

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 246/01

R.A/C.P No.

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SECTION OFFICER (Judl.)

Shah
8.12.17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

APPLICATION NO. 346 / 2001.

Applicant (S) Sri Ananda Saikia 2 nos.

Respondant(S) CCOI 2 nos.

Advocate for the Applicant: M^r K. K. Panikam

Advocate for the Respondant: CGSC

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in the Coordination Petition is filed vide M.P. No. X C.F. for K. K. Panikam vide IPO/BO No. 788002</p> <p>Dated 29.8.2001</p> <p>By, Registrar</p> <p>mb</p>	30.8.01	<p>Heard Mr. K. Panikam, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records. Returnable by 4 weeks. In the meantime, the respondents are directed not to make any further recovery of SDA so far paid, until further order.</p> <p>List on 1/10/01 for further order.</p> <p><i>[Signature]</i> Vice-Chairman</p>
	1.10.01	<p>Awaited service report. List on 17/10/01 for order.</p> <p><i>[Signature]</i> Vice-Chairman</p>
	17.10.01	<p>Written statement has been filed. List on 13.12.01 for hearing.</p> <p><i>[Signature]</i> Member</p>
<p>Notice prepared and sent to D/S for issuing the same by Regd A/D.</p> <p>3/9/01</p> <p>Issued vide D/No 3403 W/ 3406 dtd 5/9/01</p>		

① Service report are still awaited.
28.9.01

18.10.2001

W/s on behalf
of the Respondents has
been submitted.

W/s has been filed.

16.1.02.

W/s has been filed.

6.2.02.

18.12.01

Prayer has been made by learned
Central Government Standing Counsel
for adjournment of the case. Prayer
for adjournment is allowed. List on
11.1.02 for hearing.

IC Ushan
Member

Vice-Chairman

mb

11.1.02

It has been stated that Mr.K.K.
Phukan, learned counsel for the appli-
cant is hospitalised and in that view
of the matter the case is adjourned.

List the case for hearing on
7.2.2.2002.

IC Ushan
Member

Vice-Chairman

bb

7.2.02

It has been stated that Mr. K.K.
Phukan, learned counsel for the applicant
is hospitalised, so the case is accordi-
ngly adjourned.

List the matter on 7.3.2002
for hearing.

IC Ushan
Member

Vice-Chairman

mb

7.3.02

Heard counsel for the parties.
Hearing concluded. Judgment delivered
in open Court, kept in separate sheets.

The application is dismissed in
terms of the order. No order as to
costs.

IC Ushan
Member

Vice-Chairman

pg

18.4.2002

Copy of the order
has been sent to the
office for issue
in line to the applicant
as well as to the
Addl. C.G.S.C. for the
report by him.

48

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 346 of 2001.

7-3-2002.
Date of Decision.....

Sri Ananda Saikia & others.

-----Petitioner(S)

Sri K.K.Phukan

-----Advocate for the
Petitioner(s)

-Versus-

Union of India & Ors.

-----Respondent(s)

Sri B.C.Pathak, Addl.C.G.S.C.

-----Advocate for the
Respondent(s)

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN
THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Vice-Chairman.

NO

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 346 of 2001.

Date of Order : This the 7th Day of March, 2002.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

1. Sri Ananda Saikia,
2. Shri Dorjee Khandu Thangon,
3. Dr Bidhan Rana,
4. Sri Phanindra Kumar Bora
Office of the Divisional Organiser,
SSB, A.P.Division,
Itanagar, (Arunachal Pradesh) . . . Applicants

By Advocate Sri K.K.phukan.

- Versus -

1. Union of India,
represented by the Secretary to
the Govt. of India,
Ministry of Home Affairs,
New Delhi.
2. Director General,
Special Services Bureau,
Block-V (East), R.K.Puram,
New Delhi-66.
3. The Senior Assistant Director of
Accounts, GED-II Section (SSB)
O/o the Director of Accounts,
East Block - IX, Level-VI,
R.K.Puram, New Delhi-66.
4. The Divisional Organiser,
SSB, A.P.Division,
Itanagar, Khathing Hill,
Arunachal Pradesh-791111. . . Respondents.

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

O R D E R

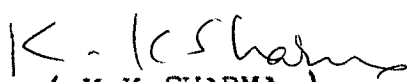
CHOWDHURY J.(V.C)


The issue relates to granting of Special Duty Allowance (SDA) to the four applicants who were serving in various capacities under the respondents. These applicants in this application claiming SDA in terms of the Central Government notification dated 14.12.1983 and

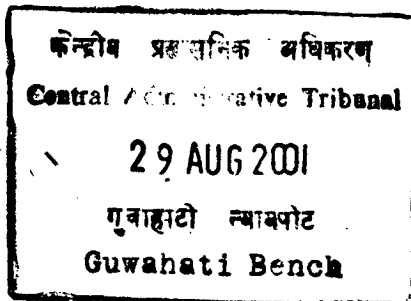
other like notifications according SDA. From the materials on record it appears that these applicants belonging to the North Eastern Region and were recruited in the SSB and posted in the N.E.Region. The issue raised in this application is almost settled in view of the numerous decisions of the Supreme Court starting from the Union of India & Ors. vs. S.Vijay Kumar disposed of on 20.9.94. In view of the consistent decisions in this regard, in the set of circumstances the question of directing the respondents for providing SDA does not arise.

2. In this application the applicants have stated that the respondents authority has stopped payment of SDA only from March 2001 and prior to it they were paid SDA till 28.2.2001. The applicant No.3 who was appointed in May 1997 was also paid SDA upto 28.2.2001. The respondents however started recovery of the SDA so far paid to them on and from March 2001. Needless to state that these applicants were paid SDA by the authority concerned themselves. The said amount could not have been recovered from the applicants retrospectively, more so when they were paid with the SDA by the respondents themselves. Considering the hardship caused to the applicants and in the facts and circumstances of the case, the respondents are directed not to make any recovery from the applicants and whatever recovery has been made from them shall be refunded to the applicants forthwith.

Subject to the observation made above the application stands dismissed. There shall, however, be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN



Filed by
- Applicants
Thangkh
Wapthkar
Advocate
29/8/01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

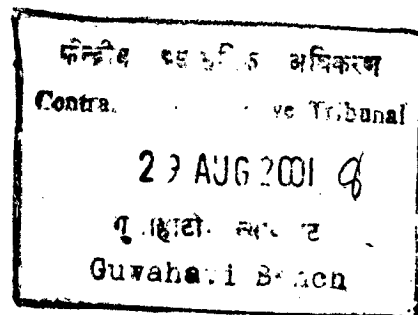
(An application under Section 19 of the
Administrative Tribunal Act, 1981)

OA No. 346 /2001

1. Shri Ananda Saikia,
Joint Area Organiser
S/o Late A. C. Saikia
O/o the Divisional Organiser
SSB : A. P. Division
Itanagar (Arunachal Pradesh)
2. Shri Dorjee Khandu Thangon,
Sub-Area Organiser
S/o P.K. Thangon
O/o the Divisional Organiser
SSB : A. P. Division
Itanagar (Arunachal Pradesh)



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(2)

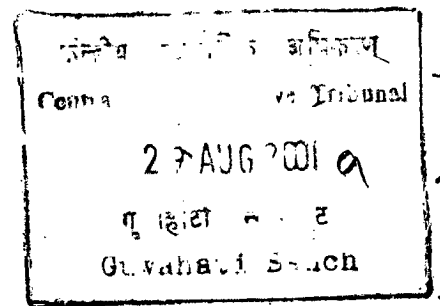
3. Dr. Bidhar Rana,
Medical Officer (Homeo)
S/o J. K. Rana
O/o the Divisional Organiser
SSB : A. P. Division
Itanagar (Arunachal Pradesh)
4. Shri Phanindra Kumar Bora,
field Officer (Telecommunication)
S/o Late S. D. Bora
O/o the Divisional Organiser
SSB : A. P. Division
Itanagar (Arunachal Pradesh)

.....APPLICANTS.

(All the applicants are serving under various capacities in the Special Services Bureau (SSB) under the administrative control of the Divisional Organiser, SSB, A. P. Division, Itanagar. The applicant No.1, 2 & 4 belong to the North Eastern Region while applicant No.3 belongs to the State of West Bengal.)

-VERSUS-

Contd.....P/3



(3)

1. Union of India

Represented by the Secretary to
the Govt. of India, Ministry of Home
Affairs, New Delhi.

2. Director General

special Services Bureau,
Block -V (East)

R. K. Puram

New Delhi-110066.

3. The Senior Assistant Director of
Accounts, GED - II Section, (SSB)

O/o the Director of Accounts,
East Block - IX

Level - VI

R. K. Puram, New Delhi - 66

4. The Divisional organiser

SSB, A. P. Division

Itanagar, Khathing Hill,

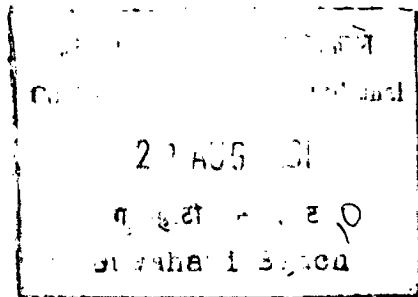
Arunachal Pradesh - 791111.

.....RESPONDENTS.

1. Particulars of the case against which the application is made :

- (i) After voluntarily paying Special Duty Allowance (SDA) since the date of commencement of payment of SDA, sudden, impugne, arbitrary and unfair actions on the part of the respondent for stoppage of payment of SDA without giving any prior notice or intimation.

Contd.....P/4



(4)

(ii) Sudden, impugne, arbitrary and unfair action of effecting recovery of SDA already paid to the applicants and that, too, in large installments which caused injury to the applicants and their dependants.

(iii) Impugne, arbitrary and unfair actions of not responding to the prayers and petitions submitted by the applicants for redressal of their grievances.

2. Jurisdiction of the Hon'ble Tribunal

The applicants declare that the subject matter of the orders are within the jurisdiction of the Hon'ble Tribunal.

3. Limitation

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

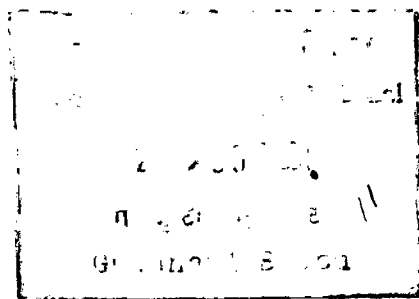
4. Facts of the case :

(i) The applicants from Sl. No. 1 to 3 are of Group- 'A' Status and Sl. No.4 is of Group- 'B' status serving in various capacities as Joint Area Organising, Sub-Area Organiser, Medical Officer (Homeo) and Field Officer (Telecom) respectively in the Special Services Bureau (SSB in short) which is a Department under Ministry of Home Affairs, Govt. of India, as recently transferred from cabinet Secretariat.

The applicants have a common interest in the matter, as such they are filing a single application because, relief, if granted to one of them, will be equally applicable to all of them. The applicants crave leave of the

Contd.....P/5

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Hon'ble Tribunal to allow them to file a single application as provided in Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

(ii) The applicant No. 1, 2 & 4 belong to North Eastern Region while applicant No.3 belongs to the state of West Bengal. All of them were directly recruited to the Department on All India basis, having all India Transfer Liability and posted to N. E. region on first appointment and presently posted in Divisional Head Quarters, SSB, A. P. Division, Itanagar under the administrative Control of the Divisional Organiser, SSB, A. P. Division (Respondents No.4).

Photo copies of the appointment letters are annexed as ANNEXURE-I (Series).

