

GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Per 6/12/17
SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

007- APPLICATION NO.

189

OE199

Applicant(s)

H. Ali & ors

Respondent(s)

U.O. 1 D ors

Advocate for Applicant(s)

Mr. A. Ahmed

Advocate for Respondent(s)

B. C. Pathak
Addl. C.S.C.

Notes of the Registry

Date

Order of the Tribunal

22.5.01

Heard Mr. Adil Ahmed, learned counsel for the applicant and Mr. B. C. Pathak, Addl. C.S.C. for the respondents.

The present case is squarely covered by the judgment and order rendered by the Tribunal in a series of O.A.149 of 1999 and 17 such O.A.s including O.A.244 of 97 and 75 of 98. In that view it is ordered that recovery of the SDA, already paid to the applicant also, is not to be recovered. In the light of the judgment mentioned above, the O.A. is partly allowed and the respondents are directed not to make any recovery from the amount of SDA already paid to the applicant.

Subject to the observations and directions made above, the application stands disposed of. No costs.

Member

Vice-Chairman

This application is in form but not in time. Condonation Petition is filed vide M. P. No. C.F. for P.S. 501 vide order vide IPO/SDA 64 792503...
Date 15.5.2001

By Registrar

Requisite has been filed.

NS
21/5/2001

bb

Notes of the Registry	Date	Order of the Tribunal
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23.5.2001

Copy of the order
 along with the applicant
 have been sent to the
 office for security etc. and
 for the Resps Nos 2 & 3 and
 the copy of the order
 has been sent to the
 office for security etc.
 and to the L/Advocate
 for the parties.

48

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

21 MAY 2001

गुवाहाटी बेंच
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 189 OF 2001.

Sri Hardish Ali & Ors.

..Applicants.

-Versus-

Union of India & Others

.. Respondents.

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Filed by

Advocate.

(ADIL AZAM)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

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

ORIGINAL APPLICATION NO. OF 2001.

B E T W E E N

Sl. No.	MES No.	Name	Designation
1]	223989	Md. Hardish Ali	Fitter.HS-I
2]	225983	Shri Lohit Ch Kakoti	P/Fitter
3]	243568	Shri Bhabendra Kalita	Mazdoor
4]	224153	" B N Sinha	Ch/Ref/Mech
5]	225295	" B C Das	Elect
6]	224473	" S K Roy	FGM
7]	225715	" Mahesh Ch Das	FGM
8]	225076	" Bhadreswar Das	FGM HS-II
9]	226324	" Sarbeswar Baruah	FGM
10]	225359	" K C Mahanta	Mate/MPA
11]	225440	" P C Nath	Mazdoor
12]	224565	" Juren Ch Das	V/Mech HS-I
13]	224576	" Bhabendra Ch	V/Mech HS-I
		Rangpee	
14]	422440	" J N Bhuyan	V/Mech HS-II
15]	238100	" Bhadreswar Kalita	FGM/DEEM
16]	225122	" Gyama Harijan	Welder
17]	224470	" Gangadhari Rai	B/Smith
18]	420021	" Bimal Ch Boro	V/Mech
19]	477972	" Lal Deo Rai	Mate/MPA
20]	225323	" Prabin Ram Boro	Mate/MPA
21]	225706	" Sd G Ahmed	Mazdoor

Filed by
Shri Ram Krishna
Hazarika
Through L.L.R.
(Adv. Ahmed)
Advocate

Sansury

211	233994	Shri T K Das	Mazdoor
221	8011	M C Das	-do-
231	225974	Ram Sharma	-do-
241	225795	Lohit Ch Nath	-do-
251	225303	Smt. Saraswati Devi	-do-
261	224460	Sri Ram Balak	FGM HS-II
271	224809	Ram Surat Rai	Mate/MPA
281	225626	Nandalal Baniya	Mate/MPA
291	225277	M Krishnan	-do-
301	225383	Niren Ch Nath	Mazdoor
311	225384	Rameswar Nath	-do-
321	225427	Nipen Ch Baruah	-do-
331	226050	Smt. Saindha Rani	-do-
341	225375	Sri Madhuran Das	-do-
351	225380	Ratneswar Nath	-do-
361	225794	Gonesh Ch Das	-do-
371	225733	Bibhuti Ch Das	-do-
381	225727	Balen Ch Medhi	-do-
391	225730	Khagen Ch Das	-do-
401	225782	Smt. Bina Bala Bhiyan	-do-
411	225451	Sri Nagen Ch Nath	-do-
421	2821	Satyaram Das	-do-
431	225921	Amarendra Das	-do-
441	226912	Hariram Das	-do-
451	225931	Gonesh Ch Das	-do-
461	225920	Manik Ch Das	-do-
471	225944	Dinesh Ch Baishya	-do-
481	225916	Rajen Ch Das	-do-
491	225915	Bhupen Ch Nath	-do-
501	225913	Sambhuram	-do-
		Thakuria	
511	225617	Manik Ch Thakuria	-do-
521	225929	Basanta Kr Das	-do-
531	225914	Upen Ch Das	-do-

