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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 168/2000
R.A/C.P No.
E.P/M.A No.

1. Orders Sheet. O.A-168/2000Pg. 1to 2
2. Judgment/Order dtd. 19/12/2000Pg. 1to 12 allowed
3. Judgment & Order dtd.Received from H.C/Supreme Court
4. O.A.168/2000Pg. 1to 60
5. E.P/M.P.N/LPg.to
6. R.A/C.P.N/LPg.to
7. W.S.Pg. 1to 5
8. Rejoinder.Pg.to
9. Reply.Pg.to
10. Any other Papers.Pg.to
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendment Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

FORM NO. 4
(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 168/2000 OF 199

Applicant(s) Dr. Ajet Kr. Borah

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. B.K. Sharma
Mr. S. Sarma.

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

Notes of the Registry	Date	Order of the Tribunal
<p>Presented in form and within time C. F. of R. No. 492438 Deposited vide IPO BD No. 10.5.2000 Dated 10.5.2000 By 17/5/2000</p>	19.5.00	<p>Present: Hon'ble Mr A.K. Misra, Member(J)</p> <p>Heard Mr B.K. Sharma, learned counsel for the applicant and considered the prayer for interim relief also. Issue notice to the respondents to show cause as to why this application be not admitted. On the prayer of interim relief, the operation of the various orders dated 21.7.1998 (Annexure G), 29.7.1998 (Annexure H), 18.8.1998 (Annexure M), 11.5.1999 (Annexure P), 10.4.1999 (Annexure Pl) is hereby stayed. The respondents to show cause why the stay order be not made absolute.</p> <p>It is further ordered that due to the stay of the various orders if the applicant receives the allowances ^{in question} during the pendency of this</p>

Notes of the Registry	Date	Order of the Tribunal
<p>24-5-2000</p> <p>Notice prepared and sent to D. Section for issuing to the same to the respondents through Regd. post with A.D.</p> <p>By vide D.No. 1458 to 1461 Dtd. 25.5.00.</p>	<p>19.5.00</p>	<p>application the applicant shall not be permitted to retain the amount thus received during the pendency, if he is ultimately found not entitled to the allowances as per the Government Order.</p> <p>Put up on 26.6.00.</p> <p>Member(J)</p>
<p>Show cause has not been filed.</p> <p>12.7.00.</p> <p>Written Statement/</p> <p>Show Cause has been filed Flag "A"</p> <p>21.9.2000</p>	<p>13.7.00</p>	<p>There is no Bank today. Adj. on 13.7.00.</p> <p>Present: Hon'ble Mr.S.Biswas, Administrative Member.</p> <p>None for the applicant. Mr.A.Deb Roy, Sr.C.G.S.C. for the respondents. Case is adjourned and posted on 7.8.00 for Admission.</p> <p>Member(A)</p>
<p>25.8.00</p>	<p>7.8.00</p>	<p>There is no Bank today. Adj. on 25.8.00.</p>
<p>22.9.2000</p>	<p>25.8.00</p>	<p>There is no Bank today. Adj. on 22.9.00.</p>
	<p>22.9.2000</p>	<p>Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman</p> <p>Heard Mr B.K. Sharma, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. Mr Deb Roy submitted that the written statement has already been filed by the Union of India. The application is admitted. No further notice need be issued to the respondents. List for hearing on 19.12.00 alongwith connected matters. The applicant may file rejoinder within three weeks.</p> <p>Vice-Chairman</p>

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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.

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5.

O.A.No.268/1999

Shri V.S. Sarma and 86 others

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

- versus -

The Union of India and Others

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

.....Applicants

.....Respondents

6.

O.A.No.312/1999

Shri Keshab Choudhury and 67 others

By Advocates Mr D.K. Mishra, Mr A. Dutta and Mr R. Agarwal.

- versus -

The Union of India and others

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

.....Applicants

.....Respondents

7.

O.A.No.372/1999

Smt Sunita Devi Bhuyan and 41 others

By Advocates Mr J.L. Sarkar and Mrs S. Deka.

- versus -

The Union of India and others

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

.....Applicants

.....Respondents

8.

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.

- versus -

The Union of India and others

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

.....Applicants

.....Respondents

9.

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.

- versus -

The Union of India and others

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

.....Applicants

.....Respondents

10.

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.

- versus -

The Union of India and others

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

.....Applicants

.....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.

- versus -

The Union of India and others

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

.....Applicants

.....Respondents

12.

O.A.No.442/1999

Shri A. Mahendra Kumar and 5 others

By Advocates Mr M. Chanda and N.D. Goswami.

- versus -

The Union of India and others

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

.....Applicants

.....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.

- versus -

The Union of India and others

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

.....Applicants

.....Respondents

14.

O.A.No.166/2000

Shri Bhabendra Nath Deka and 5 others

By Advocates Mr J.L. Sarkar and Mrs S. Deka.

- versus -

The Union of India and others

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

.....Applicants

.....Respondents

15.

O.A.No.168/2000

Dr Ajit Bora

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

- versus -

The Union of India and others

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

.....Applicant

.....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 Dimngel and 12 others
By Advocates Mr J.L. Sarkar, Mrs S. Deka and
Ms T. Das.

.....Applicants

- versus -

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

.....Respondents

21.

O.A.No.429/2000

Shri Bhupendra Nath Talukdar and 16 others
By Advocates 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

.....

O R D E R (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.11011/1/84-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)
• 1) <u>Special (Duty) Allowance</u>	
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)

(2)

ii) • Non-combatant 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.

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

13

of SDA from the pay of August 1988 in respect of all the civilian

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.....

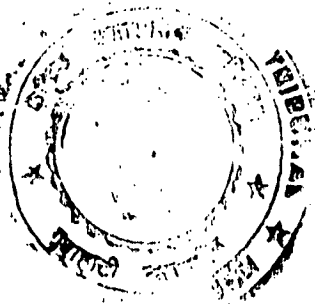
Assam Rifles personnel and civilian non-combatised officers of Assam Rifles did not have All India Transfer liability and as such question of grant of SDA even in the case of civilian non-combatised officers/employees did not arise. The aforesaid communication was considered by the Ministry while taking 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} consensus 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

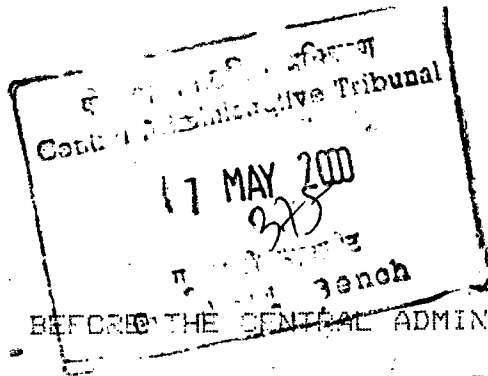
प्रतिलिपि

Section Officer (J)

प्रमुख अधिकारी (अधिकांश शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati-8
गुवाहाटी - असम, गुवाहाटी-8

4/11/2007



16

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

D.A. No. .../68... of 2000

BETWEEN

Dr. Ajit Kumar Borah. Applicant.