(iii) That the Govt. of India, with a view to attracting and retaining the services of competent officers for service in the NE region, had decided to grant certain additional allowances to the civilian employees of the Central Govt. serving in the NE Region. Among the various allowances, the one was the payment of SDA to those who have All India Transfer liabilities conveyed by the Govt. of India, Ministry of Finance, Department of Expenditure, vide Memo No. 20014/2/83/E.IV dtd. 14/12/83. In terms of the memorandum the SDA was granted to the civilian employees of the Central Govt. in NE Region who have all India Transfer Liability at the rate of 25% of basic pay.

(An extract of the said memorandum dated 14/12/83 relating to the grant of SDA is annexed herewith and marked as ANNEXURE-II).

Contd.....P/6

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(6)

(iv) That the applicants beg to state that they were selected through direct recruitment test held at various zonal selection centres during 1981 and onwards, based on All India level having all India Transfer Liability.

(v) That the applicants beg to state that Cab. Sectt. Govt. of India, New Delhi vide their U. O. No. 7/47/84-EA-I dated 23/4/84 give clarifications that employees recruited locally servicing in NE Region, SDA will be admissible if there is a specific provision in the service Rules or Recruitment Rules pertaining to them that they shall be required to work in any establishment of the SSB or other organizations under DG (S).

(An extract of the said U. O. dtd. 23/4/84
is annexed herewith as ANNEXURE-III).

(vi) That the applicants beg to state and submit that the SDA was granted to the applicants by the Respondent authorities after being satisfied that the applicants are legally entitled to get SDA which they were getting regularly with effect from the date of commencement of the order sanctioning SDA/date of appointment as applicable in respect of each applicant.

(vii) That, thereafter the Govt. of India, Ministry of Finance, Department of Expenditure, circulates their letter No. 11 (3)/95-s. 11 (B) dated 12-01-1996 regarding payment of SDA for civilian employees of the Central Govt. serving in the NE region for strict compliance of the clarifications contained therein. In the said memorandum dated 12-01-1996, it was stated in paragraph-3 that it was clarified vide O. M. dated 20-04-1987 that for the purpose

Contd.....P/7



or sanctioning of the SDA, 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 the service/cadre/post has been made on All India basis and whether promotion is also made on the basis of 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.

It was further stated, in paragraph-6 of the said memorandum dated 12-01-1996 that the Hon'ble Supreme Court in their Judgement delivered on 20/9/1994 (in Civil Appeal No. 3251/93) upheld the submissions of the Govt. of India that the Civilian employees of the Central Govt. who have All India Transfer Liabilities are entitled to the grant of the SDA on being posted to any station in the NE Region from outside the region and the SDA would not be payable merely because of the clause in the appointment letter relating to all India Transfer Liability. It is also stated that the Apex Court further added that the grant of this allowance only to the officials transferred from outside the region to the NE Region would not be violative of the provisions contained in the Article-14 of the Constitution of India as well as the equal pay doctrine.

The Hon'ble Apex Court also directed that whatever amount has already been paid to Govt. servants or for that matter to other similarly

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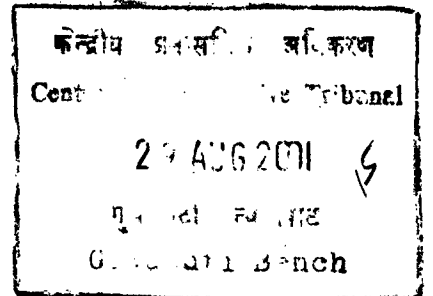
situated employees would not be recovered from them in so far as this allowance (SDA) is concerned. In paragraph - 7 of the said memorandum, it is further stated that in view of the judgement of the Hon'ble Supreme Court, as stated above, ~~the~~ matter has been examined in consultation with the Ministry of Law and it is, accordingly, decided the amount already paid by way of SDA to the ineligible persons on or before 20/9/94 will be waived and the amount paid to ineligible persons after 20/9/94 but payment were made after 20/9/94 would be recovered.

It would be pertinent to mention here that the SDA was initially paid, as stated above, by the respondent authorities of their own when it was found that they were eligible for grant of the SDA. The respondents are, therefore, not justified at this stage for stopping payment of the SDA to the present applicants by enforcing the said memorandum dated 12-1-96 issued by the Ministry of Finance, Govt. of India in as much as the applicants are liable to be transferred from NE region to the other states of the country and as such the applicants are saddled with All India Transfer Liability and they are also recruited on All India basis in various Zones and posted to NE region. The present applicants are eligible for grant of and continuance of SDA in the context of memorandum dated 14/12/83 (Annexure-II)

A copy of the said memorandum dated 12/1/96 is annexed herewith and marked as ANNEXURE-IV).

Contd.....P/9

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(9)

(viii) That the applicants beg to state that even after receipt of the Govt. of India, Ministry of Finance, Department of Expenditure O.M. No. 11 (3)/95-E. II (B) dtd. 12/1/96 (mentioned in para - VII). Payment of SDA was not stopped by the respondent being all the applicants eligible to get SDA in terms and conditions of their services, having All India Transfer Liabilities and allowed to continue to draw the SDA in the context of Memorandum dated 14/12/83 (Annexure-II).

(ix) That although the applicants were regularly getting SDA with effect from the date of grant of SDA, the respondent authorities suddenly stopped payment of SDA since March, 2001 to the applicants illegally and arbitrarily without allowing any opportunity of being heard, and directed recovery of the amount paid to the applicant Nos. 1, 2 and 4 by way of SDA with effect from 21/9/94 upto 28th February, 2001 and applicant No.3 w.e.f. the date of appointment i.e. May, 1997 upto 28th February, 2001.

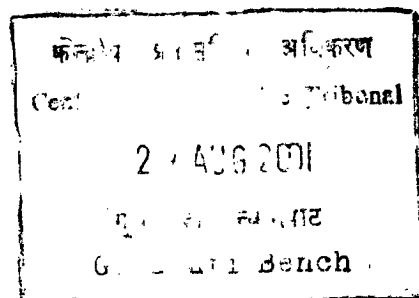
(x) That the applicants beg to state and submit that the applicants became shocked and surprised when they find that recovery of SDA @ Rs.7,000/-, Rs.6,000/-, Rs.4,000/- and Rs.1,500/- respectively from their monthly salary which were effected without any prior notice or intimation. (Month of effecting recovery of SDA, July/01 in respect of applicant No.1 and from Nov./2001, March/2001 & Nov./2000 in respect of applicants No.2, 3 and 4 respectively.

(xi) That the applicants beg to state and submit that they requested the respondent No.3 not to recover SDA in such high rate from their salary

Contd.....P/10

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(10)



as they faced financial hardship due to high rate of recovery which were not considered by the respondents.

(Copies of said applicants are annexed herewith and marks as Annexure-V, VI, VII & VIII respectively).

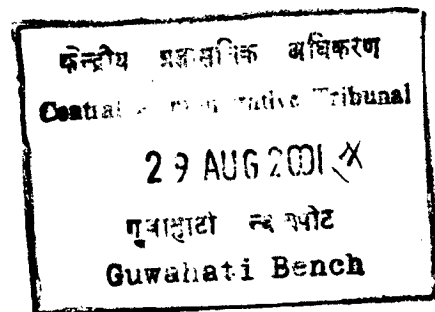
(xii) That the applicants beg to state and submit that instead of considering the request of the applicants respondent No.3 intimated only applicant No.2 that the entire amount is being recovered in 10 installments, 9 installments @ Rs.6000/- and rest Rs.2758/- in one installment vide letter No. GED-II/SSB-DOAP/2806/2000-01/747 dtd. 2/1/2001.

(Copy of the letter is annexed as ANNEXURE-IX).

(xiii) That the applicants beg to state and submit that the respondent No.3 has not responded to the requests of the applicants No.1, 3 & 4 and continued to recover @ Rs.7000/-, Rs.4000/- & Rs.1,500/- per month respectively forcing the applicants into acute hardship.

(xiv) That the applicant beg to state and submit that the applicants were not at fault in any way to receive the SDA inasmuch as it was paid to them voluntarily by the respondent authorities and the applicant have reasons to believe that they were entitled to receive the SDA. The amount already paid to the applicants should not have been recovered as no notice was given to the applicants as to the action proposed to be taken against the applicants. The recovery of SDA is, therefore, amounts to flagrant violation of the principle of natural justice and as such this is a fit case where the Hon'ble Tribunal would exercise jurisdiction and grant relief.

Contd.....P/11



(11)

(xv) That the applicants beg to state and submit that the respondent authorities have discontinued payment of SDA to the applicants and at the same time recoveries are being made from the pay without any notice and prior intimation by the Respondent No.3 and in the present circumstances finding no other remedy, the applicants have now approached this Hon'ble Tribunal praying for protection of the rights and interests of the applicants and for grant of proper relief.

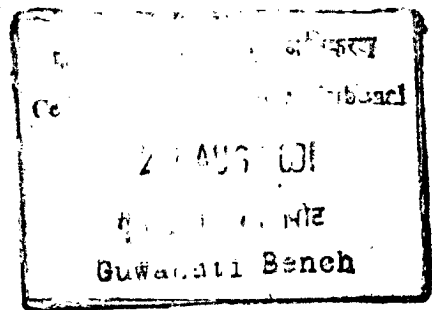
(xvi) That the applicants beg to state and submit that some employees of the Base Hospital No.151, Basistha, Guwahati who were similarly situated like the present applicants filed two cases before the Hon'ble Tribunal which were numbered as OA No. 45/98 and OA No.90/98. As both the applicants involved similar facts and law, this Hon'ble Tribunal, by common order dated 28/7/99 disposed off both the applications and relying on several cases decided by the hon'ble Apex Court, as referred to in the order, the action of the Respondent Authorities to recover the amount of SDA was quashed and set aside. The respondents were further directed to refund the amount of SDA, if any recovered from the applicants within a period of two months from the date of receipt of the order.

(Copy of the said common order dated 28/7/99 passed by the Hon'ble Tribunal while disposing of O.A. 45/98 and OA No. 90/98 are annexed herewith and marked as ANNEXURE-X).

(xvii) That the applicants beg to state that some employees of the CPWD,

Contd.....P/12

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(12)

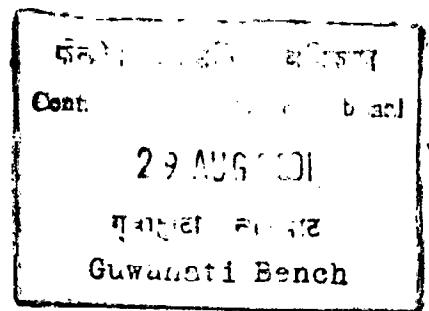
Guwahati, who are also similarly situated like the present applicants filed applications before this Hon'ble Tribunal which were numbered as OA 97/97, OA 104/97, OA 106/97, OA 109/97, OA 110/97, OA 244/97, OA 24/98, OA 35/98 and OA 75/98. All these original applications relate to SDA involving common questions of law and similar facts and as such this Hon'ble Tribunal, by a common order dated 26.06.98, disposed of all the original applications. This Hon'ble Tribunal directed the respondent authorities to first determine whether the applicants are entitled to SDA or not as per the decision of the Apex Court in Civil Appeal No. 1572/97 holding, inter alia, that persons who belong to the NE region were not entitled to SDA. If it is found after examination, that the applicants or some of them are not entitled to SDA, they shall not be paid SDA. However, the amount already paid to them shall not be recovered.

(Copy of the said order dtd. 26.05.98 is annexed herewith and marked as Annexure-XI).