S. S. S. S.

541	225917	Sri Hem Ch Nath	Mazdoor
551	214527	Babul Ch Nath	-do-
561	225821	Smt Pramila Singh	-do-
571	224574	Sri Kanteswar Banikya	Pain (HS-II)
581	225030	Sadhan Rai	H/Man
591	224619	Hareswar Nath	Mason
601	224621	Dhiren Ch Kalita	Mason
611	224625	Bholaram Das	-do-
621	224491	Kailash Shah	Plumber
631	225385	Md Unis Ali	Mate
641	225296	Sri C Rama Rao	Plumber
651	223633	Mangal Sharma	Mate
661	225924	Paresh Kr Das	Carpenter
671	234971	Subul Rai	Mate
681	225930	Manik Ch Medhi	Carpenter
691	225198	Laben Ch Nath	Mate
701	225694	Chandan Kr Das	Mate
711	229533	Robin Patgiri	Mason(HS-II)
721	225381	Rajen Ch Das	Mate
731	225376	Amulya Ch Das	Mate
741	225382	Topeswar Das	Mate
751	225378	Sambhuran Das	Mate
761	225731	Harekriahna Das	Mate
771	224122	Shiv Sanker Singh	Chow
781	225800	Uma Ch Barua	Chow
791	222550	Ram Deo Basfore	S/Wala
801	225315	Basanta Basfore	S/Wala
811	225796	Ram Ch. Basfore	S/Wala
821	295902	Kanak Ch. Kalita	S/Wala
831	225901	Smt Sanjotya Basfore	S/Wala
841	225903	Lalita Das	S/Wala
851	225689	Sri Nirjan Kumar	Chow
861	226005	Prem Bahadur Chetri	Chow

Sarganice

871	225441	Shri Rajendra Das	Mate/MPA
881	420014	" Puneswar Nath	Mate/MPA
891	225379	" Hiren Ch Das	-do-
901	224223	" Bali Ram	-do-
911	225104	" Jatin Ch Baruah	-do-
921	213083	" Karna Dey	Mazdoor
931	225428	" Prafulla Ch Nath	-do-
941	225597	" Bhagwan Das	-do-
951	225607	" Hareswar Nath	-do-
961	225459	" L R Talukdar	-do-
971	233496	" Chandradhar Das	-do-
981	268081	" Prafulla Ch Nath	Mazdoor
991	225623	" A B Chetri	-do-
1001	225807	Smt. Rani Das	-do-
1011	NYA	" Framila Das	-do-
1021	NYA	Shri Tul Prasad Pradhan	-do-
1031	229597	" Jogesh Ch Baruah	-do-
1041	224546	" Prabin Ch Das	MTD-I
1051	225712	" P K Hazarika	MTD-II
1061	224612	" Jatin Ch Das	-do-
1071	225822	" Lakhindar Goswami	-do-
1081	225486	" Parimal Ch Paul	-do-
1091	226223	" Basti Ram Boro	Chow
1101	224420	" K C Kachari	Chow
1111	224119	" Tarani Kumar	Chow
1121	226447	" Haren Barman	Chow
1131	MES/NYA	" Jadav Ch Sharma	Chow
1141	225990	" Hiren Ch Das	Chow
1151	225713	" Sachin Ch Das	Chow
1161	224512	" Biswanath Pd	S/Wala
		Basfor	
1171	224383	" Monohar Balmiki	S/Wala
1181	225900	" Pranaya Bala Das	S/Wali
1191	MRS/NYA	" Niva Choudhari	S/Wali

Shazma

All the applicants are working under the Garrison Engineer, Air Force, P.O.- Air Port, Borjhar, Guwahati-15.

-Versus-

- 1] The Union of India, represented by the Secretary, Ministry of Defence, New Delhi.
- 2] The Commander Works Engineer, Air Force, P.O.- Air Port, Borjhar, Guwahati-15.
- 3] The Garrison Engineer, Air Force, P.O.- Air Port, Borjhar, Guwahati-15.