AND

Union of India & ors. Respondents.

I N D E X

Sl.No.	Particulars	Page No.
1.	Application.....	1-13.
2.	Verification.....	14.
3.	Annexure-A.....	15.
4.	Annexure-B.....	17.
5.	Annexure-C.....	19.
6.	Annexure-D.....	20.
7.	Annexure-E.....	23.
8.	Annexure-F.....	25.
9.	Annexure-G.....	26.
10.	Annexure-H.....	27.
11.	Annexure-I.....	28.
12.	Annexure-J.....	29.
13.	Annexure-K.....	31.
14.	Annexure-L.....	33.
15.	Annexure-M.....	35.
16.	Annexure-N.....	36.
17.	Annexure-O.....	37.
18.	Annexure-P & P1.....	39 & 40.
19.	Annexure-Q	41.

FILED BY ; S.SARMA. ADVOCATE.

FILE : C:\WS7\AJIT

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

D.A. No. 168 of 2000

17
Filed by
Shankar Bora
Advocate.
15/5/2000

BETWEEN

Dr. Ajit Bora.

S/O, Lt. J.C. Bora,

Working as Medical Officer, 16th, Assam Rifle,

Diphu, C/O/99 APO.

..... Applicant.

AND

1. The Union of India,

represented by the Secretary to the Govt of India,

Ministry of Home Affairs.

New Delhi.

2. The Secretary to the Govt of India,

Ministry of Finance,

New Delhi.

3. The Director General,

Assam Rifles,

Shillong.

4. The Deputy Inspector General,

Assam Rifles, Nagaland Range (South)

C/O/ 99 A.P.O.

..... Respondents.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS
MADE:

This application is made against the order of discon-
tinuation of Special Duty Allowance (for short (SDA) with effect

from 1999 and the action of the respondents for recovery of the same from the applicant by issuing various orders mentioned in the head "Facts of the Case".

2. JURISDICTION:

The applicant declares 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 applicant is a citizen of India and as such is entitled to all the rights and privileges guaranteed by the constitution of India.

4.2. That the applicant is working as Medical Officer, in the Office of the 16th Assam Rifle Diphu, under the Director General of Assam Rifles, Shillong and at present he is posted at Diphu in the North Eastern Region.

4.3. That the Government of India had decided to give some incentives 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 Allowances (for such 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 were given SDA with effect from 1.9.1983 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 Region 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

9

employees who were not given SDA and who approached the Hon'ble Central Administrative Tribunal got SDA. Therefore, the same was taken up to the Hon'ble Supreme Court in numbers 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-A.

4.4. That after the Judgment of the Hon'ble Supreme Court, the Government of India, Ministry of Finance issued O.M.No.ii(3)/95-E/ii(b) dated 12.1.96 by which the payment of SDA has been regulated in the manner indicated in para of that O.M. referred above.

A copy of the Memo dated 12.1.96 is annexed hereto and the same is marked as ANNEXURE-B.

4.5. That the Ministry of Home Affairs issued a letter to the Director General, Assam Rifles under No.II.11011/1/84-FF.iv dtd.3.3.86 informing that the personnel and civilians non-combatant officers/employees are not entitled to SDA as envisaged in the O.M. dated 14.12.1983. Therefore, the applicants were not paid SDA in terms of the O.M. dated 14.12.1983.

A copy of the O.M. dtd.3.3.1983 is enclosed herewith and marked as ANNEXURE-C.

4.6. That the Govt. of India, Ministry of Home Affairs was also with the view of improving the conditions of the service of the Assam Rifles personnel particularly in the 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-Grant of Sikkim Compensatory Allowance. The president of India consider-

ing the peculiar conditions of service of the Assam Rifles employees accorded sanction of some allowances, and SDA is one of such allowances sanctioned by the president. Other allowances sanctioned by the President are Special Compensatory Allowances (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-combatant civilian employees, the sanction of the President indicated as under. The employees fall in this category.

Category of personnel entitled to allowance.	Particulars of O.M.S. regulating the allowance.
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i). Special (Duty) Allowance:

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, IG, DIGs, Range Hqrs, Training Centres etc) and other units (maintenance groups workshops etc.) of Assam Rifles.	Item (iii) in para 1 of Ministry of Finance O.M No. II.20014/3/83 S. IV dtd. 14.12.83 as amended from time to time, read with their O.M. No. II.20014/3/83 S. IV dated 29.10.86 and their O.M. No. I.20014/3/89-S. IV dated 15.7.88 and Min. of Finance 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-PT dated 6.4.87.
---	---

ii) Non combatised civilian Personnel (including officers) in battalions of Assam Rifles and static formation (such as	Same as above. (This is modification of the sanction issued vide item (3) of MHA letter No. 11011/1/84-PFIV dated 3.3.86).
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officers of DG, IGP, DIGs, Range
Hqrs, Training Centres etc) of
Assam Rifles.

21

This letter, dated 2.2.1989 stipulates improvement in the condition of service of Assam Rifles employees and this decision is a clear and considered decisions modifying earlier order by which your humble applicant has not given the said SDA. The decision to grant SDA to the applicant as sanctioned by the President of India communicated to the Director General, Assam Rifles, Shillong by circular dated 2.2.1989 is a distinct decision as regards the Assam Rifles employees and such this a special provision as regards the Assam Rifles only as distinguished from other Central Govt. civilian employees. Your humble applicant begs to state this distinction has always been maintained and such while SDA was paid to the other Central Govt. civilian employees by the OM. dated 14.12.1983 Assam Rifles employees, were not embraced by the said OM. It is only with the sanction of the President of India as a peculiar case of the Assam Rifles that the employees of the Assam Rifles as a being paid SDA under the circulars dated 2.2.1989. In this connection it is also pertinent to mention here that while the other civilian Central Govt. Employee were paid SDA with effect from 1.11.83 Your applicant has been granted the SDA for Assam Rifles with effect from 7.11.1988.

Copy of the Circulars dated 2.2.1989 is
annexed herewith and marked as Annexure-D.

