

GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 103/2001

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SECTION OFFICER (Judl.)

FORM NO.4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWATI BENCH ::::: GUWAHATI

ORDER SHEET
APPLICATION NO 103 OF 2001

Applicant(s) *Man Bahadur Sons.*

Respondent(s) *M.O.I. Sons.*

Advocate for Applicant(s) *Mr. A. Deb Roy*

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

Notes of the Registry	Date	Order of the Tribunal
This application is in form but contains no information P.C. 1908 vide M.C. 1908 vide S.C. 1908 vide I.P.C. 1908 vide 59 422643	13.3.01	Present: Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman and Hon'ble Mr. K.K. Sharma, Administra- tive Member.

11.5.01

List on 11.6.01 to enable the

respondents to file written statement.

(1) Office copy is not available.

(2) Mr. Vohs has been brief.

I C Usha

Member

Vice-Chairman

1m

11.6.01

Mr. Adil Ahmed, learned counsel for the applicant has stated that the O.A. may be dismissed as not pressed. Mr. B.C. Pathak, learned Addl. C.G.S.C. has no objection.

Accordingly, the O.A. is dismissed,

as not pressed. No costs.

I C Usha

Member

Vice-Chairman

bb

22.6.201

Copy of the order
has been sent to the
Dfsee. for issue of
same to the L/HQs
for the parties.

41

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. 103 OF 2001.

Sri Man Bahadur & others

-Applicants.

-Versus-

The Union of India & Others.

-Respondents.

I N D E X

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Filed by
(Adil Ahsan)
Advocate.

Filed by
 Mr. Tapan Deka
 From (Adv.)
 Ahmed
 Ahmed

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.**

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

ORIGINAL APPLICATION NO. OF 2001.

BETWEEN

- 1) 14117280 Sri Man Bahadur
- 2) 4129 " Deven Boro
- 3) 4130 " Pandit Shah
- 4) 4133 " Sanaram Das
- 5) 4135 " Shamlhu Tiwari
- 6) 4137 " Dhanraj Rai
- 7) 4138 " Dhan Bahdur Karma
- 8) 4140 " Ram Nath Ram
- 9) 4141 " Kapil Dev Paul
- 10) 4142 " Ganga Shah
- 11) 14117282 " Karunakant Kalita
- 12) 4143 " Dela Prashad
- 13) 4508 " Rupeswar Boro
- 14) 4510 " Daya Ram Das
- 15) 14117281 " Vakeel Ram

-Applicants.

All applicants are working under the Officer Commanding A.S.C. (Supply) F.S.D. Rangia, C/o 99 APO.

-AND-

- 1) The Union of India, represented by the Secretary Defence, Government of India, New Delhi.

S.R.Das

2) The Officer Commanding A.S.C.
(Supply) F.S.D. Rangia, C/o 99 APO.

-RESPONDENTS.

3) DETAILS OF THE APPLICATION:

i) The application is made for non-implementation of Memo No. 20014/3/83-IV, Government of India, Ministry of Expenditure, New Delhi, and Office Memo No. 4(19)/83/D Civil-I dated 11.01.84 regarding payment of Special Duty Allowance for Defence Civilian Employees.

ii) The application is made for non-implementation of the Hon'ble Apex Court's judgement in Civil Appeal No. 1572/97 dated 17.02.97 for payment of special Duty Allowances to the Defence Civilian Employees working in the North Eastern Region.

2) JURISDICTION OF THE TRIBUNAL:

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

3) LIMITATION:

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

S.R.D/S

4] FACTS OF THE CASE:

The facts of the case in brief are given below:

4.1 That your humble applicants are all Indian Citizens as such they are entitled to all the rights and privileges guaranteed under the Constitution of India. The applicants are all Defence Civilian employees and they are serving under the Ministry of Defence in different capacities since long time. Now they are serving under the Officer Commanding A.S.C. (Supply) F.S.D. Rangia, C/o 99 APO.