- Respondents.

DETAILS OF THE APPLICATION:

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

This application is made against the impugned Order of recovery of payment of Special Duty Allowance in short, (S.D.A.), vide Office Memorandum No. 1016/C/AKG/110/EINB dated 14th March 2001 issued by the Respondent No. 2.

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2) JURISDICTION OF THE TRIBUNAL

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

3) LIMITATION

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

4) FACTS OF THE CASE :

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

4.2 That your applicants beg to state that they are working under the Garrison Engineer, Air Force, P.O.- Air Port, Borjhar, Guwahati-15. They are Defence Civilian Employees. The applicants are working as the J.E., Duftry, Motor Transport Driver, Chowkidar, Peon, Storeman, Safaiwala, Upper Division Clerk and Lower Division Clerk, etc.

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

Signature

(Procedure) rules, 1987 to move this application jointly.

4.4 That the Government of India, Ministry of Finance, Department of Expenditure granted certain improvements and facilities to the Central Government Civilian Employees of the Central Government serving in the states and Union Territories of North Eastern Region vide Office Memorandum No. 20014/3/83-IV dated 14-12-1983. In clause II of the said office memorandum Special (Duty) Allowance was granted to Central Government Civilian Employees, who have all India Transfer Liability at the rate of Rs. 25% of the basic pay subject to ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. The relevant portion of the office Memorandum dated 14.12.1983 is quoted below:

*(iii) Special (Duty) Allowance:

Central Government Civilian employee who have all India Transfer Liability will be granted a Special (Duty) Allowance at the rate of Rs. 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North East Region. Such of these employees who are exempted from payment of Income Tax, will however not be eligible for the Special (Duty) Allowance, Special (Duty) Allowance will be in addition to any Special Pay and for allowances already being drawn subject to

Sanjay

the condition that the total of such Special (Duty) Allowance plus Special Deputation (Duty) Allowance will not exceed Rs. 400/- per month. Special Allowance like Special Compensatory (Remote) Locality Allowance, Construction Allowance and Project Allowance will be drawn separately.

An Extract of Office Memorandum dated 14-12-1983 and Office Memo dated 01-12-1988 are annexed hereto and the same are marked as Annexure- A & B respectively.

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

4.6 That the present applicants beg to state that they are saddled with All India Transfer Liability in terms of their offer of appointment and with this said liabilities they have received the offer of appointment

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and joined the service of the respondents. Be it stated that, they are liable to be transferred outside the North Eastern Region. Therefore, the applicants are in practice saddled with all India Transfer Liability and in terms of Office Memorandum dated 14-12-1983 they are legally entitled for grant of Special (Duty) Allowances.

4.7 That your applicants beg state that the Respondents No. 2 issued the impugned Office Memo. No. 1016/C/AKG/110/EINB dated 14th March 2001 by giving direction to the Respondent No.3 to recover the Special Duty Allowance from the applicants. The Special Duty Allowance amount, which has been paid to the applicants. The similarly situated persons has already approached this Hon'ble Tribunal vide O.A. No. 244/97 and O.A. No. 75/98 against the impugned recovery of Special Duty Allowance. The Hon'ble Tribunal allowed the application and directed the Respondents not to recover any amount of Special Duty Allowance which has been paid to the applicants of O.A. No. 244/97 and O.A. No. 75/98. The instant applicants have also approached before the authority concerned not to make any recovery of Special Duty Allowance as per judgment passed in the above Original Applications. But the Respondents refused to give relief to the applicants as such the applicants have compelled to approach this Tribunal for seeking justice.

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Annexure-C is the photo copy of Office Memorandum No. 1016/C/AKG/110 /EINB dated 14-03-2001 issued by the Respondent No. 2.

4.8 That the applicants beg to state that the payment of Special (Duty) Allowance is made to the applicants with effect from 01-11-1983 or from the respective dates of their joining in this Department. The payment of Special (Duty) Allowance is made to the applicants only after full satisfaction of the Respondents. Now the Respondents have issued the recovery order of Special (Duty) Allowance. As such, the act of the respondents is arbitrary regarding recovery of payment of Special Duty Allowance. As such, the Hon'ble Tribunal may be pleased to direct the Respondents not to make any recovery of any amount of the Special (Duty) Allowance which has been paid by the Respondents to the applicant.