4.7. That the pay and Accounts Office, Assam Rifles, Shillong was raising questions regarding Payment of SDA to your applicant. 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

5

for

22

Govt. 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 No.A/I-A/242/98 dated 6.6.98. This letter discussed in detail the entitlement of SDA to the civilian employees of Director general, Assam Rifles and also the matter of objection by the Pay and Accounts Officer, Assam Rifles and came 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 of Directorate General Assam Rifles, Shillong is not promised on the logical interpretation of extent Govt.orders cited above, which has a special dispensation to the non-combatised civilian personnel (including officers) in units as well as static formations including this Directorate. This Directorate therefore maintains that drawl of SDA by the civilian employees of DEAR, Shillong is in order."

Copies of the letter dated 6.6.1998 is annexed herewith and marked as Annexure-E.

4.8. That the Ministry of Home Affairs under their letter dated 9.7.98 to Director General, Assam Rifles, Shillong in reply to his letter dated 6.6.98 informed that the proposal has not been agreed to in view of orders of the Ministry of Finance dated 12.1.96. Thereafter the Director General Assam Rifles under his letter dated 31.7.98 forwarded a copy of the said letter dated 9.7.98 to the Pay and Accounts Office, Assam Rifles for

28

information and necessary action. This was followed by letter dated 29.7.98 to the Pay and Accounts office, Assam Rifles from the Director General, Assam Rifles.

Copies of the letter dated 9.7.98, 21.7.98 and 29.7.98 are annexed herewith and marked as

Annexure- F, G and H respectively.

4.9. That the applicant has come to know that Pay & Accounts Office was returning the bills for deleting Special (Duty) Allowance. Thereafter that matter was represented by the applicant, union through the Assam Rifles (Civil) employees Association by a letter dated 27.7.98 from the General Secretary of the said Association. Be it stated that the applicant is not a member of the said Association but the said Association functioning from the Headquarters sent written correspondence in the matter of payment of SDA in the civilian employees serving in the Assam Rifles as such the said Association are common, therefore all those correspondences have been referred in the instant application as the payment of SDA is common interest to all the civilian employees serving in different places in the DE, AR, Assam Rifles. In the representation it was explained in detail that the Finance Ministry's letter dated 12.1.96 has no nexus with the SDA paid to the applicant and the SDA was paid by the presidential sanction under memo of February, 1989 and that the payment was made with effect from 7.8.98. It has also been mentioned in the application that due to non-applicability of letter dated 12.1.96, SDA has been continued to be paid to the applicant. The representation requested for stoppage of arbitrary withdrawal of the SDA by the Pay & Accounts Office. This was followed by another letter dated 30.7.98 of the General Secretary of the said Association.

Copies of the representation referred above

24

dated 27.7.98 and 30.7.98 are annexed herewith and the same are marked as Annexure-I & J respectively.

4.10. That the Director General of Assam Rifles wrote a letter dated 4.8.98 to the Pay & Accounts Office, Assam Rifles, Shillong explaining the details of entitlement of SDA to the civilian employees of the Director General, Assam Rifles. This letter also narrated the facts of grant of SDA to the applicants by memo dated 2.2.89 and from 7.11.88. This letter also clarified that unless Govt. of India's order dated 2.2.89 sanctioning SDA with effect from 7.11.88 was modified or canceled or superseded the civilian employees of the Director General, Assam Rifles would be entitled to draw SDA. This letter also indicated that the matter requires further clarification and would be taken up with the appropriate authorities. It was also stated that pending clarification and final decision from the competent authority no deduction/recovery of SDA of civilian employees of the Director General, Assam Rifles may be made.

Copy of the letter dated 4.8.98 is annexed herewith and marked as Annexure-K.

4.11. That the Assam Rifles civilian employees Association have also written a letter dated 13.8.98 to the Joint Secretary, Ministry of Home Affairs regarding the above subject explaining the details of entitlement of SDA to civilian employees of Directorate General and Tripura Range Assam Rifles, Shillong and Tripura.

Copy of the letter dated 13.8.98 is annexed herewith and marked as Annexure-L.

4.12. That by their letter dated 18.8.98, the Director General, Assam Rifles, Shillong has intimated the applicants the pay & Accounts office, Assam Rifles had intimated that SDA should be discontinued from the pay of August, 1998 in respect of

25

all the civilian employees of Director General, Assam Rifles. The pay & Accounts office, Assam Rifles has further stated that the SDA drawn from 20.9.94 to till date is also to be recovered. However the said order is yet to be given effect so far it relates to the present applicants.

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

4.13. That the applicant is receiving SDA on the sanction of the President under order dated 2.2.89 with effect from 7.8.88 and not from 1983 like other Central Govt. Employees. It is humbly stated that there is no order modifying or canceling the said order dated 2.2.89. The Finance Ministry's letter dated 12.1.1996. It is the humble submission of the applicant that has no application in the case of the present applicant.

4.14. That the Directorate General, Assam Rifles, Shillong has written another letter dated 20.9.98 to Joint Secretary(P) Ministry of Home Affairs, New Delhi clarifying the total position of the entitlement of SDA to the civilian employees of Assam Rifles. It is humbly stated that the applicant entitled to SDA payment of SDA to them should be continued and no recovery should be made for payment of SDA.

Copy of the letter dated 20.8.98 is annexed here with and marked as Annexure-N.

4.15. That the applicant begs to state that the combatant staff under the respondents are presently getting SDA who are also similarly situated like that of the applicant who is civilian employees. In this connection the applicant begs to state that his service conditions is similar to that of the combatant staff working under the respondents. The applicant is also liable for movement when the situation demands for example during the time of movement of Indian Peace Keeping Force in Sri

26

Lanka, some of the employees like that of the applicant had to move to Sri Lanka in the said operation that too at their individual capacity. The applicant further states that there has been discrimination in regard to the unit staff like that of the applicant. The Unit staff of the respondents are different from other defence organisation and hence he is entitled to SDA like that of the combatant staff.

4.16. That Your applicant begs to state that some of the similarly situated employees of Assam Rifles, Shillong have also appropriated 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. The Hon'ble Tribunal was pleased to admit the said OA and was pleased to show cause as to why the order as prayed for should not be granted and was also pleased to stay the operation of the orders dated 9.7.98 and 18.8.98. Therefore the present applicant also prays before the Tribunal for a similar order like that of O.A No.203 of 1998 as the applicant is similarly situated and his grievances are also same against the same respondents.

Copy of the order dated 26.8.98 based in O.A.No.

203/98 is annexed hereto and marked as Annexure-O.

4.17. That the applicant begs to state that he has joined the services of Assam Rifle as a Medical Officer. He entered the services initially on ad-hoc basis and till date he has not been regularised in his service. However, the scale as well as other allowances are concerned he has been drawing the same as regular employees of Assam Rifles. Initially the applicant entered the service as Medical Officer on 24.8.95 under the respondents i.e. Assam Rifle (~~Office of the 16th Assam Rifle, Diphu~~) C/O 99 APO. As per the service condition he has been drawing his pay and

allowances as regular employees. In addition to his other allowances as per the aforesaid office memorandums he had been drawing his SDA till 28.2.99 in the similar rate as has been granted to other similarly situated employees of Assam Rifle.