4.2 That all the applicants have got common grievances, common course of action and nature of their relief prayed for is also same and similar and hence having regard to the facts and circumstances they intend to prefer this instant application jointly and accordingly they crave leave of the Hon'ble Tribunal under Rule 4(5) (a) of the Central Administrative Tribunal (procedure) Rules, 1987. They also crave leave of the Hon'ble Tribunal and pray that they may be allowed to file this joint application and pursue the instant application redressal of their common grievances.

4.3 That the Government of India, Ministry of Finance, Department of Expenditure granted certain improvement and facilities in the Central Government Civilian Employees of the Central Government serving in the States

S. k Daff

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) Allowances 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 O. M. dated 14.12.1983 is quoted below:

* (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 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 pay of income Tax, will however not be eligible for the special (duty) Allowance, Special (duty) Allowance will be in addition to any special Pay and for allowances already being drawn subject to the condition that the total of such special (duty) Allowance plus special deputation (Duty) Allowance will not exceed Rs. 400/- per month. Special Allowance like Special Compensatory (Remote) Locality Allowance, Construction Allowance and project Allowance will be drawn separately:

An extract of office Memorandum dated 14.12.88 are annexed hereto and the same are marked as Annexure- 1 and 2 respectively.

S. R. D.

4.4 That your applicants beg to state that, they are all scheduled with all India Transfer Liability in terms of their offer of appointment and with the said liability they have received the offer of appointment and joined the service of the respondents.

4.5 That these Defence Civilian Employees are entitled to get the benefits of Special (Duty) Allowance vide recent judgement of the Hon'ble Supreme Court of India in civil Appeal No. 1572/97 dated 17.2.97. The Hon'ble Supreme Court in their judgement it has been clearly stated that all the Defence Civilian Employees who are working in the North-Eastern Region are entitled to get the benefits of Special (Duty) Allowance because the Defence Civilian employee deployed at the North Eastern Region for support of Operational Requirement they face the imminent hostilities supporting the Army Personnel deployed there.

Annexure-3 is the photocopy of the Judgment & Order dated 17-02-1997 passed in Civil Appeal No. 1572/97.

4.6 That your applicant begs to state that they have fulfilled all the terms and condition of Special (Duty) Allowance as admissible to all the Defence Civilian Employees serving in the North-Eastern Region and the recent Hon'ble Supreme Court's order/judgement in which it was held that those Defence Civilian Employees who are

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serving in the North Eastern Region are entitled to get the benefit of Special Duty Allowance and as such, they can not be denied by the Respondents to get the benefits of Special (Duty) Allowance and as such, the applicants are legally entitled to get the benefits of Special (Duty) Allowance.

4.7 That your applicants beg to state that they have submitted representation before the Respondents for payment of Special (Duty) Allowance to the Defence Civilian Employees as per the recent Hon'ble Supreme Court's Judgement in Civil Appeal No. 1572/97 dated 17.2.97. But the Respondents have not yet taken any steps for payment of Special (Duty) Allowance to the Defence Civilian Employees and in the circumstances finding no other alternative way the applicants are approaching before this Hon'ble Tribunal for protection of their interest and rights.

4.8 That your applicant begs to state that the similarly situated some Defence Civilian Employees of the filed an Original Application No. 270 of 1998 before this Hon'ble Tribunal with a prayer for payment of Special Duty Allowance to the Defence Civilian Employee as per Hon'ble Supreme Court Judgment in Civil Appeal No. 1572 of 1997 [Reported in SCC (1997) 4 Page 189]. The Hon'ble Tribunal after hearing both the parties allowed the Original Application No. 270 of 1998 and directed the Respondents to pay the Special Duty Allowance to the Defence Civilian Employees.

Annexure-4 is the Photocopy of Judgment and Order dated 20-12-2000 passed in O.A. No. 270 of 1998 by this Hon'ble Tribunal.