4.9 . That your applicants beg to state that similarly situated persons have also approached this Hon'ble Tribunal for not to recover the Special Duty Allowance amount which has been paid by the Respondents and this Hon'ble Tribunal vide its common judgment and order passed in O.A. No. 149/99 and others similar cases on 22-12-2000 directed the Respondents not to make any recovery of Special Duty Allowance. In case, any amount on

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account of payment of Special Duty Allowance has been recovered/withheld from retirement dues, the same shall be refunded/released to the applicants immediately.

Annexure-E is the photocopy of judgment and order passed by the Hon'ble Tribunal in O.A. No. 149/99 and others.

4.10 That your applicants beg to state that the Hon'ble Tribunal may be pleased to stay the impugned order of recovery issued under Office Memorandum No. 1016/C/AGS/110/EINB dated 14-03-2001 issued by the Respondent No. 2 as interim measure and further be pleased to set aside and quash the Office Memorandum dated 14-03-2001 at Annexure-C.

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

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

5) GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

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

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- 5.21 For that the action of the Respondents are mala fide and illegal and with a motive behind. As such, the impugned order of recovery is liable to be set aside and quashed.
- 5.31 For that the Respondents have paid the Special (Duty) Allowance to the applicants after being full satisfaction with their eligibility criteria. Also in terms of the Office Memorandum dated 14-12-83 and Office Memo. Dated 01-12-88 issued by the Ministry of Finance, Government of India. Hence, the impugned recovery order of Special Duty Allowance is mala fide, illegal and without jurisdiction.
- 5.41 For that the payment of Special (Duty) Allowance was not obtained by the applicants by any fraudulent means but the Respondents after finding them eligible, paid the Special (Duty) Allowance to the applicants.
- 5.51 For that that the applicants are having practically All India transfer liability. As such, they are legally entitled to draw the Special (Duty) Allowance as per Office Memorandum dated 14-12-83 and 01-12-83.

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5.6] For that the order issued in terms of impugned Office Memorandum dated 14-03-2001 is without following any established procedure of rules and law.

5.7] For that similarly situated persons who are working in the same Office have already been given the reliefs but the Respondents have not given the same reliefs to the instant applicants. As such, the impugned order is bad in the eye of law and also not maintainable.

5.8] For that being a model employer the Respondents can not deny the same benefits to the instant applicants which have been granted to other similarly situated persons. As such, the Respondents should extend this benefit to the instant applicants without approaching this Hon'ble Tribunal.

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

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

6) DETAIL REMEDY EXHAUSTED:

Stagnate

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

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

The applicants further declares that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8) RELIEF PRAYED FOR:

Under the facts and circumstances stated above, your Lordships may be pleased to admit this petition and show cause as to why the impugned recovery order dated 14-03-2001 issued by the Respondent No. 2 should not be quashed and after hearing the parties your Lordships may be pleased to pass following reliefs:

- 8.1 The impugned Office Memorandum vide Office Memorandum No. 1016/C/AG/110 /EINB dated 14-03-2001 issued by the Respondent No. 2 directing recovery

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of Special Duty Allowance at Annexure-C may be set aside and quashed.

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

8.3 Cost of the application.

9) INTERIM ORDER PRAYED FOR:

Pending final decision of this application the applicants seek issue of the interim order:

9.1) That the Hon'ble Tribunal may be pleased to stay the impugned order of recovery dated, 14-03-2001 at Annexure-C.

10. APPLICATION IS FILED THROUGH ADVOCATE.

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

I.P.O.No./Bank Draft: GG 792503

Date of Issue : 15.5.2001

Issued from : Guwahati

Payable at : Guwahati

12) LIST OF ENCLOSURES:

As stated in index.

-Verification.

Sanjiv

Verification

I, Sri P K Hazarika, MES 225712 working as Motor Transport Driver-II in Office of The Garrison Engineer, Air Force, Borjhar, Guwahati-15 one of the applicant of the instant application and as authorised to sign this verification on behalf of other applicants and verify the statements made in accompanying application and in paragraphs 4.1 to 4.3, 4.5, 4.6, 4.8 are true to my knowledge and those made in paragraphs 4.4, 4.7, 4.9 are true to my information being matter of records and which I believe to be true and those made in paragraph 5 are true to my legal advise and I have not suppressed any material facts.

I signed this verification on this day 21st of May 2001 at Guwahati.

Sri Pranabishma Hazarika,

.Declarant.