4.18. That the applicant thereafter received a letter vide No.FIN/VII-Ofrr/P-A/99/11 dated 11.5.99 by which referring to letter dated 10.4.99 it has been communicating that SDA drawn w.e.f. 28.2.95 to 28.2.99 by him will be recovered. The respondents in the said letter also asked him to give his willingness as to how he would like to refund the same.

Copies of order dated 11.5.99 and 10.4.99 is annexed as ANNEXURES P & P1, respectively.

4.19. That the applicant begs to state that pursuant to the aforesaid Annexures P and P1 orders the respondents are now recovering the amount paid to him on account of SDA. Presently the applicant incurring a tremendous financial hardship and other similarly situated employees like that of him who approached the Hon'ble Tribunal has been dully protected. However, the applicant who was posted in a different station could not approach the Hon'ble Tribunal at that time and hence now he has approached the Hon'ble Tribunal through the present application for seeking appropriate relief with a further prayer directing the respondents not to recover any amount paid to him as SDA as well as the payment of current SDA.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1. For that the applicant is entitled to SDA by Presidential order dated 2.2.89 which has not been canceled or modified.

5.2. For that the office Memorandum dated 12.1.96 has no application in the instant case of the applicants.

5.3. For that the respondents themselves paid SDA to the applicant with effect from Aug 1995 due to his entitlement, and

296

there has not been any charge of the order of the entitlement and as such he should continue to get the SDA.

5.4. For that the SDA is sought to be stopped and recovery should be made without giving scope of explanation by the applicant. This is violative of principles of natural justice.

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

5.6. For that non-payment of SDA and recovery of SDA as has been sought to done in the instant case, already drawn shall cause undue hardship to the applicant. The applicant is being paid SDA because of their entitlement.

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

5.8. For that discrimination meted out to the applicant with the combatant staff working under the respondents more so when the service conditions and responsibilities are same, hence the action of the respondents are not sustainable in the eye of law and liable to be set aside.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both factual as well as legal, at the time of hearing of the case.

6. DETAILS OF REMEDY EXHAUSTED:

The applicant begs to state that there is no other remedy under any rule. However, the applicant requests for payment of SDA has been rejected by the authority.

7. MATTER NO PENDING BEFORE ANY OTHER COURT:

The applicant further declares that he has not previously filed any application, Writ petition or suit regarding the matter in respect of which the application has been made before any

29

court of law or any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances of the case the applicant pray that Your Lordship would be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicant shall not be granted, call for the records of the case and on perusal of records and after hearing the parties on the cause that may be shown, be pleased to grant the following relief(s):

8.1. To direct the respondents to allow the applicant to draw SDA continuously without any break by setting aside order dated 18.8.98, 9.7.98 and 11.5.99 and other communications and to set aside the action of any recovery as has been sought to be done in the instant case by issuing necessary order, office memorandums etc.

8.2. To set aside and quash letter dated 9.7.98 and 21.7.98 and other communications in this regard.

8.3. To direct the respondent not to recover any amount from the applicant already made by setting aside letter dated 11.5.99 and 10.4.99.

8.4. Cost of the application.

8.5. 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 the pendency of this application, the applicant prays for an interim order directing the respondents to allow the applicant to draw SDA by suspending the orders dated 9.7.98, 21.7.98, 29.7.98, 18.8.98, 11.5.99 and 10.4.99 by which the respondents have also sought to recover the amount of SDA paid to

G H ✓ M P P1

the applicant earlier.

10.

11.

PARTICULARS OF POSTAL ORDER:

- 1. I.P.O. No. : 497438
- 2. Date : 10.5.2000
- 3. Payable at : Guwahati.

12.

PARTICULARS OF ENCLOSURES:

As stated in the INDEX.

31

VERIFICATION

I, Shri Ajit Kumar Bora, son of Late J.C. Bora, aged about 33 years, at present working as Medical Officer (Ad-hoc), in the office of the 16th Assam Rifles (Diphu), C/O/ 99 APO, do hereby solemnly affirm and verify the statements made in paragraphs 1-3, 41-42, 415, 420 and 5 to 12..... are true to my knowledge and those made in paragraphs 43-44, 416-419..... are also true to my legal advice and I have not suppressed any material facts of the case.

And I sign on this verification on this the 24th day of May, 2000.

Signature

Ajit K. Bora

-18-
-15-

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ANNEXURE - A

//Copy//

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

New Delhi, the 14th December, 1983.

OFFICE MEMORANDUM

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

The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows:-

(i) Tenure of posting/deputation :

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

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

(ii) Weighting for Central deputation/training abroad and special mention in Confidential Records.

Satisfactory performance of duties for the

-19- -16-

37
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prescribed tenure in the North East shall be given due recognition in the case of eligible officers in the matter of:-

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

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

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

(iii) Special (Duty) Allowance:

Central Government civilian employees who have All-India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 per cent of basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special Allowance. Special (Duty) Allowance will be in addition to special pay and/or Deputation (Duty) Allowance already being subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs.400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance:

1. Assam and Meghalaya

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

2. Manipur

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

Pay upto Rs.260/-

Rs.40/-p.m.

Pay above Rs.260/-

15% of basic pay subject to a maximum of Rs.150/- p.m.

3. Tripura

The rates of the allowance will be as follows:-

...3/-

- 23 -
- 17 -

119 B

ANNEXURE - B

/ 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 Allowance for civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region - regarding:

The undersigned is directed to refer to this Department's O.M. No. 20014/3/86-EI V dated 14.13.83 and 20.4.88 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 above mentioned OM dt 14.12.83 granted certain incentives to the Central Government civilian employees posted to the NE Region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have "All India Transfer Liability".

3. It was clarified vide the above mentioned OM dt 20.4.87 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 person concerned is liable to be transferred anywhere in India, did 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 uphold the prayers of the petitioners as their appointment letters carried the clause of All India Transfer Liability and, accordingly, directed payment of SDA to them.

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministries/Department against the orders of the CAT.

6. The Hon'ble Supreme Court in their judgement delivered on 20.9.94 (in Civil appeal no. 3251 of 1993) uphold 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

Contd...2...

been paid to the respondents 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 ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94 but payments were made after this date i.e. 20.9.94) will be recovered.

8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.

9. In their application to employees of Indian Audit and Accounts Department, these orders issue in consultation with the controller and Auditor General of India.