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

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

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION

5.1 For that the applicants having fulfilled the entire Criterion laid down by the Hon'ble Supreme Court judgement in Civil Appeal No. 152 o 197 towards granting the Special (Duty) Allowance, to the Defence Civilian Employees of North Eastern Region. Hence the Respondents can not deny the same to the applicants without any jurisdiction.

5.2 For that there is no jurisdiction in denying the said benefits granted to the applicants and the denial has resulted in violation of the Articles 14 and 16 of the Constitution of India and also other similarly situated employees already have been granted the said benefits.

5.3 For that the applicants having fulfilled all the criterion laid down in the aforesaid Memorandum towards granting the

S.R.Dal

Special (Duty) Allowance, the respondents can not deny the same to the applicants without any jurisdiction.

5.4 For that the application has been denied the said benefits without any principle of being heard. There is a violation of the principle of natural justice in denial of the benefits to the applicants and accordingly proper reliefs and required to be granted to the applicants.

5.5 For that it is a settled proposition of law that when the same principle have been laid down in given cases, all other persons who are similarly situated should be granted the said benefits without requiring them to approach in the court of law.

5.6 For that the recent Hon'ble Supreme court's judgement it was held that irrespective of facts and circumstances the Defence Civilian Personnel who are posted in the North Eastern Region are entitled to get the benefits of Special (Duty) Allowance and as such, the same can not be denied to the applicants by the Respondents.

5.7 For that the action of the Respondents are illegal, arbitrary and not sustainable in law.

6 DETAILED REMEDY EXHAUSTED:

S.R.Das

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 COURT:

The applicants further declare that they have not filed any application, the applicants most respectfully pray that your Lordship may be pleased to admit this application and grant the following reliefs:-

8. RELIEF PRAYED FOR:

Under the facts and circumstances stated above in this application it is therefore most respectfully prayed that your Lordship may be pleased to admit this application and call for the records, issue notices to the Respondents to show cause as to why the reliefs sought for should not be granted to the applicants and after hearing the parties on the cause or cause that may be shown and also on perusal of records your Lordships may be pleased to pass the necessary order or orders as your Lordships may deem fit and proper for granting the following reliefs to the applicants:

8.1 That the Hon'ble Tribunal may be pleased to grant the Special (Duty) Allowance to the applicants in terms

S.R.Daff

of Memo No. 20014/ 3/83 E-IV dated 14.12.83 and office Memorandum No. 20014/16/86 IV/E II (B) dated 1.12.88.

8.2 That the respondents may be directed to pay the Special (Duty) Allowance to the applicants in terms of Hon'ble Supreme Court's Judgment in civil Rule No. 1572 of 1997 dated 17-02-97.

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

8.4 Cost of the Case.

9. APPLICATION IS FILED THROUGH ADVOCATE
10. PARTICULARS OF I.P.O.

I.P.O. No. : 56422643

Date of issue : 16.3.2001

Issue from : Guwahati

Payable at : Guwahati

11. LIST OF ENCLOSURES: As stated above.

S.R.D.K

OUNAL
- 12 -
VERIFICATION

I, Sri Sanaram Das, P. No. 4133, working under the Officer Commanding A.S.C. (Supply) F.S.D. Rangia, C/o 99 APO. and applicant No. 4 of the instant application also authorised by the other applicants do hereby solemnly affirm and verify the statements in paragraphs 4.1, 4.2, 4.4, 4.6, 4.7 are true to my knowledge, those made in paragraphs 4.3, 4.5, 4.8 are being matters of record true to my information and those made in paragraph 5 of the application are true to my legal advice and those made in the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification today on this 12th day of March 20001 at Guwahati.

S.R Das
Declarant

- 13 -

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

ANNEXURE - I

New Delhi, the 14th Dec '83

OFFICE MEMORANDUM

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

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

1) Tenure of posting/deputation.

2) eligibility for Central deputation/training abroad and special mention in confidential Records.