No. 20014/2/03/E.IV
Government of India
Ministry of Finance
Department of Expenditure

-18-

ANNEXURE - A

New Delhi, the 14th Dec '03

OFFICE MEMORANDUM

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

The need for attracting and retaining the services of competent officers for service in the North Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and Staff Administrative Reforms, to review the existing allowances & 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:-

1) Tenure of posting/deputation.

x x x x x x x x

11) "Eight-ages for Central deputation/training abroad and" special mention in confidential Records.

x x x x x x x

111) Special (Duty) Allowance:

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

Contd..

Handwritten signature and initials.

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an eligible for this special (Duty) Allowance. will be in addition to any special pay and deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance, plus special pay/deputation (Duty) Allowance, will not exceed Rs. 400/- p.m. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

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XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
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XXXXXXXXXX

34/- J.S. RAHULIK
GOVERNMENT OF INDIA

Ahs C
Shrivastava

ANNEXURE - B

ORGANIZATION OF THE UNITED NATIONS

The undersigned is directed to refer to this Ministry's G.O. No. 20014/1/83-E.IV dated 14th December, 1983 and 10th March, 1984, on the subject mentioned above and to say that the question of making suitable improvements in the accommodation facilities to Central Government employees posted in North East Region comprising the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been engaging the attention of the Govt. Accordingly the President is now pleased to decide as follows.

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

Altst
Lil
Anno

Tele: 041626

Commander Works Engineers (AF)
 IO-Airport
 Borjar-15 (ASSAM)

1016/C/ARG/110 /EINB

14 Mar 2001

GE (AF) Borjar

RECOVERY OF SDA PAID TO INELIGIBLE PERSONNELS

1. Ref HQ 101 Area letter No 66885/A/2(SDA) dt 20 Nov 99 forwarding an extract of Eastern Command letter No 202521/R/4/A2(civ) dt 9 Nov 99.

2. As per the directions contained in the Eastern Command above cited letter recovery of SDA paid to ineligible individuals those who are not covered in OA No 244/97 and 75/98 to be effected immediately. The details of individuals covered in the above said OAs and obtained stay order are as under : -

(a) OA No 244/97 - 289

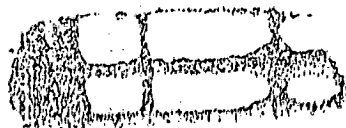
(b) OA No 75/98 - 6

Total 295

3. In view of the above, please confirm that recovery action taken against those individuals as per the directions of Eastern Command, along with a details of such affected individuals for further action.

4. Please also ensure that no recovery is left out in respect of individuals affected and proceeding on pension/retirement etc which may lead to an overpayment on a later stage.

5. Please ack.



(Signature)
 (TK Datta)
 SE
 CWE

(Signature)
 +
(Signature)

- 22 -

ANNEXURE - D

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 149 OF 1999.
(AND 17 OTHER ORIGINAL APPLICATIONS)

(O.As 217, 274, 297, 296 and 187 of 1998; 18, 21, 223, 23, 380 and 81 of 1999 AND 282, 208, 24, 21, 428 and 234 of 2000)

Date of decision - December, 22, 2000.

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR. M.P. SINGH, ADMINISTRATIVE MEMBER.

1. Ordinance Depot Civil Workers' Union,
Masimpur, P.O. Arunachal,
Dist Cachar, Assam.
2. Sri Badal Ch Dey,
President,
Ordinance Depot Civil Workers' Union,
Masimpur,
P.O. Arunachal,
Dist Cachar, Assam.
3. Sri Badal Chandra Dey,
Son of Late Birendra Chandra Dey,
Vill. Badarpur Part-II,
P.O. Nij Jaynagar,
(via Arunachal),
Cachar, Pin 788025.
4. Sri Salim Uddin Barbhuyan,
Son of Late Abdul Hakim Barbhuyan,
Village-Uzam Gram, P.O. Nij Jaynagar,
(Via Arunachal) Dist Cachar, Assam.

(Applicant Nos. 3 and 4 are effected members of the aforesaid Association working under No. 1 Det 57 Mountain Division, Ordinance Unit as Mazdoor).

- APPLICANTS

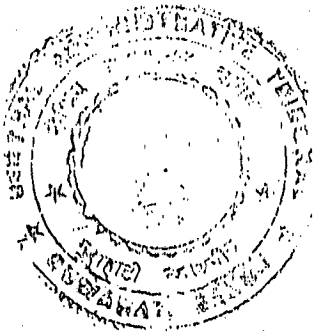
By Advocates Mr. J.L. Sarkar, Mr. M. Chanda,
Mrs. S. Deka and Ms U. Dutta.