(xviii) That the applicants beg to state and submit that all of them having all - India transfer liability selection/recruitment on all-India basis having common seniority list on all-India basis are similarly situated like those who were applicants in the above noted original applications and as such the case of the present applicants is squarely covered by the orders passed by this Hon'ble Tribunal in the above noted original applications.

(xix) The applicants beg to state and submit that this Hon'ble Tribunal be pleased to stay the operation of recovery of SDA by the respondent

Contd.....P/13



(13)

No.3 as an interim measure in as much as the applicants will suffer irreparable loss and injury if the operation of the said recovery of SDA is not stayed and recovered SDA, if any, is not repaid to the applicants. This Hon'ble Tribunal would also be pleased to further set aside the act of recovery of SDA by the respondent No.3 as not sustainable in law.

(xx) That this application is made bonafide and for the cause of Justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS

- I. For that the applicants have the eligibility criteria for grant of SDA in terms of O.M. dated 14/12/83 (Annexure-I) and UO dated 23/4/84 (Annexure-II) issued by the Govt. of India. Ministry of Finance, Department of Expenditure and as such unilateral discontinuation of the payment of SDA and effected recovery without notice and intimation by the respondent No.3 is extremely arbitrary, illegal and unfair and as such the action of the respondent authorities is bad in law and liable to be set aside and quashed.
- II. For that the respondent authorities have paid SDA to the applicants after being fully satisfied of their own that the applicants are eligible for payment of SDA in terms of the OM dated 14/12/83 (Annexure-II) and UO dated 7/5/97 (Annexure-XII) issued by the Ministry of Finance, Govt. of India, Department of expenditure, New Delhi and it is now not open to the respondent authorities to hold that the applicants are not eligible for grant

Contd.....P/14

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of SDA and as such the action of the authorities of the amount already paid to them is bad in law liable to be set aside.

III. For that the case of the applicants is squarely covered by the orders passed by this Hon'ble Tribunal in the matter of stopping payment of SDA to the employees who are similarly situated like the applicants in those original applications and recoveries of payment already made and as such the applicants are legitimately expecting that their interest will be similarly protected as has been in those original applications. The orders passed in this regard are place at Annexure- X and XI)

6. Details of remedies exhausted

All the applicants have submitted representations praying for stoppage of recovery and to make recovery at a moderate rate but the same have been turned down/not responded.

7. Matters not previously filed or pending with any other Court

The applicant further declare that they have not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any such application, Writ Petition or suit is pending before nay of them.

Contd.,.....P/13



8. RELIEF SOUGHT

It is, therefore, prayed that you Lordships would please to admit this application, call for the entire records of the case, ask the respondents to show cause as to why they should not be directed to continue payment of SDA to the applicants and as to why recoveries of the amount already paid to the applicants as SDA should not be repaid and after perusing the causes shown, if any, and hearing the parties, set aside the impugned actions of the respondents with regard to recovery of SDA at high rate for the period w.e.f. 20/9/94 to 28/2/2001 and to stoppage of SDA since 1st March, 2001 and direct the respondents to grant SDA to the applicants as usual from the date of their joining in NE Region on first posting and/or pass any other order/orders as Your Lordships may deem fit and proper.

And for this act of kindness, the applicants, as in duty bound shall ever pray.

9. INTERIM ORDER, IF ANY, PRAYED FOR

It is, further prayed that Your Lordships would be pleased to stay the operation of the impugned actions for recovery of SDA till final disposal of this application otherwise the applicants would suffer irreparable loss and injury.

Contd.....P/16

(Signature)

10. The application will be presented by the Advocate of the applicants.

11. Particulars of the Postal Order in respect of the application fee :-

IPO No. ^{64 488002} ~~74 548932~~ Dated 29.8.01 Issued by the

Guwahati PO payable at Guwahati is enclosed

12. LIST OF ENCLOSURES :-

As state in the Index

1. ANNEXURE-I (Series) ... Appointment letters
2. ANNEXURE-II ... OM dated 14th December, 1983 regarding grant of SDA.
3. ANNEXURE-III ... UO dated 23/4/84 clarifications regarding grant at SDA in N.E. Region.
4. ANNEXURE-IV ... OM dated 12/1/96 regarding grant of SDA in N.E. Region and other states and Union Territory.
5. ANNEXURE-V TO VIII ... Representations submitted by the applicants to the Respondent No.3.
6. ANNEXURE-IX ... reply of the representation of the applicant No.2
7. ANNEXURE-X ... Copy of the Judgement and order dated 28/7/99 passed in OA No.45/98 and OA No. 90/98 by the CAT, Guwahati.

Contd.....P/17



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(17)

8. Annexure-XI ... Copy of the Judgement and order dated 26/5/98 passed by this Hon'ble Tribunal in OA 97/97 and other.
9. Annexure-XII ... UO dated 7th May, 1997 regarding determination and grant SDA in N. E. Region.

V E R I F I C A T I O N

I, Shri Ananda Saikia, son of late A. C. Saikia, aged about 48 years, presently serving as the Joint Area Organizer, SSB, under the Administrative Control of the Divisional Organizer, SSB, A. P. Division, Itanagar, Arunachal Pradesh do, hereby, verify and certify that the contents in paragraphs No. III, IV, VI, XVIII to XX are true to my personal knowledge and those in paragraphs III, V, VII, VIII to XVII are true to the best of my information which have been derived from records which I believed to be true and that I have not suppressed any material fact.

I, being one of the applicants, have been authorized by other applicants to sign this verification on behalf of all the applicants.

Place : Guwahati

Date : 28/08/01.

Ananda Saikia

Signature of the applicant.

APD

DIRECTORATE GENERAL OF SECURITY
OFFICE OF THE DEPUTY COMMISSIONER, NORTH ASSAM DIVISION

MEMORANDUM

The undersigned hereby offers Shri Ananda Naikia a temporary post of Circle Organiser (Gazetted Class II) in the SSE Organisation on a pay of Rs. 550/- in the scale of Rs. 550-25-750-RM-30-900. The appointee will also be entitled to draw dearness and other allowances at the rates admissible under and subject to the conditions laid down in rules and orders governing the grant of such allowances in force from time to time.

2. The terms of appointment are as follows:-

(i) The appointment is temporary and he will be on probation for a period of three years. His permanent appointment to the post, if and when it is made permanent, however, will depend on various factors governing permanent appointment to such posts in force at the time and will not confer on him the title to confirmation from the date the post is converted as permanent.

(ii) The appointment is purely provisional pending the issue of eligibility certificate in the candidate's favour and shall stand cancelled in the event of such certificate being refused. The candidate is required to give a written undertaking in the form ~~to be supplied~~ ~~attached~~ ~~to the~~ ~~candidate~~ ~~attached~~.

(iii) The appointment may be terminated at any time by a month's notice given by either side, viz, the appointee or the appointing authority, without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice and on such termination, the appointee shall be entitled to claim a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

(iv) The appointment carries with it the liability to serve in any part of India. He will have to undergo such courses/training as may be prescribed from time to time.

(v) The appointment is subject to the passing of the IC/COs course at the SSE Training Centre, also known as the SSE Training Centre. If the appointee fails to pass the said courses in accordance with orders/instructions on the subject even at the second attempt, the appointment will be liable to be terminated forthwith and without any notice to the appointee and the appointee shall not be entitled to claim any sum as pay and allowances in lieu thereof on such termination.

(vi) Other conditions of service will be governed by the relevant rules and order in force from time to time.

3. The appointment will be further subject to :-

Contd page-2

Attest
By
Signature
Official

- i) Production of certificate of fitness from the competent Medical Authority (viz. Medical Board). He will not be allowed to join unless he produce this certificate.
- (ii) Submission of a declaration in the form enclosed that he has not got more than one wife living.
- (iii) Taking of an oath of allegiance/faithfulness to the constitution of India in the prescribed form (Copy enclosed).
- (iv) Production of the following original certificate:
 - a. Certificate of educational and other technical qualifications (with one attested copy each).
 - b. Certificate of age.
 - c. Character certificate from two Gazetted Officers.
 - d. Certificate in the prescribed form in support of candidate's claims belonging to a reserved (Schedule caste/Schedule Tribes) or Anglo-Indian community.
 - e. Discharge certificates in the prescribed form of previous employment if any.
 - f. Any other documents (to be specified)
 - g. While serving in this office, he will not be allowed to apply for posts elsewhere.
 4. If any declaration given or information furnished by the candidate proves to be false or if the candidate is found to have willfully suppressed any material information, he will be liable to removal from service and to such other action Government may deem necessary.
 5. If Shri Ananda Saikia accepts the offer on the aforesaid terms, he should report for duty to the DO, N/A for taking charge on or before 6th Feb '81. If he fails to report for duty by the prescribed date, the offer will be liable to be treated as cancelled.
 6. Within 7 days of his joining he would be required to apply for Government quarter (Where applicable).
 7. No travelling allowance will be allowed for joining the appointment.

The Hon. Secy
4th 23.1.81
16.2.81

3(ii)4(iii)

To
Shri Ananda Saikia,
Mill-Ghassia, P.O. Ghassia,
North Lakhimpur

23.1.81
DIVISIONAL ORGANISER
NORTH ASSAM DIVISION: TEZPUR

Memo No. _____ Dated, Tezpur, the Jan '1981
Copy forwarded to the Deputy Director (T) SSB, New Delhi with
reference to SSB Hq signal No. HY-16039 DATED 20.1.81 for
information.

23.1.81
DIVISIONAL ORGANISER
NORTH ASSAM DIVISION: TEZPUR
ASSAM:

-20-

26

NO.GE/E-26/320
DIRECTORATE GENERAL OF SECURITY
OFFICE OF THE DIVISIONAL ORGANISER
ARUNACHAL PRADESH DIVISION :TEZPUR

Dated Tezpur, the 12th Oct '84

M E M O R A N D U M

The undersigned hereby offers Shri Dorjee Khundu a temporary post of Circle Organiser (Gazetted Class-II) in the SSB Organisation on a pay of Rs.550/- in the scale of pay of Rs.550-25-750-EB-30-900/-. The appointee will also be entitled to draw dearness and other allowances at the rates admissible under and subject to the conditions laid down in rules and orders governing the grant of such allowances in force from time to time.

2. The terms of appointment are as follows:-

i) The appointment is temporary and he/she will be on probation for a period of three years. His permanent appointment to the post, if and when it is made permanent, however, will depend on various factors governing permanent appointment to such posts in force at the time and will not confer on him the title to confirmation from the date the post is converted as permanent.

ii) The appointment is purely provisional pending the issue of eligibility certificate in the candidate's favour and shall stand cancelled in the event of such certificate being refused. The candidate is required to give a written undertaking in the form to be supplied shortly to him

iii) The appointment may be terminated at any time by a month's notice given by either side, viz., the appointee or the appointing authority, without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice and on such termination, the appointee shall be entitled to claim a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

iv) The appointment carries with it the liability to serve in any part of India. He/She will have to undergo such courses/training as may be prescribed from time to time.

v) The appointment is subject to the passing of the PC/COs courses at the SSB Training Centre, Salomibari. If the appointee fails to pass the said courses in accordance with orders/instructions on the subject even at the second attempt, the appointment will be liable to be terminated forthwith and without any notice to the appointee and the appointee shall not be entitled to claim any sum as pay and allowances in lieu thereof on such termination.

vi) Other conditions of service will be governed by the relevant rules and order in force from time to time

3. The appointment will be further subject to :-

i) Production of certificate of fitness from the competent Medical Authority (viz., Medical Board). He/She will not be allowed to join unless he/She produces this certificate.

ii) Submission of declaration in the form enclosed that he/she has not got more than one wife/husband living.