3) Special (Duty) Allowance :

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

Contd.:

Attest
Advocate

be eligible for this Special (Duty) Allowance. ~~With the~~
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.

XXXXXX

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80/- S.C. HANLIK
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Attest
S. C. Hanlik
Advocate

Ref. No. 20014/10/EG/E.IV/S.11 (3)
Govt. of India, Ministry of Finance
Department of Expenditure

New Delhi the 1 Dec 1986

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/83-E.IV dated 14th December, 1983 and 30th March, 1984 on the subject mentioned above and to say that the question of making suitable improvements in the allowances and facilities to Central Government employees posted in North East in Region comprising the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been attracting the attention of the Govt. Accordingly the President is now pleased to decide as follows.

- i) XXXXXXXXXXXX
- ii) x x x x x x
- iii) Special (Duty) Allowance.

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

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

XXX XXXXXX
XXX XXX

Attested
S. J.
for

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ANNE XURE 3

— 16 —

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1572 OF 1997
(Arising out of SLP (C) No. 14008 of 1996)

Certified to be true copy
S. No. - (P. No. 100)
Additional Registration - (Juddi)
..... 3/3/97 199
Supreme Court of India

Union of India & Ors. etc.

For Appellants

100181

Versus

B. Prasad, B.S.O. & Ors. etc. Respondents

VI. T. 1

CIVIL APPEAL NO. 1573-1576, 1577, 1578, 1579, 1580-1585/97
(Arising out of SLP (C) Nos. 17236-39, 14104, 15141-42,
15740, 25108-10 of 1996, SLP (C) No. 4336 /96 (CC-
5040/96) and SLP (C) No. 4338 /96 (CC-6660/96))

O R D E R

Leave granted. We have heard learned counsel

1911-1912 *Properties* *Acres* *Value* *Value per acre*

These appeals by special leave arise from the various orders passed by the Central Administrative Tribunal, Gauhati Bench in different matters. The main order was passed on 17.11.1995 in RA No. 4/95 in OA No. 49/69.

The Government of India have been issuing orders from time to time for payment of allowances and

~~John Adams Ltd~~

facilities for civilian employees of the Central Government servants working in the States and Union Territories of the North-eastern region. It is not in dispute that Special Duty Allowance was ordered by the Government @ 25% of the basic pay subject to a ceiling of Rs. 400/- per month, on posting on any station in the North-eastern region. Subsequently, the Government have been issuing orders from time to time. In the proceedings dated April 17, 1995, the Government modified the payment of the Special Duty Allowance and Special Compensatory (Remote Locality) Allowance as under:

"The Defence Civilian employees, serving in the newly defined modified Field Areas, will continue to be entitled to the Special Compensatory (Remote Locality) Allowance and other allowances as admissible to Defence Civilians, as hitherto, under the existing instructions issued by this Ministry from time to time. However, in respect of Defence Civilian employees in the newly defined Field Areas, Special Compensatory (Remote Locality) Allowance and other allowances will concurrently be admissible along with Field Service Concessions."

It is contended by Mr. P.P. Malhotra, learned senior counsel appearing for the Union of India, that the view taken by the Tribunal that they are entitled to both, is not correct and that they would be entitled

Abst
Avante

either of the allowances. Shri P.P. Rao, learned senior counsel appearing for some of the respondents has contended that those civilian employees working in the defence service at various stations in the North-eastern region were given Special Duty Allowance with a view to attract the competent persons and the persons having been deployed, are entitled to the same and the amended concessions would be applicable to those employees who are transferred after April 17, 1975. All those who were serving earlier would be entitled to both. Shri Arun Agstely, learned senior counsel appearing for some of the respondents has drawn our attention to the distinction between Field Area and Modified Field Area and submitted that in cases where civilian employees are supporting the field defence persons deployed for the border operational requirements facing the immense hostilities, they will be denied the payment of both allowances while the personnel working in the Modified Field Area, in other words, in barracks, will be entitled to double benefit of both the allowances. This creates hostile discrimination and unjust results.