- Versus -

1. Union of India,
Through the Secretary to the Govt
of India, Ministry of Defence,
New Delhi.

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By
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2. Officer Commanding,
57 Mountain Division,
Ordinance Unit,
C/O 99 APO.
3. LAO (A),
Silchar, Masimpur Cantonment,
No. 1 Det 57 Mountain Division,
C/O 99 APO.

RESPONDENTS

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

J U D G M E N T

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

By filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicants have challenged the impugned order dated 12th January, 1999 whereby the Special (Duty) Allowance granted in the light of the Office Memorandum No. 20014/3/83.E.IV dated 14th December, 1983 and Office Memorandum No. F.No. 20014/16/86/E.IV/E.II(B) dated 1st December, 1988 is now sought to be recovered by the respondents. The applicants have sought relief by praying that the Office Memorandum dated 12th January, 1996 (Annexure-4) and 12th January, 1999 (Annexure-5) be quashed and set aside and the respondents be directed to continue to pay S.D.A. to the members of the applicant association in terms of O.M. dated 14th December, 1983, 1st December, 1988 and 22nd July, 1998. The applicants have also sought direction to the respondents not to make any recovery of any part of S.D.A. already paid to the members of the applicant association.

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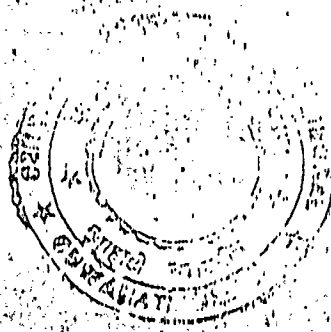
2. The cause of action, the issues raised and relief sought for in this O.A. are same as raised in O.A. No.217/98 (All India Central Ground Water Board Employees Association, North Eastern Region Central Ground Water Board, Tarun Nagar, Guwahati-5 and others - Vs. - Union of India and others), (2) O.A. No.274/98 (Sri Dulal Sarma and others - Vs. - Union of India and others), (3) O.A. No.18/99 (National Federation of Postal Employees Postmen and Gr.D - Vs. - Union of India and others), (4) O.A. No.21/99 (Makhon Ch. Das and others - Vs. - Union of India and others), (5) O.A. No.282/2000 (Rabi Shankar Seal and others - Vs. - Union of India and others), (6) O.A. No.223/99 (Shri K. Letso and others - Vs. - Union of India and others), (7) O.A. No.208/2000 (Krishanlal Saha and others - Vs. - Union of India and others), (8) O.A. No.23/99 (Ordinance Mazdoor Union and another - Vs. - Union of India and others), (9) O.A. No.24/2000 (Ramani Bhattacharyya - Vs. - Union of India and others), (10) O.A. No.21/2000 (Sri Louis Khyatom and others - Vs. - Union of India and others), (11) O.A. No.428/2000 (Sri T. Ahmed and others - Vs. - Union of India and others), (12) O.A. No.297/98 (Biswajit Choudhury and others - Vs. - Union of India and others), (13) O.A. No.380/99 (Smt. Sanghamitra Choudhury and others - Vs. - Union of India and others), (14) O.A. No.296/98 (Dwijendra Kumar Debnath and others - Vs. - Union of India and others), (15) O.A. No.187/98 (All Assam M.E.S. Employees Union and another - Vs. - Union of India and others), (16) O.A. No.234/2000 (Gautam Deb and others - Vs. - Union of India and others), (17) O.A. No.81/99 (Sri Nitya Nanda Paul - Vs. - Union of India and others) and (18) O.A. No.84/2000 (Subodh Ch Gupta and 56 others - Vs. - Union of India and others). We, therefore, proceed to hear all the

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cases together. Among these O.As, O.A. No.149/99 is to be treated as a leading case and the orders passed in this O.A. shall be applicable to all other aforesaid O.As.

3. The brief facts as stated in O.A. No.149/1999 are that the applicant No.1 is an association of Group 'D' employees representing 155 persons working under the Officer Commanding No.1, Det, 57 Mountain Division, C/O 99 APO. The applicant No.2 is the President of the aforesaid association and the applicant No.3 and 4 are the affected members of the said association. They are civilian Government employees working under the Officer Commanding of the aforesaid Mountain Division.