Contd...2

*after Jw
Dorjee Khundu
Advocate*

- (iii) Taking of an oath of allegiance/faithfulness to the Constitution of India in the prescribed form (copy encl)
- (iv) Production of the following original certificates:-
- (a) Certificates of educational and other technical qualifications (with one attested copy each)
 - (b) Certificate of age.
 - (c) Character certificates from Gazetted Officers.
 - (d) Certificates in the prescribed form in support of candidate's claims belonging to a reserved (Scheduled caste/Scheduled Tribe) or Anglo-Indian community.
 - (e) Discharge certificates in the prescribed form of previous employment, if any.
 - (f) Any other documents (to be specified).
 - (v) While serving in this office, he/she will not be allowed to apply for posts elsewhere.

4. If any declaration given or information furnished by the candidate proves to be false or if the candidate is found to have willfully suppressed any material information, he/she will be liable to removal from service and such other action as Government may deem necessary.

5. If Shri/Kumari Dorejee Khandu Thangon accepts the offer on the above terms, he/she fails to report for duty to the AO SSB Tezu on or before 15.11.1984. If he/she fails to report for duty by the prescribed date, the offer will be treated as cancelled.

6. Within 7 days of his/her joining, he/she would be required to apply for Government quarter (where applicable).

7. No travelling allowance will be allowed for joining the appointment.

[Signature]
12.10.84

DIVISIONAL ORGANISER
ARUNACHAL PRADESH DIVISION,
TEZPUR.

To

Shri/Mrs Dorejee Khandu Thangon
C/O. A.O. Boodila

.....

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No. 6/22/95-Do II
 Government of India
 Cabinet Secretariat
 Bikaner House (Annexe)
 New Delhi-110011

Dated, the:

11/4/97

MEMORANDUM

President is pleased to offer Dr. **Bidhan Rana**
 an appointment to the temporary
 post of the Medical Officer (Homeo) in the SSB on a pay of Rs.2200/-
 per month in the pay scale of Rs.2200-75-2800-EB-100-4000/- on the
 basis of the following terms:-

- i) The post is temporary and he/she will be on probation for a period of two years. The period of probation may, if the controlling authority deems fit, be extended or curtailed but such extension/curtailment shall not exceed one year. His/Her permanent appointment to the post if and when it is made permanent; however, will depend on various factors governing permanent appointment to such posts in force at the time, and will not confer on him the title on permanency from the date of post if made permanent.
 - ii) The appointment may be terminated at any time by a months notice given either side viz. the appointed OR the appointing authority without assigning any reasons. The appointing authority, however, reserve the right of terminating the services of the appointee forthwith OR before the expiration of the stipulated period of notice by making payment to him/her of a sum equivalent to the pay and allowances for the period of notice OR the unexpired portion thereof.
 - iii) The appointment carries with it the liability to serve in any part of India.
 - iv) While serving in the SSB, he/she shall be completely debarred from private practice.
 - v) No application for higher education OR appointment to some other department will be entertained before completion of two years of service in this organisations.
 - vi) Other conditions of service will be governed by the relevant rules and order in force from time to time.
2. The appointment will be further subject to:
- i) Production of certificate of fitness from the competent authority (viz., Medical Board). This will not be applicable in case he has already been medically examined.
 - ii) Submission of marital declaration in the prescribed form and in the event of candidate having more than one wife/husband living, the appointment will be subject to his/her being exempted from the enforcement of the requirement in this behalf.

Contd.

*Attested -
 Wapindan
 Advocate*

- 29
- iii) Taking an oath of allegiance/faithfulness to the Constitution of India (OR making of a solemn affirmation) to that effect in the prescribed form.
 - iv) Production of degree/diploma/certificates of educational and other technical qualification.
 - v) Production of original certificate of age.
 - vi) Production of certificate in the prescribed form in support of candidates claim for belonging to a Schedule Caste or Tribe/Anglo Indian community.
 - vii) Production of discharge certificate from the previous employment, if any.

3. It may please be stated whether the candidate is serving or is under obligation to serve another Central Government department or State Government or a public authority.

4. If any declaration given or information furnished by the candidate proved to be false or if the candidate is found to have wilfully suppressed any material/information, he/she will be liable to removal from service and such other action as Government may deem necessary.

5. If Dr. Bidhan Rana..... accepts the offer on the above terms he/she shall report to the Divisional..... Organiser, SSB, A.P. Division, Itanagar.... within one month from the date of issue of this Memorandum.

6. No travelling allowance will be allowed for joining the appointment. However, the candidate appointed to the in North Eastern Region is entitled for ordinary Bus fare/2nd Class rail fare for road/rail journey.

P.N. Thakur

Encl:-One.

(P.N. THAKUR)
DIRECTOR TO THE GOVERNMENT OF INDIA

To

Dr. Bidhan Rana,

P.O. Kalla Central Hospital Asansol,

Distt. Burdwan (West Bengal)-713340.

Copy forwarded to :-

- 1. The Director, SSB, Block-V(East), R.K. Puram, N.W Delhi.
- 2. Director, of Accounts, Cabinet Secretariat, Block No. IX(East), R.K. Puram, N.W Delhi.
- 3. The Divisional Organiser, SSB, A.P. Division, Itanagar.
- 4. Office Order File.

RSD

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

New Delhi, the 14th Dec '83

OFFICE MEMORANDUM

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

The need for attracting and retaining the services of competent officers for service in the North Eastern Region comprising the States of Assam, 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 Administrative Reforms, to review the existing allowances & Administrative Refors, to review the existing allowances and facilities admissible to the various categories of Civilian Control Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows :-

i) Tenure of posting/deputation.

x x x x x x x

ii) Weight-age for Central deputation/training abroad and special mention in confidential Records.

x x x x x x x

iii) Special (Duty) Allowance :

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

Contd..

*Attested
Dy Secy
F. & A.*

*Attested
Wapshulan
Advocate*

be eligible for this Special (Duty) Allowance. ~~xxxxxx~~
Special (Duty) Allowance will be in addition to any
special pay and pre 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. Soecial
Allowance like Special Compensatory (Remote Locality)
Allowance, Construction Allowance and Project Allowance
will be drawn separately.

xxxxxxx

xxxxxxxxx

xxxxxxxxxxx

xxxxxxxxxxx

xxxxxxxxxxx

Sd/- S.C. MAHALIK
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Adm. Secy
Adm. Secy
Adm. Secy

CABINET SECRETARIAT
SOUTH BLOCK

SECRET

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

In continuation of this Secretariat's UD Note of even number dated 9.4.84, on the subject mentioned above, the points raised by the Director of Accounts during discussions with JS(SR) on 19.4.84, are clarified as under:-

- (a) The Dte. General of Security (Secretarial) Service Rules 1975 provide that members of the Service shall be required to work in any of the units under the DG(S). Hence the officers and staff holding Posts included in the DGS (Secretarial) Service by any method of recruitment provided in the Rules may be treated to have All India Transfer liability and eligible for Special Duty Allowance granted under the Min. of Finance orders dated 14.12.1983.
- (b) In respect of the categories of employees of DG(S) taken on deputation or recruited locally serving in North-Eastern region, Special Duty Allowance will be admissible if there is a specific provision in the service Rules or Recruitment Rules pertaining to them that they shall be required to work in any establishment of the SSB or other organisations under the DG(S).

Sd/-

(G.P. CHADHA)
DIRECTOR (SR)

DACS (Shri N.C. Roy Choudhury, Director of Accounts)
Cab. Sectt's DO No. 7/47/84-EA.I, dated 23.4.84.

Copy forwarded to 1. Director (Planning), DGS New Delhi, for information.

Sd/-

(G.P. CHADHA)
DIRECTOR (SR)

No. 14(11)/Coord/84
Directorate General of Security
Coordination Coll.

Dt. the 28.4.84

Copy forwarded for information and necessary action.

AD(EA)SSB/AD(A)ARC
AD(A) SFF/CIOA.

SECTION OFFICER (COORD)

2y forwarded to all Ao. and Comd. Gcs (J)-
Dim.

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. 20014/3/83-E.IV dated 14.12.1983 and 20.4.1987 read with O.M. No. 20014/16/86-E.IV/E.II (b) dated 1.12.1988 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 N.E. 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. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowances' 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 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.

Contd...

Asst. Secy.
Cdr.
Adv.

Attested
Advocate

4. Some employees working in the N.E. Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment 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/Departments 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) upheld the submissions of the Government of India that Central Government Civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The Apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

Contd..

*Approved
C.A. Adv.*

- 29 -

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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 Comptroller and Auditor General of India.

10. Hindi version of this OM is enclosed.

Sd/- C. Balachandran
Under Secy to the Government of India

To

All/Ministries/Departments of the Govt. of India, etc.
Copy (with spare copies) to C&AG, UPSC etc. as per standard endorsement list.

*Affected
Rule
B.M.*

From Shri A Chandra Sekhar, Additional Secretary (S.R.)
(Cab. Sectt. U.O No. 7/47/84-NG I dated 17.7.85 (Cabinet Sectt.)).

KIKET

RIKET HOUSE (Annexure) is appended below :

CABINET SECRETARIAT

BIKANER HOUSE (ANNEXURE).

Sub : Allowance and facilities for civilian employees of Central Govt. serving in the States and Union Territories of North Eastern Region Improvement thereof.

Director of Accounts may please refer to this of Secretariates U.O./even No. dated 28.9.84 under which certain clarification were issued regarding drawal of special duty allowance.

2. The matter was further examined in consultation with the Ministry of Finance and the following clarifications are issued.

Group C employees recruited locally in the North Eastern Region, but who liable to serve anywhere, will be eligible for special duty allowance though may not have been transferred outside that region since their joining the service due to Administrative reasons.

3. In view of the above position Directorate of Accounts may continue to pay the special duty allowance to Group C employees mentioned above. In case any recoveries have been made from them on the basis of the earlier clarification issued on the 28.9.84 may be paid back to them.

Sd/- A.Chandra Sekhar
Addl. Secretary (S.R.)

Handwritten:
A. Chandra Sekhar
(Sd/-)
17/7/85

NO. PF/AS/99-2001/01
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
O/O THE DIVISIONAL ORGANISER
SSB: A.P. DIVISION: ITANAGAR
ARUNACHAL PRADESH - 791 111

DATED: 25/7/2001

To

The Sr. Assistant Director of Accounts,
GED-II Section, (SSB)
O/o the DACS, Level-VI,
East Block - IX, R.K. Puram,
New Delhi - 110066

Sub: Recovery of Special Duty Allowance (SDA)

Sir,

Kindly ref. to your D.D. forwarding memo No.P-1(V)/DD/CHEQUE-II/001143 dtd. 11/7/01 sending therewith the pay for the month of July/01. It appears that over Rs.8,000/- has been recovered from my salary for the month of July/01, most probably, being recovery of SDA as I have not yet received the pay slip to ascertain the exact cause of recovery.

In this context, I am to submit herewith that :-

- (i) I have never ever asked for payment of SDA to me nor it is my fault that I have not been transferred outside N.E. Region. It is DACS which paid me SDA as per admissibility.
- (ii) I understand the compulsion of DACS in executing the recovery. But recovery of such a large amount from each month's pay is perhaps inhuman as this step will definitely let myself and my family to starve not to speak of supporting children in higher education.

It is, therefore, requested that the recovery be made in the same manner as had been paid to me or @ Rs.2000/- per month. I hope DACS will well appreciate my submission and act accordingly.