Having regard to the respective contentions, we are of the view that the Government having been

Abta
Sh. Agstely

extending the benefit of payment of Special Duty Allowance to all the defence employees working in the North-eastern region as per the orders issued by the Government from time to time as on April 17, 1995, they are entitled to both the Special Duty Allowance as well as "Field Area Special Compensatory" (Remote Locality) Allowance. The same came to be modified twice, that date. Therefore, irrespective of the fact whether or not they have been deployed earlier to that date, all are entitled to both the allowances only upto that date. Thereafter, all the personnel whether transferred earlier to that or transferred from on or after that date, shall be entitled to payment of only one set of Special Duty Allowance in terms of the above modified order.

In regards the payment of special duty allowance to the defence civilian personnel deployed in the border area for support of operational requirement, they face the imminent hostilities supporting the army personnel deployed there. Necessarily, they alone require the double payment as ordered by the Government but they cannot be deprived of the same since they are facing imminent hostilities.

Abdul

Abdul

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in hilly areas risking their lives as envisaged in the proceedings of the Army dated January 13, 1994, but the Modified Field Area, in other words, in the defence terminology, "barracks" in that area is a lesser risking area; hence they shall not be entitled to "double" payment. Under these circumstances, Mr. P.P. Malhotra is right in saying that the wording of the order requires modification. The Government is directed to modify the order and issue the corrigendum accordingly.

The appeals are disposed of accordingly. It is made clear that the Union of India is not entitled to recover any payments made of the period prior to April 17, 1995. No costs.

(K.RAHASWAMY)

(G.T.NANAVATI)

NEW DELHI,
FEBRUARY 17, 1997.

Abdul
Abdul
Abdul

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 270 of 1998.

Date of Order : This the 20th Day of December, 2000.

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

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

Shri Bikash Deb and 29 others.

... applicants.

By Advocate Sri A.Ahmed.

- Versus -

Union of India & Ors.

... Respondents.

By Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J. (V.C)

All the applicants are serving under the Commandant, 222 A.B.O.D, Narengi Camp. Having regard to the common grievance and seeking common relief, the leave is granted to them under Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules 1987 to file this single application. By this application the applicants have sought for a direction on the respondents to pay Special (Duty) Allowance to the applicants in terms of Office Memoranda No. 20014/3/83-E-IV dated 14.12.1983 and No. 20014/16/86 IV/IT(B) dated 1.12.1988. In the light of the aforementioned memorandum and in view of the decisions rendered by the Hon'ble Supreme Court in Union of India & Ors. vs. B.Prasad, R.S.O. and others, reported in (1997) 4 SCC 189. In that order the Supreme Court observed as follows :

"As regards the payment of Special Duty Allowance to the defence civilian personnel deployed in the border area for support of operational requirement, they face the imminent hostilities supporting the army personnel deployed there. Necessarily

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After
Ans

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they alone require the double payment as ordered by the Government but they cannot be deprived of the same since they are facing imminent hostilities in hilly areas risking their lives as envisaged in the proceedings of the Army dated 13.1.1994. But the Modified Field Area, in other words, in the Defence terminology, "barracks" in that area is a lesser risking area, hence they shall not be entitled to double payment. Under these circumstances, Mr P.P. Malhotra is right in saying that the wording of the order requires modification. The Government is directed to modify the order and issue the corrigendum accordingly."

In the light of the aforesaid observation, the respondents are directed to pay Special (Duty) Allowance to the applicants. The application is accordingly allowed. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN
Sd/MEMBER (Adm)

Certified to be true Cop
प्रमाणित प्रतिलिपि

PG
Section Officer (D)
आनुसारी अधिकारी (सेक्शन ऑफिसर)
Control Administrative Tribunal
कानूनी प्रबन्धालय अधिकारी
Delhi Bench, Government of India
दिल्ली न्यायालय, भारत सरकार

Attal
JL
Anita