10. Hindi version of this OM is enclosed.

Sd/- xx xx xx

(C. Balachandran)

Under Secy to the Govt. of India

All Ministries/Departments of Govt of India, etc.

-22-19-

36

ANNEXURE - C

//copy//

No. II.11011/1/84.IV.
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya.

New Delhi, the 3.3.86

To

The Director General
Assam Rifles,

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

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 Rns . of Assam Rifles will not
be entitled to the concessions envisaged in the
Ministry of Finance (Deptt. of Expr.) O.M. No.20014
/3/8.-E.IV. dated 14.12.1983 as they move in
organised group and have back-up support.
2. The Assam Rifles personnel & Civilian non-
combatant 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-combatant officers/employees does not
arise.
3. Non-combatant civilian staff in static
formations such as Offices of DG, IGP, DIGs
and Range Headquarters of Assam Rifles may
be all wld 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.700/86
-Fin.III,D.I.dated 24.02.1986.

Yours faithfully,

Sd/-

Annexure-D

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 7-11-1988 :-

Category of personnel
entitled to allowance
(1)

Particulars of O.Ms regulating
the allowances
(2)

(1) Special (Duty) Allowance

i) Combatised personnel (including cadre officers) in battalions of Assam Rifles and the combatised personnel (including cadre officers) in static formations. Such as Officer of DG, IGP, DIGs, Range HQrs, Training centre etc) of Assam Rifles.

ii) Non-combatised civilian personnel (including officers) in battalions of Assam Rifles and in static formations (such as offices of DG, IGP, DIGs, Range HQrs, Training centres etc. and other units for maintenance groups, workshops etc) of Assam Rifles.

Item (iii) in para 1 of ministry of Finance O.M No. II. 20014/3/03-E-IV dated 14.12.83 as amended from time to time, 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.20014/3/83-866.IV/E-II(B) dated 1.12.88 (This is in modification of sanction issued in KMA letter No.27013/31/85-FP.II dated 6.4.87.

Same as shown (this is in modification of the sanction issued vide item(3) of para 1 of MHA letter No.11011/1/84-00 IV dated 3.3.86.

Category of personnel
entitled to allowance
(1)

Particulars of OMs regulating
the allowance
(2)

2) Special Compensatory Allowance (also called as special compensatory (Remote Locality Allowance)

Category of personnel
as mentioned against
item 1 (1)

Same as indicated against item (1) above, Ministry of Finance O.M No.20014/6/86-E.IV dated 23.9.86 and 27.4.87 (Meghalaya) No.20014/7/86-E.IV (Assam) No.20014/10/86-E.IV dated 23.9.86 and 22.4.87 (Tripura) No 20014/2/86-E.IV dated 23.9.86 and 16.4.87 (Mizoram) No. 20014/9/86-b.IV dated 23.9.86 and 22.4.87. (Nagaland), No. 20014/11/86-E.IV dated 23.9.86 and 22.4.87. (Manipur) No.20014/4/86-E.IV dated 23.9.86 and 22.4.87. (Arunachal Pradesh) also refer. (This is in modification of MHA letter No.27012/31/85-FP. II dated 6.4.87)

3) Sikkim Compansatory allowance.

Combatised as well as Ministry of finance O.M non-combatised personnel No.20014/8/86-E.IV dated (including officers) in Assam 23.9.86 and 22.4.87. Rifles posted in Sikkim.

2. With effect from 7.11.1968 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 provisions are not applicable to Army Officers/personnel on deputation to Assam Rifles.

22 -
-26-

39
Annexure-B (Contd.)

4. This issue with the concurrence of the Ministry of Finance vide their I.D. No. 5 (72) S.III/88 dated 7.11.88 and F.89/AD(I)/89 dated 13.1.89 and the Integrated Finance Division of this Ministry vide their Dy. No. 474/FA(I)/88 dated 7.12.88.

Yours faithfully,

SC/-

(M.M. Sharma)

Deputy Secretary to the Govt. of India.

No. 11011/1/84-IP.IV dated New Delhi the 2nd February, 1989

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 (S.III Branch).
5. Ministry of Finance, Deptt. of Expenditure (S.IV Branch).
6. Liaison Officer, Assam Rifles, New Delhi
7. 20 spare copies.

SC/-

(M.M. Sharma)

Deputy Secretary to the Government of India
Secretary

Dated 6 June 1998

No.O/1-A/242/93

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

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

Sir,

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 1. 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/S.II(B) dated 01 Dec'88 attached as Annexure II.

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 these 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 HQrs, 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.27012/31/86/PP.II dated 04 April'87 (Annexure

Consequent upon change over of pay structure of Assam Rifles personnel from Army pattern to CPO, pattern from 01Jan 86 following Fourth Central Pay Commission recommendations. SDA on the analogy of other CPOs like BSF, CRPF Etc. was also granted to both combatant and civilian employees of Assam Rifles with effect from 07 Nov 88 (of the civilian staff and officers of the static Formations of Assam Rifles including Directorate General Assam Rifles) under Ministry of Home Affairs letter No.Roh1/1/84-PP.IV dated

...2/-

02 Feb 89 (attached as 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 EIV 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.

5. The Judgement of the Apex Court regarding non-entitlement of SDA to certain category of civilian personnel ie. 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 combatants 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 presented on a logical interpretation of extent 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

SDA by the civilian employees of DGAR, Shillong is in order.

7. The above proposed reference has been agreed by the Financial Advisor North Eastern Council.

8. The Ministry is requested to kindly issue a clarification of the orders.

Yours faithfully
sd/-SJR Sharma
Major General

Dy. Director General Assam Rifles
for Director General

Encl: As above.

- 28 -
- 25 -
C O P Y

ANNEXURE - F

42

No.II-22013/2/98-PF.V
Government of India
Ministry of Home Affairs

To
Director General
Assam Rifles
Shillong-793011

New Delhi : dated 9-7-1998

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

Sir,

I am directed to refer to your letter No.A/I-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.

Yours faithfully,

sd/- xx xx xx
(Nirmal Dev)
Desk Officer
9/7/98

Copy to LCR, North Block, New Delhi

*Agastya
Advocate*

Sharat Sarkar
Government of India
Grah Mantralaya
Ministry of Home Affairs
Mahavidyalaya Assam Rifles
Directorate General Assam Rifles
Shillong-793011

A/LA/242/98

21 Jul 98

The Pay and accounts officer
Mahavidyalaya Assam Rifles
Government of India
Ministry of Home Affairs
Laitmukrah, Shillong-3

ENTITLEMENT OF SPECIAL DUTY ALLOWANCE TO
CIVILIAN EMPLOYEES OF DGAR SHILLONG

1. Enclosed please find herewith photo copy of MMA letter No. II.22013/2/98-PF.V dated 09 Jul 98 on the cited above for info and necessary action.