4. The Government of India granted certain facilities to the Central Government civilian employees serving in the States and Union Territories of North Eastern Region vide Office Memorandum dated 14th December, 1983. As per clause II of the said memorandum, Special (Duty) Allowance was granted to the Central Government civilian employees, who have all India transfer liability on posting to any station in the North Eastern Region. The respondents after being satisfied that all the members of the said Association who are civilian Central Government employees are saddled with all India transfer liability and are, therefore, entitled to S.D.A. in terms of the office memorandum dated 14th December, 1983 and office memorandum dated 1st December, 1988. The Special (Duty) Allowance was accordingly granted to the members of the applicant association. The Respondent No.3 issued the impugned order dated 12th January, 1999

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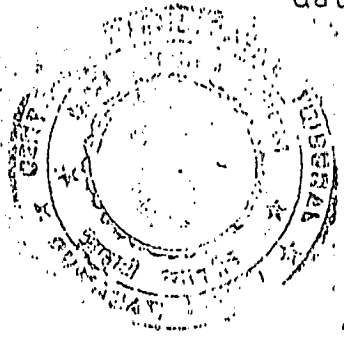
wherein it is stated that in view of the Supreme Court judgment, the persons who belong to North Eastern Region would not be entitled to S.D.A. but the said allowance would be payable only to the employees posted to North Eastern Region from outside the region. All the industrial persons working also fall within the same category and it is further requested to submit a list of employees showing permanent residential address for verification for entitlement of S.D.A. It was ^{also} further instructed to start recovery in respect of the employees who belong to North Eastern Region with effect from 21.9.1994 in instalments. As such, the applicants apprehend that in view of the instructions issued through impugned letter dated 12.1.1999, the respondents may start recovery of S.D.A. from the Pay Bill of May, 1999. The action of the respondents to stop the S.D.A. to the members of the applicant association is without any show cause notice and without following the principles of natural justice.

5. On an enquiry made by the applicants, they came to know that the Government of India while issuing the office memorandum dated 12th January, 1996 clarified the position regarding the entitlement of S.D.A. In para 6 of the said office memorandum, it is stated that the Hon'ble Supreme Court in the judgment dated 20th September, 1994 (in Civil Appeal No.3281 of 1993) upheld the submission of the Government that ^{whereas} ~~all~~ civilian employees, who have all India transfer liability are entitled to the grant of S.D.A. on being posted to any station in the North Eastern Region from outside the region and S.D.A. would not be payable merely because of

the clause ...

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the clause in the appointment order relating to all India transfer liability. It is also stated that the Apex Court ² also added that the grant of this allowance only to the officers transferred from outside the region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Supreme Court further directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them. But a contradictory view has been taken in regard to recovery of the Special (Duty) Allowance from the applicants vide para 7 of the office memorandum dated 12th January, 1996. The relevant para 7 of the office memorandum dated 12th January, 1996 is as follows :-



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

- i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
- ii) the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments were made after this date i.e. 20.9.94) will be recovered."

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

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considerable period, the respondents have now sought to recover the amount of S.D.A. paid to them after 20.9.1994. Aggrieved by this, they have filed this O.A. seeking relief as mentioned in Para-1 above.

6. The respondents have contested the case and stated in their reply that in order to retain the services of civilian employees from outside the North Eastern Region, who do not like to come to serve in the North Eastern Region being a difficult and inaccessible terrain, the Government of India brought out a scheme under the office memorandum dated 14th December, 1983 thereby extending certain monetary and other benefits including "Special (Duty) Allowance" (in short SDA). While the provisions of the office memorandum dated 14th December, 1983 were wrongly interpreted which raised some confusion relating to payment of S.D.A., the Government of India brought out a clarification to remove the ambiguity of the earlier office memorandum dated 14th December, 1983 by the office memorandum dated 20th April, 1987 and also extended the benefit to Andaman, Nicobar and Lakshdweep Islands. According to this clarification for the sanctioning of S.D.A., the all India transfer liability of the members of any service/cadre or incumbents of any posts/Group of posts has to be determined by applying the test of recruitment zone, promotion zone etc. i.e. whether recruitment to the service/cadre/posts has been made on all India basis and whether promotion is also done on the basis of all India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of S.D.A.