Yours faithfully,

(ANANDA SAIKIA)
JT. AREA ORGANISER
DIV.HQR:SSB: A.P. DIVN.
I T A N A G A R - 791 111

Copy to:-

The Director General, SSB, R.K. Puram, New Delhi -66 through proper channel for favour of information and necessary action please.

(ANANDA SAIKIA)
JT. AREA ORGANISER
DIV.HQR:SSB: A.P. DIVN.
I T A N A G A R - 791 111
(I.R.L. A/C NO. 2442)

25/7/01

OK

To

The Director Of Accounts,
Cabinet Sectt., East Block-IX,
Level-6 R.K. Puram, New Delhi-66.

Sub : Payment of SDA w.e.f. 1/2000.

Sir,

Please refer to the DACS letter No. GED-II/SSB-DOAP/
2806/2000-01/747 dated 2.1.2000 on the above mentioned
subject.

2. In this connection I am to state that overpayment for
an amount of Rs. 56758/- was made to me w.e.f. 20.9.94 to
31.10.2000 i.e. approximately @Rs. 767/- p.m. and now the said
amount is having recovered from me at 10 equal instalments
@Rs. 6,000/- p.m. The instalments fixed for recovery of the
said amount is very much on the higher side and as a result
of which I am facing acute financial hardship. I am having
sufficient service as I will be superannuating during January
2022, the overpayment of SDA may therefore kindly be recovered
from my pay and allowances at easy instalments preferably
@Rs. 1,500/- p.m. without effecting financial hardship to me.

Yours faithfully,

(D.K. THONGON)
SUB-AREA ORGANISER (HQ)
DIVN. HQRS., SSB, ITANAGAR.
IRLA NO. 2806.

.....

Attested
by
Advocate

To,

The Director of Accounts,
Cabinet Secretariat, SSB Wing
New Delhi-66

SUB:- RECOVERY OF SDA FROM SALARY.

Sir,

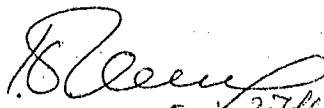
Most respectfully it is to inform you that a sum of Rs. 4000/- (Rupees four thousand) only have been deducted monthly from my salary may be as SDA ^{recovery} ~~deduction~~, though there is no mention in my pay slip.

After ^{recovery} ~~deduction~~ of said amount I have getting very difficulties to run my family with less amount. I have to further mention that it is my first posting in SSB from outside the NE Region.

It is therefore requested that the rate of recovery may be reduced to Rs. 2,000/- (Rupees two thousand) only from the present recovery rate of Rs. 4,000/-.

Thanking you.

Yours faithfully,



(Dr. B. Rana)

Medical Officer (Homoeo)
Divl Hqr, SSB, Itanagar
Arunachal Pradesh

Date: 27/6/2001
Station: Itanagar

Attest
W. Phukan
Advo. Cal.

To

The Divisional Organiser, SSB
A.P. Division, Itanagar.

Dated, Itanagar the 13th October/2000

Sub: Recovery of S.D.A.

Ref:

D.O., NAD memo No.V/4/ACCTT/85/99/9071
dated 25.9.2000 regarding recovery of
SDA in r/o Sh.P.K.Bora, FO(T).

Sir,

I have the honour to inform you that Divisional Organiser, NAD has informed this office vide his memo under reference that a sum of Rs.47,723/- being the irregular payment of Spl.Duty Allowance is to be recovered from my pay immediately.

Sir, I have been transferred from NA Divn and has joined in this office on 13/7/2000. Here at A P Division, Itanagar I am very much monetarily in loss than that of N.A. Division. Over and above I have to run two establishments at Tezpur and at Itanagar. Besides, my 2 sons and last daughter are studying at University, college and Central School.

Sir, if the SDA recovery deduction has to be made from my pay, it will be a hard nut to me to run the family.

It is, therefore, your goodself is cordially requested to kindly consider my case and necessary order may be issued to stop recovery of SDA from my pay till the decision of a pending Court case filed by some of the Divl.Hqrs., staff, in the equal footing.

Yours faithfully,

Dated:

[Signature]
(P.K. Bora)
FO(T), SSB, Div. Hqrs.
Itanagar, AP Divn..

*Attested
W. Phukan
Advocate*

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मंत्रिमंडल सचिवालय
CABINET SECRETARIAT
कार्यालय लेखा निदेशक
OFFICE OF THE DIRECTOR OF ACCOUNTS
मंत्रिमंडल सचिवालय
CABINET SECRETARIAT
पूर्वी खंड-9, सतह-7
EAST BLOCK No. IX, LEVEL-7
रामा कृष्णा पुरम
R.K. PURAM

नई दिल्ली-66

New Delhi-66 the

नं०

No. GED-II/SSB-DO AP/2806/2000-01/747

To

Sh.D.K.Thongon, SAO(HQ),
SSB, D.O. A.P.,
Itanagar.

2 JAN 2001

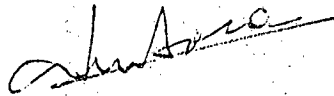
Sub:- Payment of DA w.e.f. 1/2000.

Sir,

Refer your letter dt. 22.11.2000 on the above subject it is stated that the entire amount has been adjusted against the total recovery of SDA amounting to Rs.56758/- w.e.f. 20.9.94 to 31.10.2000.

The entire amount is being recovered in ten instalment. Nine instalments of Rs.6,000/- and 10th will be of Rs.2758/-.

Yours faithfully,



(N.M.BOSE)

ASSTT.DIRECTOR OF ACCOUNTS.

Attested
by
Advocate

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4178
6000
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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order : This the 28th day of July, 1998.

Shri G.L.Sanglyine, Administrative Member.

Original Application No. 45 of 1998.

Shri Ajitangshu Deb and 16 others.

Original Application No. 90 of 1998.

Shri S.K.Benerjee and 4 others.

All the applicants are working under
Commander, Base Hospital No.151, Guwahati . . . Applicants

- Versus -

1. Union of India
through Secretary to the
Government of India,
Ministry of Defence,
New Delhi.2. Controller of Defence,
Accounts Area,
Accounts Officer,
Shillong.3. Commandar,
Base Hospital No. 151,
Govt. of India,
Basistha, Guwahati.

. . . Respondents

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

ORDERG.L.SANGLYINE, ADMN.MEMBER,

These two Original Applications involve similar facts and law and therefore they are disposed of by this common order for convenience.

2. Seventeen applicants in O.A.No.45/98 and five applicants in O.A.No.90/98 are Group 'C' and Group 'D' employees, as the case may be, in the Base Hospital No.151, Basistha, Guwahati. They were allowed to draw Special(Duty) Allowance (SDA for short) in terms of Office Memoranda issued from time to time with regard to payment of SDA. But from July 1996 the payment of SDA was stopped. Further recovery of SDA paid from 20.9.1996

contd.. 2

*Attested
Bisphuloo
Advocate*

to 30.6.1996 was ordered to be recovered in instalments with effect from the pay bill of February 1998 in terms of O.M.No. 11(3)/95-E-II(8) dated 12.1.1996 issued by the Ministry of Finance, Department of Expenditure and made applicable to the employees in the Ministry of Defence by Defence Directorate No. 4(19)/83-D(Civ-I) Vol.II dated 18.1.1996. Thereafter the applicants submitted the Original Applications disputing their recovery of the SDA paid. The respondents have submitted written statement.

3. Mr M.Chanda, the learned counsel for the applicants, submitted that consequent to the order of the Hon'ble Supreme Court dated 20.9.1994 in Civil Appeal No. 3251 of 1993 (Union of India & Ors. vs. S.Vijayakumar & Ors.) the Ministry of Finance, Department of Expenditure issued an Office Memorandum dated 12.1.1996 and para 7 of the O.M. is as below :

"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 20/09/94 (which also include those cases in respect of which the allowance was pertaining to the period prior to 20/09/94, but payments were made after this date i.e. 20.9.94) will be recovered."

The respondents have purported to recover the amount of SDA paid to the applicants in terms of para 7(ii) above. The respondents had not however acted upon the office Memorandum or on the letter dated 18.1.1996. They continued to pay SDA to the applicants upto June 1996. Thereafter no action to recover the amount of SDA paid was taken till February 1998. It was not the fault of the applicants to receive the SDA as it was paid to them voluntarily by the respondents upto

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June 1996. In fact by the action of the respondents the applicants were led to believe that they were entitled to receive the SDA. Relying on the decision of the Hon'ble Supreme Court in Shyam Babu Verma and others vs. Union of India and others reported in (1994) 27 ATC 121 he submitted that they had received the amount in such situation and the amount already paid to them should not be recovered. Suddenly and without giving the applicants any notice the respondents had effected recovery of the SDA received. He submitted that the recovery is therefore in violation of principle of natural justice. According to him the respondents had not acted fairly as the applicants were not informed of the action taken against them before the action was taken and therefore the respondents cannot in law make recovery of the amount of SDA already paid to the applicants. In this connection he places reliance on K.I. Sephard & Ors. vs. Union of India & Ors. reported in 1988(1) S.L.J. 105 and Bhagwan Shukla vs. Union of India & Ors. reported in (1994) 6 SCC 154. Mr Chanda further submitted that in the matter of recovery of SDA paid the underlying principle of the decision of the Supreme Court in S. Vijayakumar is that the amount of SDA paid needs not be recovered. He submitted that this is further reiterated by the Hon'ble Supreme Court in the order dated 7.9.1995 in Civil Appeal No. 8208-8213 of 1995 in Union of India & Ors. vs. Geological Survey of India Employees' Association & Ors. in which it was directed that the appellant will not be entitled to recover any part of payment of Special Duty Allowance already made to the concerned employees. This Tribunal also, he submitted, had held in the order dated 26.6.1998 in O.A.No. 97 of 1997 and series of O.As that amount of SDA already paid shall not be recovered. Mr B.C. Pathak, the learned Addl. C.G.S.C opposed the contention of Mr Chanda. According to him the applicants are

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ineligible to receive SDA. It is a matter of policy to recover the amount of SDA paid to the ineligible persons. Therefore, there is no bar to recover the amount wrongly paid. He further submitted that payment of SDA is not a condition of service and therefore there is no violation of natural justice if recovery of amount wrongly paid is made without issuing notice. However, in the present case respondents had issued notice No.453/3/Civ Est/Coy/98 dated 13.2.1998 before recovery in mail by endorsing copy to the General Secretary, N.E. Defence Workers Co-ordination Committee, Guwahati for his information and necessary action.

4. I have heard counsel of both sides. In both the O.A.s the applicants are local residents of North Eastern Region and recruited locally to work in the region. In such situation they are not eligible to benefit of SDA in view of the decision dated 20.9.1994 of the Hon'ble Supreme Court mentioned above. However, in these cases they continued to be paid SDA till it was stopped in July 1996. The decision to recover the amount paid after 20.9.1994 was taken by O.M. dated 12.1.1996 and adopted by the Ministry of Defence, respondent No.1 on 18.4.1996. No recovery was however made till February 1998. In February 1998 the recovery was initiated without giving any notice to the applicants regarding the action proposed to be taken against them by the respondents. The letter dated 13.2.1998 referred to by Mr Pathak is not addressed to any of the applicants and there is no indication that the contents of the above letter were brought to the notice of the applicants. The respondents had not therefore acted fairly and reasonably in making recovery of the amount of SDA paid to the applicants between 20.9.1994 and 30.6.1996. The recovery therefore is not sustainable in law. Moreover, in view of the facts and circumstances relating

contd.. 5

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to the payment of SDA to the applicants as mentioned above for the period and the decisions relied on by the learned counsel for the applicants. I am of the view that the respondents should not recover the amount of SDA already paid to the applicants. Therefore, in the facts and circumstances of the case of the applicants, the action of the respondents to recover the amount of SDA paid to them for the period from 20.9.1994 to 30.6.1996 is quashed and set aside. The respondents are directed to refund the amount of SDA if any recovered from the applicants within a period of 2 months from the date of receipt of this order.