Sd/ XX XX
(R S Rawat)
Lt Col
AD(A)
for DG Assam Rifles

Encl : as above

Copy to :-

Estt Branch (Internal) - for info and necessary action
alongwith a copy of MMA letter No
II.22013/2/98-PF.V dated 09 Jul 98.

Finance Branch

*Alleged
to
date*

30-28-30-
27-33-
H
Annexure
Tel No 1 705075
Mahanidhanalaya Assam Rifles
Directorate General Assam Rifles
Shillong-788012

29 Jul 98

ANNEXURE - H

Pay and Accountd Office
Assam Rifles

Shillong - 3

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

1. Reference our letter NO.A/I-A/242/98 dated 21 July'98.
2. Consequent to the issue of Ministry of Finance (Department of Expenditure) OM NO.11(3)/85-E.II(B) dated 12 Jan 96 and the observation raised by your Office regarding applicability of SDA to civilian employees of DGAR, Shillong. The Ministry of Home Affairs has intimated vide their letter NO.11.22013/2/98-PF.V dated 09 July 98 (copy enclosed) that the civilian employees of DGAR, Shillong are not entitled for SDA in view of Ministry of Finance letter dated 12 Jan 96.
3. The above is for information and necessary action.

Assam Rifles (Civil) Employees Association

Annexure - I

Shillong 27 Jul 98

ANNEXURE - I

Lt General Curpreet Singh
Directorate General Assam Rifles
Shillong

WITHDRAWAL OF SPECIAL DUTY ALLOWANCE FROM PAY OF
JULY 1998 IN RESPECT OF CIVILIAN EMPLOYEES OF THE
DIRECTORATE GENERAL ASSAM RIFLES SHILLONG BY THE
PAY AND ACCOUNTS OFFICE (ASSAM RIFLES), SHILLONG.

1. The under signed would like to apprise the following matter for favour of your kind personal intervention please.
2. It has come to the notice of the civilian staff members of this Directorate that the Pay and Accounts Office (Assam Rifles), Shillong has returned the Pay Bill of July 1998 with instruction to delete Special Duty Allowance from the pay bill in accordance with the Ministry of Home Affairs, New Delhi letter No.11.22013/2/98-PF.V dated 9 July 1998 (Photostate Copy enclosed) which has forwarded to them by this Directorate vide letter No.A/I-A/242/98 dated 21 July 98 (Photostate copy enclosed).
3. Sir, due to return of Pay Bill for the month of July 1998 by the PAO (AR), Shillong, it has become panic amongst the civilian staff members of this Directorate and they have urged me to take up this matter immediately with your honour so that your honour would be kind enough to look into this matter personally and would save all civilian members from Financial loss which has been caused by the PAO(AR).

.....2/-

32-29-

ANNEXURE J

30

Assam Rifles (Civil) Employees Association

SHILLONG
14TH AUG

Annexure J

Ref No. AB(C)/IA/98/86

-29-

Dated Shillong the 30 Jul 98

To

Lt General Gurpreet Singh
Director General Assam Rifles
Shillong

WITHDRAWAL OF SPECIAL DUTY ALLOWANCE FROM PAY OF JULY 1998 IN RESPECT OF CIVILIAN EMPLOYEES OF THE DIRECTORATE GENERAL ASSAM RIFLES SHILLONG BY THE PAY AND ACCOUNTS OFFICE (ASSAM RIFLES), SHILLONG;

Respected Sir,

1. Kindly refer to our letter NO.AB(C)EA/98/84 dated 27th July 1998.
2. Sir, it is learnt that the contention made by the Ministry of Finance letter dated 12-1-1996 as quoted by the Ministry of Home Affairs, New Delhi vide their letter NO.II.22013/2/98-PF.V dated 9 July 1998 has not been considered and the pay bill for the month of July 1998 in respect of civilian employees of this Directorate has been re-submitted stating that the special duty allowance would be ceased from the month of July 1998 which has extremely shocked to entire civilian employees of this Directorate.
3. Sir, all civilian employees were extremely hopeful that our dynamic leader Director General would exercise his all efforts that the poor employees working under him would not loose their pay packet by ceasing their genuine allowance which is still in existing even though the MHA has turned down our strong recommendation by simply quoting Ministry of Finance letter dated 12-1-1996.
4. Sir, we are still hundred percent sure that we may defend our case with the PAO (AB), Shillong based on the reference quoted by the MHA in their letter dated 9 July 1998 with a view that in no case the order of Ministry of Finance letter dated 12-1-1996 has got any relation with the sanctioning order of the MHA vide NO.11011/1/84-FP.IV dated 1st Feb 1989.
5. Sir, your honour would definitely appreciate that the pay which we are getting now in our each cadre is quite insufficient to meet even proper two square meals. In addition to this we are to meet expenditure towards education to our children, medical treatment as and when required and various social obligations.

...2/-

33- 3135- #30-
Assam Rifles (Civil) Employees Association

SHILLONG
1989

2-
Dated Shillong the 27th July 1989

6. Sir, our earnest appeal to your honour that your employees what-so-ever rank and file may be do get proper justice keeping in view of the correct inter-pretation of the Government orders received from time to time and as to how the SDA proposal was originated from the Director General Assam Rifles to the Ministry so that all confusions would be removed sir.

7. Sir, inspite of your all efforts, if our SDA is ceased, we have no other way but to take shelter of the law on correct inter-pretation of the Ministry of Finance letter dated 12-1-1996 and MHA's sanctioning order NO.II.11011/1/84.FP.IV dated 1st Feb 1989 so that we do not suffer financial lose in this critical hard days of our daily life. We believe your vision of rights will remove all clouds in regard to correct inter-pretation of the Government orders.

8. Looking forward for favour of your valuable judgement on this matter Sir.

Please accept my sincere regards Sir.

Thanking You Sir.

