA to Civilian Employees of Assam Rifles, out come of which will be intimated separately.

(Signature)
(RS Rawat)
Lt Col
AD(A)
for DG Assam Rifles

Copy to

List 'D' | for info please.
List 'G' |

General Secretary
Assam Rifles(Civil) Employees
Association
Shillong - 11

Ans 28/5/99

- 37 -

Annex-13

FROM : NLR (N)

BTG : 18

UN-LAS

TO : IGAR (N)

A 14/6

Info : DGAR (A/Fin Br)/10 AR/T/13 AR/15 AR

6 AR - by the originator

Entitlement of SDA to civ emp of AR (.) ref DGAR sig

No A/1-H/242/99 May 17 (.) civ emp serving in units/

HQ are having an all India transfer liability (.) it

is an well known and established fact that civ emp

had also moved to J & K, Sri Lanka and other States

alongwith troops during emergency and are moving as

and when ordered (.) as per terms and condition of

service in vogue civ emp in units/HQs are liable to

serve any where wherever units/HQs are deployed from

time to time (.) it is pertinent to mention that civ are
emp

also discharging same nature of work as their counterpart

combatant clerical staff (.) discontinuance of SDA

abruptly will certainly affect the moral of civ staff

while discharging their duties with devotion and

utmost sincerity (.) it would be prudent to allow civ

emp to continue drawing SDA on obtaining undertaking

from them till registration of same (.) request advise

favourably to avoid financial hardship to civ emp

Capt T A Mohlch, SO-3 (A)

'A'

Dated : 18 Jun 99

Capt
TOR : 18

h.

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 2257/99

OF 199

Applicant(s) : Subrata Kumar Deka
and Ors

Respondent(s) : Union of India and Ors

Advocate for Applicant(s) : Mr. D. Sarker, M. Chaudhury

Advocate for Respondent(s)

C-G-S-C

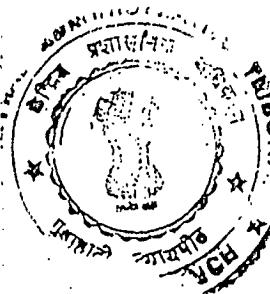
3.8.99

The application has been submitted by 25 applicants. They have prayed for permission to file this single application under the provision of Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules 1987. Heard counsel of both sides. Permission is granted as prayed for.

Perused the application. Heard counsel for both sides. Application is admitted. Issue notice on the respondents by registered post. List on 2-9-99 for written statement and further orders.

Mr. J. L. Sarkar learned counsel for the applicant prays for an interim order.

contd/-



U.A.325 or 99

37

Notes of the Registry	Date	Order of the Tribunal
	3-8-99	<p>Issue notice to show cause as to why interim order shall not be granted as prayed for. List on 2-9-99 for orders. In the meantime the respondents are directed to keep in abeyance the operation of the order dated 9-7-98, 18-8-98, 12-10-98, 22-9-98, 17-5-99 and 12-5-99; Annexure 6, 7, 9, 10, 11, 12, till disposal of the show cause.</p> <p>The matter will be decided by Division Bench. The counsel of both sides has no objection. List on 2-9-99 before Division Bench.</p> <p>sd/ MEMBER (JUD)</p>

(Certified to be true Copy)

प्रभाषितः इतिलिपि

Department of Justice (U)
Central Judicial Service Tribunals
Gujarat Bank

બાંધારાની બાંધારાની

مکالمہ

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 110/2000 OF 199

M
5

Applicant(s) Smt. Hulan Basumatary and Ors

Respondent(s) Kisor J. Deka and Ors.

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

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

Date	Order of the Tribunal
28.4.00	<p>NOTIFICATION OF THE APPEAL.</p> <p>Heard Mr. J. L. Sarkar learned counsel for the applicant and Mr. B. S. Basumatary learned Addl. C.G.S.C. for the respondents.</p> <p>Application is admitted. I rule no. 10 on the respondents by registered post. List on 31.5.00 for written statement and further orders.</p> <p>Mr. J. L. Sarkar learned counsel urges for an interim order. Heard counsel for both sides. The operation of the orders dated 9.7.1998, 12.10.1998, 22.3.1998, 17.5.1999, 12.5.1999 shall be kept in abeyance until further orders.</p>
2m	

VALU CO/27
11/5/2010
Section 43, Cr. (Judicial),
Central Administrative Tribunal
Guwahati Bench, Guwahati



FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 284/99 OF 199

Applicant(s) *Gaj. Bishakar Singh Thapa and Ors.*

Respondent(s) *Unisa J. Gohar and Ors.*

Advocate for Applicant(s) *Mr. M. Chanda, At. N. D. Goswami
At. G. N. Deka*

Advocate for Respondent(s) *Adv. A. Deb, Ry
D. C. G. S. C.*

Notes of the Registry	Date	Order of the Tribunal
	3.9.99	<p>Present : Hon'ble Mr Justice D.N. Baruah, vice-Chairman.</p> <p>This application has been submitted by 99 applicants. They have prayed for permission to file this single applica- tion under the provision of Rule 4(5) (a) of the Central Administrative Tri- bunal (Procedure) Rules 1987. Heard counsel of both sides. Permission is granted as prayed for.</p> <p>perused the application. Heard counsel of both sides. Application is admitted. Issue notice on the respon- dents by registered post. List on 5.10.99 for written statement and fur- ther orders.</p> <p>Mr J.L. Sarkar, learned counsel for the applicant prays for an interim order</p>

contd...

CONT'D

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O.A.

/99



Date

Order of the Tribunal

3.9.99

Issue notice to show cause as to why interim order as prayed for shall not be granted.

List on 2x. 5.10.99 for orders. In the meantime, the respondents are directed to keep in abeyance the operation of the orders dated 9.7.98, 18.8.98, 12.10.98, 22.9.98, 17.5.99 and 12.5.99, Annexures 6, 7, 9, 10, 11 and 12 till disposal of the show cause.

The matter will be decided by Division Bench. The counsel of both sides have no objection.

List on 5.10.99 before the Division Bench.

Sd/ VICE CHAIRMAN

TRUE COPY
8/10/99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Central Bench GAUHATI BENCH

702 17/01/2000 166 OF 2000

Shri Bhabendra
Guwahati Nath Deka and 5 Others Applicants

Vs

Union of India and others

Respondents

In the matter of :

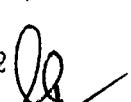
Written Statement submitted by
respondents No 1 to 3

WRITTEN STATEMENT

The humble resapondents submit
their written statements as
follows :

1. That no comment is called for against para 1 of the Application being factual.
2. That the statement made in paras 2 and 3 of the application are admitted being matter of record.
3. That the statement made in para 4.1 to 4.5 of the application are admitted being matter of records.
4. That with reference to the statement made in para 4.6 of the application, this deponent begs to state that the employees of the Central Government serving in the States and Union Territories of North-East region were granted the Special Duty Allowances vide Govt of India O M No II.20014/3/83/E.IV dated 14.12.83. Orders of Special Duty Allowance to the employees of Assam Rifles were issued vide Ministry of Home Affairs O M No.11011/1/84-FP.IV dated 2.2.89 with effect from 7.11.88. These

...2



FILED BY
(A. DEB ROY)
ST. C. G. S. C.
C. A. T. Guwahati Bench

40
29/2/2000

orders were issued in pursuance of orders of Ministry of Finance dated 14.12.83.

5. That the statement made in para 4.7 to 4.13 of the application, this deponent begs to state that Government of India, Ministry of Finance vide OM No II(3)/95-E,II(B) dated 12.1.96 on SDA while examining the judgement of the Supreme Court on the grant of SDA vide Department of Expenditure OM No.20014/3/83-E-IV dated 14.12.83 and 20.4.88 read with OM No.20014/16/86-E.IV/E.II(B) dated 1.12.88, has decided that the amount of SDA paid to ineligible persons after 20.9.94 will be recovered and SDA will be admissible only on the basis of All India Transfer Liability Conditions as being posted in the North-East region from out side the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The appex court further added that the grant of this allowance only to the Officers transferred from outside the region to the North-East region would not be violative of the provisions contained in Article - 14 of the Constitution as well as the equal pay doctrine. In pursuance of order of Ministry of Finance order dated 12.1.96, the SDA was stopped by the Pay and Accounts Office of Assam Rifles for the civilian employees of Assam Rifles are confined only to the North -East Region, admissibility of the SDA to the civilian employees of Assam Rifles was again considered by Govt and was not agreed to. Accordingly, the orders for discontinuation of SDA to civilian employees of Assam Rifles were issued vide Ministry of Home Affairs letter No II.11013/2/98-PF.V dated 9.7.98 and 12.5.99.