The applications are disposed of. No order as to costs.

Sd/ MEMBER (Adm)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.97 of 1997 and others

Date of decision: This the 26th day of June 1998

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

1. O.A.No.97 of 1997
All India Junior Engineers Association & others, CPWD,
Guwahati.
2. O.A.No.104 of 1997
All India Engineering Drawing Staff
Association and others,
C.P.W.D., Guwahati.
3. O.A.No.106 of 1997
C.P.W.D. Class IV Staff Union,
Guwahati Branch, Guwahati.
4. O.A.No.109 of 1997
C.P.W.D. Staff Association,
Guwahati Branch, Guwahati.
5. O.A.No.110 of 1997
C.P.W.D. Mazdoor Union,
Guwahati Branch, Guwahati.
6. O.A.No.244 of 1997
Shri M.C. Baruah and 289 others
7. O.A.No.24 of 1998
Shri H.K. Das and 35 others
8. O.A.No.35 of 1998
Shri R.R. Thakur and 84 others
9. O.A.No.75 of 1998
Shri A.K. Gohain and 5 others

By Advocates Mr J.L. Sarkar, Mr B.K. Sharma,
Mr M. Chanda, Mr A. Ahmed, Mr S. Sarma and
Ms M.D. Goswami.Applicants

- versus -

Union of India and others

By Advocates Mr S. Ali, Sr. C.G.S.C. and
Mr A.K. Choudhury, Addl. C.G.S.C.Respondents

Attested
W. S. Phukan
Advocate

O R D E R

DARUAH.J. (V.C.)

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All the above applications relate to Special (Duty) Allowance (SDA for short). As the applications involve common questions of law and similar facts I propose to dispose of all the applications by this common order.

2. The applicants claim that they are entitled to SDA as per the Office Memorandum No.20014/3/83.E-IV dated 14.12.1983, but the same was denied to them. Some of the employees, situated similarly, approached this Tribunal praying, inter alia, for payment of SDA. This Tribunal gave direction to the respondents to pay SDA to those applicants. Though the present applicants did not approach this Tribunal and there was occasion to give such direction to the respondents for payment of SDA to the present applicants. However, in view of the order passed by this Tribunal in the earlier cases the respondents continued to pay SDA to the present applicants also. Meanwhile, the respondents challenged the earlier order of this Tribunal before the Apex Court by filing Civil Appeal No.1572 of 1997 and other Civil Appeals. The Apex Court disposed of all the above Civil Appeals holding, inter alia, that persons who belong to the North Eastern Region were not entitled to SDA. The present applicants are working in various departments under the Central Government, but it is not very clearly known whether all the applicants were recruited outside the North Eastern Region and have come on transfer. By the strength of the earlier order of this Tribunal, even

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those persons who are not entitled to SDA also continued to draw SDA. However, as per the Apex Court's decision in aforesaid civil appeals those persons who belong to the North Eastern Region are not entitled to SDA. In the said civil appeals the Apex Court also held that the amount of SDA which has already been paid to the employees should not be recovered.

3. I have heard both sides. After hearing the learned counsel for the parties and following the decision of the Apex Court in Civil Appeal No.1572 of 1997 and others, I direct the respondents to first determine whether the present applicants are entitled to SDA or not as per the decision of the Apex Court. If after examination it is found that the applicants or some of them are not entitled to SDA they shall not be paid SDA. However, the amount already paid to them shall not be recovered.

4. With the above observation all the applications are accordingly disposed of. No order as to costs.

SD/-VICECHAIRMAN

COPY

Cabinet Secretariat
EA.I Section

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

The matter was taken up with Ministry of Finance
(Department of Expenditure) and a copy of their
UO.No.11(3)/85-EA-II(B) dated 7th May 1997 is enclosed for
information and further necessary action.

(Jagdish Chandra)
Desk Officer

1. Deputy Director (B) ARC w.r.t. his
U.O.No.ARC/Coord./16(3)/94 dated 29/10/1996.

2. AD (EA) SSB w.r.t. UO.No. 42/SSB/A1/92(61)-1855
dated 9/ /1996.

Cabinet Secretariat U.O.No.20/3/96-EA.1-1040 dated 10 JUNE 1997

*Attested
K. B. Phulekar
Advocate*

~~-35- Appendix-III~~
45 Ann. XII contd.
Ministry of Finance
Department of Expenditure
E.II(B) Branch

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

Cabinet Secretariat may please refer to their D.O. letter No.20/3/96-EA-I-645 dated 8th April 1997 on the above mentioned subject and to say that for the purpose of sanctioning of Special Duty Allowance to Central Government Civilian employees, that All India transfer liability of the members of any Service/Cadre or incumbent of any posts/group of posts has to be determined by applying tests 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 based on a common seniority list for the service/cadre/posts as a whole mere clause in the appointment order (as in done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance.

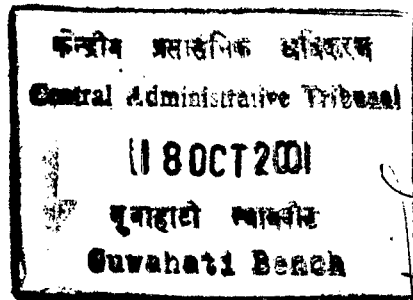
2. Therefore, Cabinet Secretariat may determine in each case whether the employees locally recruited in NE Region, who rejoin NE Region on their transfer to NE Region from outside and the Central Govt. Civilian employees who are posted on first appointment from outside NE region to NE region, fulfill the above said conditions of all India transfer liability, or not. If they fulfill all the conditions of all India transfer liability and are posted from outside NE region to NE region then they are entitled to SDA, otherwise not. However, if further advice is needed on any particular case, the same may be referred to this Ministry alongwith the views of IFU thereon.

sd/-

(P.S.Walia)

For Under Secretary to the Govt. of India.

Cop.Secy. Bikaner House Annex. (Sh. P.N. Thakur Director
MOF (Exp)'s U.O.No.11(3)/85 EA-II(B) dt.7th May 1997



(B. C. Pathak) 16/10/01
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench: Guwahati

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Divisional Organiser
SSB A.P. Division 52
Itanagar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

IN THE MATTER OF :- O.A No. 346/2001

Shri Ananda Saikia & others -Petitioners

Versus

Union of India & others -Respondents

And in the matter of

Written statement on behalf of the respondents

I, Shri M.L. Chaudhuri, presently working as Divisional Organiser Special Service Bureau, Arunachal Pradesh Division, Divisional Head Quarters, Itanagar aged about 55 years do hereby solemnly affirm and say as follows :-

1. That I am competent to file this written statement, on behalf of the respondents No. 1 to 4 as authorised, and I swear the same. I am also acquainted with the facts and circumstances of the case. The copies of original application served upon the

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Divisional Officer
SSB A.P. Division
Manager


respondents have been gone through and understood the contents thereof save and except those, what has been specifically admitted in this written statement, all averments and submissions made in the O.A may be deemed to have been denied by the declarant.

2. That with regard to the averments made by the petitioners of the O.A, this declarant begs to submit that no illegal and ultravires action has been taken by the respondents by recovering the payment of special duty allowance from the inadmissible employees.

3. That with regard to the averments made by the petitioners vide para 4 (I) and (II) this declarant has no comments as the same are matter of record.


4. That with regard to the averments made by the petitioners vide para 4 (III) this declarant begs to submit that the position with regard to the recruitment of the applicants have since been reviewed on the basis of Cabinet Secretariat U.O No. 20/12/99-EA-I-1799 dated 02.05.2000 (Annexure R-1), [which clearly indicates that a person belonging to outside N.E Region but appointed on first appointment after

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Divisional Officer
SSB A.P. Division
Itanagar

selection through all India direct recruitment basis having a common / centralised seniority list and all India transfer liability are not entitled to drawal of SDA. In the instant case applicant No. 3 was posted to the N.E Region on initial appointment which constitute that he was neither employed nor transferred from outside the N.E Region to the N.E Region and therefore, he is not entitled to grant of SDA in terms of judgment of Apex Court dated 20.09.94, wherein it has been clearly indicated that grant of SDA would paid to the civilian employees who have all India transferred liability and posted to N.E Region from outside this region on transfer, grant of SDA to such category of employee would not be violative of Article 14 of the Constitution. With regard to the position of other petitioners of the O.A, the declarant begs to submit that though the applicants fulfill the eligibility conditions of All India transfer liability yet are not entitled to the grant of special duty allowance since they hail from N.E Region, recruited in N.E Region and had never been posted out of N.E Region, in true spirit of the judgment of Hon'ble Supreme Court pronounced on

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Divisional Officer
SSB A.P. Division
Itanagar

20.09.1994 followed by Ministry Of Finance clarification vide their O.M dated 12.01.1996 and Cabinet Secretariat U.O No. 20/12/99-EA-I-1799 dated 02.05.2000. The payment of special duty allowance to the non entitled Officers has to be regulated accordingly.

5. That with regard to the averments made by the petitioner vide para 4 (V) this declarant begs to submit that the position as enumerated by the petitioner have since been reviewed vide Cabinet Secretariat U.O dated 02.05.2000.

6. That with regard to the averments made by the petitioner vide para 4 (VI) & (VII) it is submitted that :

(a) Govt. of India, Ministry of Finance, Department of Expenditure vide their O.M No. 20014/2/83-E.IV dated 14.12.1983 allowed special duty allowance to Central Government Civilian Employees who have All India transfer liability based on the recommendation of a Committee set up by the

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[Signature]
Director
SSB Division
Imphal

Govt. of India. Based on the decision, the respondents were allowed special duty allowance on the analogy to the employees having All India transfer liability to the applicants, including all other SSB employees posted in N.E Region.

Copy of Ministry of Finance O.M. No. 20014/2/83-E.IV dated 14.12.1983 is attached at Appendix (R-2)

(b) Based on the Hon'ble Supreme Court judgment dated 20.09.1994 (In Civil appeal No.3251 of 1993) the Government of India, Ministry of Finance, Department of Expenditure vide O.M No. 11(3)/95-E.II(B) dated 12.01.96 incorporated the provision of above judgment as under :

"Central Government civilian employees who have All India transfer liability are entitled to the grant of Special Duty Allowance, on being posted to any station in the N.E Region from the out side the region and special duty allowance would not be payable merely because of the clause in the appointment order to All India transfer liability. The Apex Court further

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Divisional Engineer
SSB A.P. Division
Itanagar

added that the Grant of this allowance only to the Officers transferred from out side this region would not be violative of the provision contained in Article 14 of the Constitutions as well as the equal pay doctrine."


Copy of the judgment of the Hon'ble Supreme Court delivered on 20.09.94 (In Civil appeal No. 3251 of 1993) Union of India Vrs. S. Vijay Kumar and others, 1995 (I) SLP 139 (SC) is enclosed as Appendix (R-3).

Further, the Ministry of Finance decided that the amount already paid on account of Special duty allowance to the ineligible persons on or before 20.09.94 will waived off and payments made after this date will be recovered.

Copy to Govt. of India, Ministry of Finance, Dept. of Expenditure O.M. No. 11/(3)/95-E.II(B) dated 12.01.96 is enclosed as Appendix (R-4).