Yours faithfully,

(R S PATHAK)
General Secretary

Directorate General Assam Rifles
Shillong-793011

07 Aug 1998

No.A/I-A/242.88/98

Pay and Accounts Office
Assam Rifles
Laitumkhrah
Shillong - 3ENTITLEMENT OF SPECIAL DUTY ALLOWANCE TO
CIVILIAN EMPLOYEES OFDCAR SHILLONG:

1. Reference this Directorate letter NO.A/1-A/242/98 dated 21 Jul 1998 and No.A/1-A/242-88/98 dated 20 Jul 1998.
2. The photostate copies of the following letters are sent herewith:-
 - (a) Ministry of Home Affairs, New Delhi letter NO.II.11011/1/84-FP.IV dated 3.3.1986.
 - (b) Ministry of Home Affairs, New Delhi letter No.II.11011/1/84-FP.IV dated 1st/2nd Feb 1989.
 - (c) Ministry of Finance Department of expenditure letter No.11(3)95-E.II(B) dated 12th Jan 1996.
3. While allowing various concessions as envisaged in the Ministry of Finance O.M dated 14-12-1983 to the civilian employees of the Central Government serving in the states and Union Territories of North Eastern Region, except Special (Duty) Allowance to the non combatised civilian staff of static formation such as offices of DG, IGP, DIGs and Range HQs of Assam Rifles was not agreed to by the Ministry as communicated under their letter NO.II.11011/1/84-FP.IV dated 03-3-1986.
4. The Government of India, Ministry of Home Affairs while issuing the sanction of special (Duty) allowance vide NO.11011/1/84-FP.IV dated 1st /2nd Feb 1989, it may be pursued from para 1(ii) of the above sanctioning order that the sanction to the grant of special (duty) allowance to the non-combatised civilian personnel (including officers) in Battalion of Assam Rifles and in static formations (such as offices of DG, IGP, DIGs, Range HQs, Training Centre etc) and other units (Maintenance Groups, Workshops etc) of Assam Rifles was made in modification of the sanction issued vide item (3) of the Ministry of Home Affairs order No.II-11011/1/84-FP.IV dated 03 Mar 1986.
5. It appears from the O.M.NO.11(3)/95-E.II(B) dated 12-1-96 issued by the Ministry of Finance Department of Expenditure that the Government of India vide O.M Nos mentioned in Para 1 of the Aforesaid letter had ceased special (duty) allowance to the

...2/-

civilian employees of the Central Government service in the state and Union Territories of North Eastern Region giving effect from 20-9-1998 but in the aforesaid order, there was no reference quoted of the Ministry of Home Affairs Order NO.11011/1/84-FP.IV dated 1st/2nd Feb 1989 with a view that the special (duty) allowance to the civilian employees of the Central Government serving in the state and Union Territories of North Eastern Region was granted from the year 1983 onwards whereas the civilian employees of the Directorate General Assam Rifles was granted special (Duty) allowance from 7-11-1988 onwards and hence the order of the Ministry of Finance letter dated 12-1-96 was not being made operative till date.

6. Since the Ministry Finance, Department of Expenditure in their O.M.NO.11(3)95-PF11(B) dated 12th Jan 1989 had not made any reference of MHAS order dated 1st/2nd Feb 1989. It is felt that the contention made in the MHAS letter NO.II 22013/2/98-PF.V date 09-7-1998 forwarded to you under this Directorate letter NO.A/1-A,242/98 dated 21 Jul 1998 need to be examined at your end for admissibility of special (duty) allowance in regard to civilian employees of the Directorate General Assam Rifles, Shillong before ceasing the said allowance. The Special (Duty) allowance was discontinued from 20-9-1994 for those who were in receipt of said allowance from 1993 onwards and was not effective to those who were receiving the said allowance from 7-11-1988 to till date. Unless, the Government of India, NHA modify/cancel or supersede the provision contained in para 1(ii) of order No.11011/1-84-FP.IV dated 1st/2nd Feb 1989, the civilian employees of the Directorate General Assam Rifles, Shillong would be entitled to draw the special (duty) allowance.

7. In view of the above you are requested to examine this matter and let this Directorate know immediately about the correct inter-pretation of the Government orders to enable this Directorate to take on the matter with the appropriate authority.

8. Pending clarification from your end as well as final decision is received from the competent authority, no deduction/recovery of special (duty) allowance of civilian employees of the Directorate General Assam Rifles, Shillong may please be made.

9. An early clarification on this matter is requested.

Sd/xx Mandhata Singh
Brig. Director (Adm)
for DG Assam Rifles.

- 36 -

ANNEXURE - L

Assam Rifles (Civil) Employees Association

SHILLONG
1710-1968

A-11-1-1-1

Ref No AR(C)/EA/98/111

Dated Shillong the 13 Aug 98

To

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

- 33 -

(Through the Director General Assam Rifles Shillong)
ENTITLEMENT OF SPECIAL DUTY ALLOWANCE TO CIVILIAN
EMPLOYEES OF DGAR, SHILLONG

Respected Sir,

1. The undersigned on behalf of all civilian employees of the Directorate General Assam Rifles. Shillong would like to bring before your honour on the following matter for favour of your kind and sympathetic orders Sir,
2. The Government of India, Ministry of Home Affairs vide order No.11011/1/84-FP.IV dated 1st/2nd Feb 1989 (photo stat copy enclosed) had conveyed the sanction of Special (duty) allowance to the non-combatised civilian personnel (including officers) 1b battalion of Assam Rifles and in static formation (such as office of DG, IGP, DIG, Range HQ Training Centre etc.) and other units (Maintenance Group, Workshops etc) of Assam Rifles in modification of the sanction issued vide item No. 3 of the Ministry of Home Affairs order No.11.11011/1/84-FP.IV dated 03 Mar 1986 (photostat copy enclosed).
3. Sir, Special (duty) allowance to the civilian employees of the Central Government serving in the state and Union Territories of North Eastern Region was granted from the year 1983 onwards and was discontinued to them with effect from 20.9.94 under the orders of the Ministry of Finance letter dated 12.1.1996.
4. Sir, after lapse of 5 years, the civilian employees was granted Special (duty) allowance from 7.11.1988 under the orders of the MHA vide No.11011/1/84-FP IV dated 1st/2nd Feb 1989 and therefore under no circumstances the orders of the Ministry of Finance letter dated 12.1.96 could be made operative unless the aforesaid order is modified/cancelled or superseded by the MHA with a view that no reference of MHA's letter dated 1st/2nd Feb 1989 was quoted by the Ministry of Finance in their letter dated 12.1.96 forceasing the SDA from 20.9.94
5. Sir, this Association firmly believe that the Special(duty) allowance was discontinued from 20.9.94 for those who were in receipt of said allowance from 1983 onwards and was not effective to those who were receiving the said allowance after lapse of 5 years i.e. from 7.11.1988.
6. Sir, Dy Controller of PAO(AR) has unnecessarily created panic and confusions by sending one after another letter to our respected Director General Assam Rifles by mis-interpreting the orders of the Government issued from time to time and directed this Dte to stop SDA from the

...2/-

Assam Rifles (Civil) Employees Association

SHILLONG

ESTD - 1900

Ref No - 37 -

- 28 - 34 -

- 2 -

Dated Shillong the 13 Aug 98

pay of Aug 98 and also to recover the SDA drawn by the civilian staff of this Dte from 20.9.94 and inspite of all efforts and good offices exercised by our respected Director General and other dignitory officers to makee him understand about the correct inter-peretation of the Govt. orders but it appears that all efforts of our respected and dignitory officers good offices failed because of the negative attitude of the Dy. Controlier PAO(AR), Shillong.