6. Moreover, in the order of MHA dated 2.2.89, it was clearly mentioned that the Allowance will be regulated by Ministry of Finance O M No 20014/3/83-E.IV dated 14.12.83 as amended from time to time which stipulates the condition of All India Transfer Liability. The condition of All India Transfer Liability was amply clarified by the Hon'ble Supreme Court in their judgement dated 20.9.94 (in Civil Appeal No.3251 of 1993). The judgement given by the Supreme Court and the Principle laid down therein is applicable to all the cases for grant of Special Duty Allowance including the personnel of Assam Rifles.

7. That the statement made in para 4.14 and 4.15 of the application are matter of records and are admitted except the statement that the applicants are similarly situated which is denied.

8. That with reference to the statement made in paragraph 4.16 to 4.19 of the application this deponent has no comments being prayers of the petitioners.

9. That with reference to the ground in 5.1 of the application this deponent states that the order dated 2.2.89 has not been referred to specifically in the Ministry of Finance OM dated 12.1.96.

10. That with reference to the statement made in ground 5.2 of the application it is stated that OM dated 12.1.96 is applicable to the civilian employees of Assam Rifles. (Ministry of Home Affairs letter dated 12.5.99 annexed as Annexure 1 refers in this regard).

11. That with reference to the statement made in ground 5.3 of the application this deponent states that the SDA was extended to the civilian employees of Assam Rifles with effect from 7.11.38 by Ministry's order. It is however denied that employees should continue to get the SDA as the Government is competent to review the matter considering the pros and cons as also the principles laid down by the Govt and upheld by the Apex Court and issue orders to affect modification in order dated 2.2.89.

12. That with reference to the statement made in ground 5.4 of the application this deponent begs to state that the condition of service of employees determined by an administrative order and there is no scope of giving any opportunity to the affected employees to explain as claimed.

13. That no comment is called for against ground 5.5 of the application.

14. That with reference to the statement made in ground 5.6, 5.7 and 5.8 of the application this deponent begs to state that grant and withdrawal of allowance is within the direction of Government and as such no civil right can be claimed on such allowance and as such no undue hardship is caused for such non-payment, as also can not be violative of Article 14, 16 and 21 of the Constitution of India.

15. That the statement made in para 6 and 7 of the application are self proclaimed declarations by the applicants.

16. That with reference to the statement made in para 8.1 to 8.3 of the application this deponent begs to state that the relief sought for in these paras needs review in view of what have been stated in replies to para 4.13 and 5.3 of the application.

17. That with reference to the statement made in paragraph 8.4 and 8.6 of the application this deponent has no comments being prayers of the petitioners.

18. That no reply is called for against para 9.1 to 9.3 of the application as interim relief as prayed for has already been granted by the Hon'ble Tribunal vide order dated 24.03.2000.

19. That no reply is called for against para 10, 11 and 12 of the application being particulars of postal orders and enclosures.

20. In view of the Hon'ble Supreme Court's decision in Civil Appeal No 3251 of 1993, dated 20.9.94, the issue stands settled. The civilian employees of Assam Rifles can not be exception vis-a-vis other civilian Central Govt employees. The Appex Court has upheld the contention of the Govt of India, as such the respondents most humbly submit that the application has no merit and is liable to be dismissed.

VERIFICATION

I, Major Sandeep Kumar working as Joint Assistant Director (Legal) do hereby solemnly verify that the statements made in the written statement are true to my knowledge, belief and information and nothing has been suppressed.

And I sign this verification on this the 28 day of Aug 2000.



DEPONENT

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No. 22012/10/97-PF-V

Government of India

Ministry of Home Affairs

To

New Delhi dated 12th May, 1999

Director General
Assam Rifles
Shillong - 793011

Subject: Entitlement of Special Duty Allowance to
Civilian Employees of Assam Rifles.

Sir,

I am directed to refer to your fax message No.
I.11013/27/99-Dept. dated 3.5.99 on the subject cited above
and to say that the orders of the Ministry No. I.T. 22013/2/98-
PF-V dated 9-7-98 regarding discontinuation of the Special
Duty allowance is applicable for all the civilian employees
of the Assam Rifles.

Yours faithfully,

I sd/-xxxx
(Mirimala Devi)
Desk Officer

Jose/