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Divisional Officer
SSB, A.P. L. Nagar
Itanagar

(c) That the Govt. Of India, Ministry of Finance, Dept. of Expenditure vide their U.O No. 11(3)/85-E-II(B) dated 07.05.97 clarified that the employees who fulfill all the conditions of All India transfer liability and are posted from outside N.E Region to N.E Region, are entitled to special duty allowance otherwise not.

Copy of Govt. Of India, Ministry of Finance, Dept. of Expenditure U.O No. 11(3)/85-E-II(B) dated 07.05.97 is enclosed as Appendix (R-5).

(d) That the Hon'ble Supreme Court in another judgment on 25.10.96 in petition No. 794 of 1996 titled Sub Inspector Sadan Kr. Goswami and others Vrs. Union of India and others held that "The Judgment of this Court would indicate that it did not make any distinction between Group 'C' & 'D' and Group 'A' & 'B' Officers. All are Governed by the law under Article 141 "

Copy judgment of the Hon'ble Supreme Court is enclosed as Appendix (R-6).

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Divisional Officer
SSB A.P. Division
Itanagar

(e) That on careful scrutiny of the Cabinet Secretariat U.O No. 7/47/84-EA.I dated 11.04.96, it would be seen that a proposal for waiver of payment of special duty allowance made to locally recruited employees of Group 'C' & 'D' of DGS and R&AW serving in the N.E Region was mooted for the consideration of the Ministry of Finance on which the Ministry has conveyed decision based on the recent judgement dated 20.09.94 pronounced by the Hon'ble Supreme Court and accordingly necessary instruction was issued for regulating payment of Special Duty Allowance to Group 'C' and 'D' employees. There has not been made any distinction between Group 'A', 'B', 'C' or 'D' for grant of the Special Duty Allowance.

Copy of Cabinet Sectt. U.O. No. 7/47/84 -EA-I dated 11.4.96 is enclosed as appendix-(R-7).

That keeping in view of the judgement of the Apex court and decisions of the Ministry of Finance, the petitioners are ineligible for the grant of Special Duty allowance for merely having offer of appointment, since the petitioners hail from N.E. region, recruited

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Divisional Officer
SSB A.P. Division
Itanagar

in the region and never been posted out of the region, therefore, the respondents has rightly stopped payment of Special Duty Allowance to the petitioners.

7. That with regard to the averments made by the petitioners vide para-4(VIII, IX, X, XI, XII and XIII) the declarant begs to submit that the allowances and facilities provided in the office Memorandum dated 14.12.83 were with a view to accepting and retaining of the services of the competent officers for serving in the North Eastern region. Now, the applicants of the O.A. recruited though on the basis of All India level selection list and posted to the North Eastern region initially, they do not possess any competency/experience in service hence accordingly to the basic principle for granting S.D.A. they being purely raw in experience and competency, not entitled for S.D.A at this stage. Hence, the claim of the applicant is devoid of merit accordingly to the fundamental criteria for grant of the said additional allowance. The aforesaid position has since been reviewed on the basis of Cab. Sect. U.O. No. 20/12/99-EA-I-1799 dated 02.05.2000 Annexure (R-1) which clearly indicates that a person belonging to

outside N.E Region but appointed on first appointment posted in N.E Region after selection through All India Direct Recruitment basis having a common / centralised seniority list and having All India transfer liability are not entitled to drawal of SDA.

In the instant case the applicant were posted in N.E Region on initial appointment which constitute that they were neither employed nor transferred from outside the N.E Region to N.E Region and therefore, they are not entitled to grant of SDA in terms of judgment of Apex Court dated 20.09.94, wherein it has been clearly indicated that Grant of SDA would be paid to the Civilian employees who have All India transfer liability and posted to N.E Region from outside this region on transfer, grant of SDA to such category of employees would not be violative of Article 141 of the Constitution.

On the basis of the order of Cab. Sectt. dated 10.06.97 SDA was paid to the applicant, but the said payment being irregular and have to be recovered as per the revised / amended instructions of Cab. Sectt. issued vide their U.O dated 02.05.2000 (Annexure R-I).

(46)
Divisional Officer
SSB A.P. Division
Itanagar

In the instant case the applicants were posted in N.E Region on initial appointment which constituted that they were not transferred from outside the N.E Region to N.E Region, and moreover they are not competent / experienced as contemplated in the O.M dated 14.12.83 under the aforesaid position stoppage for drawal of SDA in respect of the applicants as well as the order for recovery of the amount already paid was not illegal and arbitrary. The recovery of irregular payment of SDA made to the applicants can not be termed as violation of the principles of natural justice as already the notice of eligibility conditions of SDA were circulated through the notice board of the office with a view that every employee who is receiving payment of irregular SDA can made up his mind and calculate out their eligibility conditions. Undoubtedly the applicants were in fault in receiving the irregular payment of SDA.

8. That With regard the statements made by the petitioners vide para-4(XIV) and(XV) this declarant begs to state that the contention of the petitioners is misconstrued, factual position have already been

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Divisional Officer
SSB A.P. Division
Itanagar

enumerated vide aforesaid paras of this statement. Action to stop payment of SDA and also recovery of overpayment made to the petitioners have been ordered in pursuance to the Cabinet Secretariat UO No. 20/12/99-EA-I-1799 dated 2.5.2000, the decision was further taken in consultation with the Ministry of Finance, Deptt. of Expenditure which is in consonance with the judgement pronounced by the Hon'ble Supreme Court on 20.9.94 (in Civil appeal No. 3251/93)

9. That With regard to the statement made by the petitioners vide para-4 (XVI),(XVII),(XVIII) and (XIX) this declarant has no knowledge regarding the decision taken by the Hon'ble CAT bench of Guwahati against OAs No. 45/98, 90/98, 97/97, 104/97, 106/97, 109/97, 244/97, 24/98, 35/98, 75/98 as these cases do not pertain to this Department. However, in an analogous case in OA No. 43/2000 titled Shri Mathuresh Nath and others Versus U.O.I and others, the Hon'ble CAT bench of Guwahati vide their judgement dated 11.1.2001 stated that " the issue raised in this application is no longer Res-integra in view of the judgement of the Supreme Court rendered in Civil appeal No. 3251 of 1993

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Divisional Engineer
SSB A.P. Division
Itanagar

disposed of on 20.9.94 in Union of India and others versus S. Vijoy Kumar and others, reported in (1994) 28 ATC 598. As per the afore mentioned decision, Central Govt. employees who have all India transfer liability are entitled to grant SDA on being posted(emphasis supplied) to any station in the North-Eastern region from outside the region and SDA would not be payable merely because of the clause in the appointment letter relating to all India transfer liability. Consequent thereto, the concerned Ministry issued necessary instructions not to disburse SDA to ineligible persons. There are also a number of like decision rendered by the tribunal as well as the High Court.

In the circumstances there is no scope for directing the respondents to pay SDA to the present applicants. Mr. K.P. Singh, learned counsel for the applicants cited the instance of some persons who are allegedly being paid SDA though they are similarly situated like the present applicants. Assuming that the respondents are paying SDA to ineligible persons contrary to the provisions of law that would not be a ground for giving similar unlawful benefit to the applicants by the Tribunal."


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Divisional Officer
SSB, A.P. Division
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Copy of the judgement dated 11.1.2001 is attached at appendix-(R-8).

10. That With regard to the statements made by the petitioners vide para-5 (I) this declarant begs to state that in view of the position explained in the foregoing paras discontinuation of the payment of SDA and effecting recovery from the ineligible employees was not illegal, arbitrary and unfair as contented by the petitioners and hence, it is not bad in law.

11. That With regard to the averments made by the petitioners vide para-5(II) and (III) this declarant has no comment as the matter has been clearly explained in the foregoing paras which is reiterated here for the sake of brevity. As explained the grounds shown can not sustain in law and hence the application is liable to be dismissed with cost.

12. That with regard to the statement made in para 6 and 7 of the application, the answering respondents have no comments to offer.

(50)

Divisional Organizer
SSB A.P. Division
Itanagar

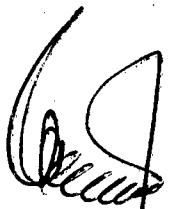
13. That With regard to the relief sought and interim order as prayed for by the petitioners vide para-8 and 9 of the petition this declarant reiterates the submissions made in the foregoing paras of this petition and submits before this Hon'ble Tribunal that the petitioners being ineligible are not entitled for drawal of SDA hence, relief sought by them is bad in law and therefore interim order passed by the Hon'ble Tribunal needs to be reviewed in the context of the judgement of the Apex Court dated 20.9.94. The applicants are not entitled to any relief whatsoever as prayed for and hence the application is liable to be dismissed with cost as devoid of any merit. In the premises aforesaid, it is therefore prayed that your lordship would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall further be placed to dismiss the application with cost.

67

VERIFICATION

I, Shri M.L. Chaudhuri presently working as Divisional Organiser being competent and duly authorise to sign this verification. I do hereby solemnly affirm and states that the statements made in Para 1,2,10,11,12 & 13 are true to my knowledge and belief and those made in the para 3,4,5,6,7,8, & 9 being matter of records are true to my information, derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign the verification in this day 13th day of October, 2001 at Itanagar.


DEPONENT
Divisional Organiser
SSB A.P. Division
Itanagar

COURT CASE
MOST IMMEDIATECabinet Secretariat
(E.A.I Section)

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

SSB Directorate may kindly refer to their UO No.42/SSB/AI/99(18)-2359 dated 31.3.2000 on the subject mentioned above.

2. The points of doubt raised by SSB in their UO No.42/SSB/AI/99(18)-5282 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Department of Expenditure) and clarification to the points of doubt is given as under for information, guidance and necessary action :

i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1995 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.

a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer Liability.

No

b) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.

ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-E.IV dated 14.12.83 and 20.4.87 read with

NO

Contd...2/-...

Section Officer
SSB Manager

12/1/01

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

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

YES

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

YES

v) The MOF, Deptt. of Expr. vide their UO No.11(3)/95-E.II(B) dated 7.6.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. For determination of the admissibility of the SDA to any Central Govt. Civilian employees having All India Transfer Liability will be by applying tests (a) whether recruitment to the Service/Cadre/Post has been made on All India basis (b) whether promotion is also done on the basis of All India Zone of promotion based on common seniority for the service/Cadre/Post as a whole (c) in the case of SSB/DGS, there is a common recruitment system made on All India basis and promotions are also done on the basis of All India Common Seniority basis. Based on the above criteria/ tests all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from NE Region or posted to NE Region from outside the NE Region.

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

Contd...3/-...

CTC

Section Officer
SSE Itanagar

M. K. S.
12/11/01

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

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

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

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

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

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

1. Shri R.S. Bedi, Director, ARC
2. Shri R.P. Kureel, Director, SSB
3. Brig (Retd) G.S. Uban, IG, SFF
4. Shri S.R. Mehra, JD (P&C), DGS
5. Shri Ashok Chaturvedi, JS (Pers), R&AW
6. Shri B.S. Gill, Director of Accounts, DACS
7. Smt. J.M. Menon, Director-Finance (S), Cab. Sectt.
8. Col. K.L. Jaspal, CIO, CIA

Cab. Sectt. UO No. 20/12/99-EX-I-1799

dated 2.5.2000

CTC

Section Officer
SSB, Itanagar

12/10/01

New Delhi, the 14th Deco. 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 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) Weightage for Central Deputation/training abroad
special mention in confidential Records.

Satisfactory performance of duties for the 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.

.....2/-

CTC

Section Officer
Itanagar

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A specific entry shall be made in the C.R. of all rendered a full tenure of service in the North-Eastern 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 percent of basic pay out 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 (Duty) Allowance. Special (Duty) Allowance will be in addition to any Special pay and/ or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such special (Duty) allowance, 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/-
pay upto Rs. 260/-

Rs. 40/- p.m.
15% of basic pay subject to a maximum of Rs. 150/- p.m.