7. Sir, it is our earnest appeal to your honour that you will kindly ~~also necessary~~ clarification on this matter at the earliest so that service of civilian staff of Directorate General Assam Rifles, Shillong and the civilian staff who have already proceeded on retirement from 20.9.94 are not being

- 38 -
- 35 -
ANNEXURE - M 52

Directorate General Assam
Rifles, Shillong.

A/I-A/pers/98

18 Aug 98

Shri P S Pathak
Assam Rifles (Civil)
Employees Association
Directorate General Assam Rifles
Shillong.

ENTITLEMENT OF SDA TO THE CIVILIAN EMPLOYEES OF THE
DIRECTORATE GENERAL ASSAM RIFLES SHILLONG

1. Ref your letter No.AR(C)/EA/98/126 dt. 12 Aug 98.

2. The PAO AR has intimated that SDA should be discontinued from the Pay of Aug 98 in respect of all civilian employees of Directorate General Assam Rifles Shillong. The PAO AR has further stated that the SDA drawn from 20 Sep 94 to till date also to be recovered. ✓

3. For information please.

Sd/- (BS Rawat)
Lt Col
AB(A)

A/I-A/242/98/3IC

20 Aug 99

Smt O P Arya
Jt. Secretary(P)
North Block
Ministry of Home Affairs
New Delhi-110001

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

Sir,

I am directed to refer to your letter No.II.22013/2/98-PF.V dated 9.7.1998 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 6 June 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.10 dated 01 Feb 1989 whereas employees of the Central Govt. serving in the State and Union Territories of NE Region were granted the said allowance from 1983 onwards. This 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 20.9.94.

4. It may be seen that while ceasing SDA to the civilian employees of the Central Govt. serving in the State 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 order No.II.11011/1/84-FP.IV dated 1 Feb 1989 in their letter dated 12 Jan 1996. The civilian employees of this Directorate were granted SDA after lapse of 5 years. From 1-11-1989 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 PAO's decision to recover the SDA drawn by civilian employees since 20 Sep 1994, the civilian 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 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.

In view of the above, you are requested to examine the MHA's order No.II.II011/1/84-FP IV dated 1 Feb 1989 and review the applicability of SDA to civilian employees of this Directorate.

Yours faithfully
Sd/-SJB Sharma
Maj.Gen, DDG AR.

FORM NO. 4.
(See Rule 42)

ANNEXURE - 0

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. **OA 203** OF 1998

Applicant(s) **Shri R.S. Pathack & Co.**

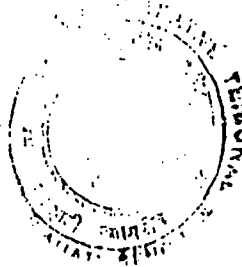
Respondent(s) **Union of India & Ors.**

Advocate for Applicant(s) **Mr. J. B. Borker**

Advocate for Respondent(s) **Mr. M. Choudhury**
Mr. S. D. Borker

Mr. S. A. Borker

C.C. Borker

Notes of the Registry	Date	Order of the Tribunal
	26.8.98	<p>This application has been submitted by 424 applicants. However, the applicant No.301 Sri U.Choudhury, UDC has not signed the vakalatnama. Therefore, only the case of 423 applicants will be considered in this application. 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.</p> <p>Perused the application. Heard counsel of both sides. Application is admitted. Issue notice on the respondents by registered post.</p> <p>List on 23.9.98 for written statement and further orders.</p> <p>Mr J.L.Sarkar, learned counsel for the applicants prays for an interim order.</p>

Notes of the Registry	Date	Order of the Tribunal
	26.8.98	<p>Mr S. Ali, learned Sr.C.G.S.C. submits that he has no instruction. Issue notice on the respondents to show cause as to why the interim order as prayed for should not be granted.</p> <p>List on 23.9.98 for show cause and interim order.</p> <p>The respondents are directed to keep the operation of the Orders No.II-22013/2/98-PF.V dated 9.7.98 (Annexure-F) and No.A/I-A/pers/98 dated 18.8.1998 (Annexure-N) in abeyance pending disposal of the show cause.</p>

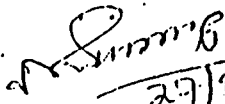
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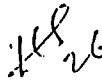
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प्रमाणित प्रतिलिपि


 27/8/98

Section Officer (A)

Central Administration Tribunal
 Section Officer (A)
 Section 20, Govt. of India
 New Delhi, India


 26/8

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- 39 -
ANNEXURE - P

30 Assam Rifles
C/O 99 APO

11 May 99

FIN/VII-Offr/P-A/99//)


Dr. A K Bora, MO (Adhoc)
30 Assam Rifles
C/O 99 APO

RECOVERY OF SDA, DRAWN FROM 28 AUG 95 TO FEB 99

1. Copy of 9 Assam Rifles Sig No. A 6415 dt 10 Apr 99 and A6462 dated 09 May 99 is enclosed herewith for your info.
2. You have drawn SDA from 28 Aug 95 to 28 Feb 99 amounting to Rs. 32,452/- (Rupees thirty two thousand four hundred fifty two) only while serving in 9 Assam Rifles. As per 9 AR Sigs quoted above whole amount of SDA has drawn by you is required to be recovered. Please intimate whether you are willing to pay whole amount in a instalment or more for obtaining approval from Comdt to effect recovery from pay of May 99.

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Enclo : 2


(K S Rajput)
Comdt
EDO
Offg Comdt

Attested
AS

5X
ANNEXURE - P1

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(copy)

From : 9 AR

UNCLAS

A 5462

TO : 30 AR

SDA to CHS Offr (.) your A 6838 Apr 21 (.) Request recover SDA
wef 24 Aug 95 to Jan 99 and Amend our Sig A 6415 Apr 10
accordingly

Atty
for
on

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GAUHATI BENCH

Guwahati Bench
C.A. No. 168 DE 2000

Dr. Ajit Kumar Borah . . Applicants

Vs

Union of India and others

. . . . Respondents

In the matter of :

Written Statement submitted by
respondents No 1 to 4

WRITTEN STATEMENT

The humble respondents 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

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Filed by

(A. DEBROY)

Sr. C. C. & C.

G. A. T., Guwahati Bench

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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 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 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.

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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___ refers in this regard).



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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 7.11.88 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.

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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 25 day of Aug 2000.

DEPONENT

Sandeep Kumar