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7. Thereafter, a number of litigations came up challenging the non-payment/stoppage of payment of S.D.A. to certain classes of employees who were not coming within the zone of consideration as stated in the office memorandum dated 14th December, 1983 and 20th April, 1987. The Hon'ble Supreme Court in Civil Appeal No. 3251/93 vide judgment dated 20th September, 1994 held that the benefit under the office memorandum dated 14.12.1983 read with office memorandum dated 20.4.1987 are available to the non-residents of North Eastern Region and such discrimination denying the benefit to the residents civilian employees of the region is not violative of Article 14 and 16 of the Constitution of India. It has also been held that as per the office memorandum dated 20th April, 1987 the S.D.A. would not be payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India. According to another decision dated 7th September, 1995, the Hon'ble Supreme Court in Civil Appeal No. 8208-8213 held as follows :-

"It appears to us that although the employees of the Geological Survey of India were initially appointed with an All India Transfer Liability, subsequently, Government of India framed a policy that Class C and D employees should not be transferred outside the Region in which they are employed. Hence All India Transfer Liability no longer continues in respect of Group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having All India Transfer Liability is not to be paid to such group C and D employees of Geological Survey of India who are residents of the Region in which they are

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posted. We may also indicate that such question has been considered by this Court in Union of India and others - Vs - S. Vijayakumar and others (1994) 3 SCC 649."

8. This Tribunal in O.A. No.75/96 (Hari Ram and others - Vs - Union of India and others) vide judgment dated 4th January, 1999 held that the S.D.A. is not payable to those employees who are residents of the North Eastern Region. In pursuance of the Supreme Court judgment, the Government of India took a policy decision vide office memorandum No.11(3)/95-E-II(B) dated 12th January, 1996. According to the respondents, the applicants No.3 and 4 and those in Annexure-'I' are resident of North Eastern Region and are locally recruited in the region and they do not have all India transfer liability although the list does not indicate that these employees are either residents of North Eastern Region or they belong to some other region outside the North Eastern Region and posted from outside the region as per the office memorandum dated 14th December, 1983. In view of the instructions contained in the office memorandum dated 12th January, 1996, no S.D.A. has been paid after 31st January, 1999. It was proposed to recover the amount already paid after 20th September, 1994 to 31st January, 1999. No recovery has been effected by them so far. In view of the aforesaid legal position, the O.A. is misconceived and cannot sustain in law.

9. Heard both the learned counsel for rival contesting parties and perused the records.

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10. The question for consideration before us is as to whether the applicants are entitled for the payment of S.D.A. and if not, whether the recovery of the amount of S.D.A. already paid to them beyond 20.9.1994 is to be effected. The issue relating to the grant of S.D.A. has been considered and decided by the Hon'ble Supreme Court in Union of India and others - Vs - S.Vijayakumar and others, reported in 1994 Supp (3) SCC 649. The Hon'ble Supreme Court in that case has held as under:

"We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 29.10.1986 which has been quoted in the memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1983 memorandum starts by saying that the need for the allowance was felt for, "attracting and retaining" the service of the competent officers for service in the North Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Government Civilian Employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North Eastern Region". This

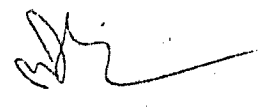
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aspect is made clear beyond doubt by the 1987 Memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the Office Memorandum of 1983 the subject was mentioned as quoted above is not be enough to concede to the submission of Dr. Ghosh."

The position has been further clarified by the Supreme Court vide their judgment in Union of India and others - Vs - Geological Survey of India Employees Association and others passed in Civil Appeal No. 8203-8213 (arising out of S.L.P. Nos. 12450-55/92) as stated in para 7 above.

11. In view of the criteria laid down by the Hon'ble Supreme Court in the aforesaid judgments, the applicants are not entitled to the payment of S.D.A. as they are resident of North Eastern Region and they have been locally recruited and they do not have all India Transfer Liability. As regards the recovery of the amount already paid to them by way of S.D.A., the Hon'ble Supreme Court in the aforesaid judgments has specifically directed that whatever amount has been paid to the employees, would not be recovered from them. The judgment of the Supreme Court was passed on 20.9.1994 but the respondents on their own had continued to make the payment of S.D.A. to the applicants till 31.1.1999. The orders have been passed by the respondents to stop to payment of S.D.A. only on 12.1.1999. The order passed on 12.1.1999 can have only prospective effect and, therefore, the recovery of the SDA already paid to the applicants would have to be waived.



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12. For the reasons recorded above, the O.A. is partly allowed and the respondents are directed that no recovery would be made by them of the amount of S.D.A. already paid to the applicants upto 31.1.1999. In case any amount on account of payment of S.D.A. has been recovered/withhold from retiral dues, the same shall be refunded/released to the applicants immediately.

The O.A. is disposed of with the above direction.
No order as to costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)



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03/01/99

Section Officer (J)
आयुक्त सचिव (अ) (जनक कर्म)
Central Administrative Tribunal
द्वितीय न्यायालय, गुवाहाटी
Guwahati Bench, Guwahati
प्रमाणित प्रतिलिपि, प्रमाणित

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