3. Tripura

The rates of the allowance will be as follows:-

(a) Difficult Areas

25% of pay subject to a minimum of Rs. 50/- and a maximum of Rs. 150/- p.m.

(b) Other Areas

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.

There will be no change in the existing rates of Special Compensatory Allowances admissible in the Arunachal Pradesh, Nagaland and Mizoram and the existing rate of Disturbance Allowance admissible in specified areas of Mizoram.

(v) Travelling allowance on first Appointment:

In relaxation of the present rules (S.R. 105) that travelling allowance is not admissible for journeys undertaken in

connection with initial appointment, in case of journeys for taking up initial appointment to a Post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 400 kms. for the Government servant himself are his family will admissible.

(vi) Travelling Allowance for journey on Transfer:

In relaxation of orders below S.R. 116 if on transfer to a station in the North-Eastern region, the family of the Government Servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the Post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost (or) have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. In case the family accompanying the Government servant on transfer, the Government servant will be entitled to the existing admissible travelling allowance including the cost of transportation of the admissible weight of personal effects according to the grade to which the officer belongs, irrespective of the weight of the baggage actually carried. The above provisions will also apply for the return journey on transfer back from the North Eastern Region.

(vii) Road Mileage for transportation of personal effects on transfer:

In relaxation of orders below S.R. 116, for transportation of personal effects on transfer between two different stations in the North-Eastern region, higher rate of allowance admissible for transportation in 'A' Class cities subject to the actual expenditure incurred by the Government Servant will admissible.

(viii) Joining Time with leave:

In case of Government servants proceeding on leave from a place of posting in North-Eastern Region, the period of travel in excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) Leave Travel Concession:

A Government servant who leaves his family behind at the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the leave travel concession once a year from the station of posting in the North-East to his home town or place where the family is residing that in addition the facility for the family

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Section Officer
Imphal

14/10/1

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(restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North eastern region. In case the option is for the latter alternative, the cost of travel for the initial distance (400Kms/150 kms) will not be borne by the officer.

Officers drawing pay of Rs. -2250/- or above, and their families, i.e., spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance/Hostel Subsidy:

Where the children do not accompany the Government Servant to the North-Eastern Region, Children Education Allowance upto class XII will be admissible in respect of Children studying at the last station of posting of the employee concerned or any other station where the children reside, without any restriction of pay drawn by the Government Servant. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

2. The above orders except in sub-para(iv) will also mutatis mutandis apply to Central Government employees posted to Andaman and Nicobar Islands.

3. These orders will take effect from 1st November 1983 and will remain in force for a period of three years upto 31st October, 1986.

4. All existing special allowances, facilities and concessions extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North Eastern Region will be withdrawn from the date of effect of the orders contained in this office memorandum.

5. Separate orders will be issued in respect of other recommendations of the Committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

6. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

Sd/-

(S.D. MAHALIK)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA
All Ministries/Departments of the Government of India.

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To

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Special Duty Allowance in North Eastern Region can be paid only to those who are posted there from outside the region and not to those locally recruited.

Facts: This Special Leave Appeal is against the judgment of the Tribunal which upheld the contention of the respondents/petitioners herein that for purpose of payment of Special Duty Allowance it is not only the staff who reside outside the North Eastern Region who are eligible, but also local residents, for the reason that the latter has also the incidence of All India transfer. The petitioner/respondents contended in this SLP that in order to draw persons from outside the North-Eastern Region, this Allowance was introduced and, therefore, the object sought to be achieved gets frustrated in view of the judgment of the Tribunal and prayed for setting aside the same.

Held: We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor-General for two reasons. The first is that, a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum, dated 22-10-1956, which has been quoted in the memorandum, dated 21-4-1957, 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 in letters even the 1953 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 1/2 years to claim the allowance depending upon the period of service of the incumbent. The 1956 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowances "on posting to any station in the North-Eastern Region". This aspect is made clear beyond doubt by the 1957 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 1953 the subject was mentioned as quoted above is not enough to concede the submission of Dr. Ghosh.

The submission of the respondents that the denial of the allowance to the respondents would violate the equal doctrine is rejected. The ratio was laid in *Reserve Bank of India and others v. State of Madras and others*, [1991] (4) SCC 132 in which an argument has been raised by the learned Additional Solicitor-General in which grant of Special Compensatory Allowance or Bonus Locality Allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at Gauhati Unit was not regarded as violative of Article 14 of the Constitution.

In view of the above, we hold that the respondents were not entitled to the allowance and the impugned judgments of the Tribunal are, therefore, set aside. Even so, in view of the fair stand taken by the Additional Solicitor-General, we state that whatever amount has been paid to the respondents, or for that matter to other similarly situated employees, would not be recovered from them in so far as the allowance is concerned. The appeals are allowed accordingly.

[*Union of India and others v. S. Vijayalaxmi and others*, 1995 (1) 311 137 (SC), date of judgment 20-9-1994]

Civil Appeal No. 3251 of 1993

CTC

Ma Rao
12/10/01

Section Officer
Sri Itanagar

-25- / APPENDIX - B-4 (574)
No. 11(31)/95-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 12th Jan. 1996

OFFICE MEMO ANDHRA

Sub: Special Duty Allowance for civil servants 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 OM No. 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20014/16/86-E.IV/E.II(B) dt. 1.12.88 on the subject mentioned above.

2. The Government of India vide the abovementioned OM dt. 14.12.83 granted certain incentives to the Central Government civilian employees posted to the NE Region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have "All India Transfer Liability".

3. It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the 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 upheld 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/Departments against the Orders of the CAT.

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12/2/01
Section Officer
SSB, Itanagar

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the clause in the appointment order relating to All India Transfer Liability.

6. The Hon'ble Supreme Court in their judgement delivered on 20.9.94 (in Civil Appeal no. 3251 of 1993) upheld the submissions of the Government of India that Central Government civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability.) The apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

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

- i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
- ii) the amount paid on account of SDA to 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 issued in consultation with the Comptroller and Auditor General of India.

10. Hindi version of this OM is enclosed.

(C. Balachandran)

Under Secy to the Govt. of India

All Ministries/Departments of the Govt. of India etc.

Copy (with spare copies) to CAG, UPSC etc. as per standard endorsement list.

-27-1-1-710.F
7/5/97
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APPENDIX-R-58/117
78

Ministry of Finance
Department of Expenditure
E.II(U) Branch

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

Cabinet Secretariat may please refer to their D.O. letter No. 20/3/96-EA-1-645 dated 24th April, 1997 on the above mentioned subject and to say that for the purpose of sanctioning Special Duty Allowance to Central Government Civilian employees, 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 tests 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 based on a common seniority list for the service/cadre/posts as a whole. If such clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance.

The above Cabinet Secretariat may determine in each case whether the employees locally recruited in NE Region, who join NE Region on their transfer to NE region from outside NE Region, or the Central Govt. civilian employees who are posted on first appointment from outside NE region to NE region, fulfil the above said conditions of all India transfer liability, or not. If they fulfil all the conditions of all India transfer liability and are posted from outside NE region to NE region, then they are entitled to SDA, otherwise not. However, if further advice is needed in any particular case, the same may be referred to this Ministry alongwith the views of IFU thereon.

Sd/-

(P.S. Wallia)

For Under Secretary to the Govt. of India.

Encl. Sachin. Nandan House Wagon. (Sh. P. K. Thakur Director)
for (Exp) to U.O. No. 11(3)/95 E-II(8) dt. 7th May 1997.

CTC

Section Officer
SSB, Itanagar

79 28
Cabinet Secretariat
E.A.1 Section

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

This matter was taken up with Ministry of Finance (Department of Expenditure) and a copy of their UO No.11(3)/95-E-II(8) dated 7th May, 1997 is enclosed for information and further necessary action.

(Jagdish C. Nder)
Desk Officer

1. Deputy Director (8) ARC W.r.t. his U.O. No. ARC/Coord./16(3)/94 dated 29/10/1996.

2. AD (CA) SSU W.r.t. UO No. 42/SSU/A1/92 (61)-1055 dated 9/7/1996.

Cabinet Secretariat U.O. No. 20/3/96-EA.1-1040 dated 10 JUN 1997

5755/CS/96 - 29 -
9/12
All communications should be
addressed to the Registrar,
Supreme Court, by designation.
NOT by name
Telegraphic address:—
"SUPREMECO"

APPENDIX - 4
L. No. 3366/96/X
SUPREME COURT
INDIA
80-1-2

Dated New Delhi, the 26th November, 1996 19

FROM: ASSISTANT REGISTRAR (JUDL)

- TO :
1. The Union of India,
Represented by the Cabinet Secretary,
Government of India, North Block,
New Delhi.
 2. The Director, SSB,
Office of the Director, SSB,
East Block- V, R.K.Puran,
New Delhi - 110 066
 3. The Divisional Organiser,
SSB Shillong Division,
A.P. Secretariat building,
Shillong, Meghalaya.
 4. Commandant, Group Centre, SSB,
Tripura, Salbagan, Agartala,
Tripura West.

WRIT PETITION NO. 794 OF 1996
(Under Article 32 of the Constitution of India)

WITH
INDEFINITE APPLICATION NO. 1
(Application for ex-parte Stay)

Sadan Kumar Goswami & Ors.

.. PETITIONERS

VERSUS

Union of India & Ors.

.. RESPONDENTS

Sir,

I am directed to forward herewith for your information
and necessary action a certified copy of the Signed Order dated
the 25th October, 1996, of this Court passed in the Writ
Petition and Application for stay.
Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR (JUDL)

CTC
malavika
12/11/01
Section Officer
SCF Itanagar

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Certified to be true copy
132/104
Assistant Registrar (Judl.)
11/9/96
Supreme Court of India
REPERTABLE-1275/95

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION NO. 794 OF 1996

133724

(Under Article 32 of the Constitution of India)

Sub-Inspector Sadhan Kumar Goswami &
Ors.

...Petitioners

v.

The Union of India & Ors.

...Respondents

THE 25TH DAY OF OCTOBER, 1996

Present:

Hon'ble Mr. Justice K. Ramaswami
Hon'ble Mr. Justice S.P. Kurdukar

Sankar Ghosh, Sr. Adv. and Amlan Ghosh, Adv. with him for
the petitioners.

O R D E R

The following Order of the Court was delivered:

-31-

(60) 1-2 (67)
(69)
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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION NO. 794 OF 1996

Sub-Inspector Sadhan Kumar Goswami &
Ors.

... Petitioners

Versus

The Union of India & Ors.

... Respondents

O R D E R

This writ petition under Article 32 is one of the series of cases we have come across to reopen the judgments/orders of this Court rendered under Article 136 of the Constitution of India after their becoming final.

The admitted facts are that the petitioners who joined service under the Special Security Bureau (SSB) in North Eastern Region of India, claimed special duty allowances as per order of the Central Government. The question was considered by this Court in Union of India vs. S. Vilay Kumar [CA No. 3251 of 93] decided on September 20, 1994; therein this Court had held thus:

We have duly considered the rival submissions and are inclined to agree with the contention advanced by the

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SSB, Itanagar

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learned Additional Solicitor General, Shri Tuli for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 29.10.1966 which has been quoted in the memorandum of 20.4.1967, 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 1963 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 thereby 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 1966 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North-Eastern Region". This aspect is made clear beyond doubt by the 1967 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 memoranda of 1963 the subject was mentioned as quoted above is not be enough to concede to the submission of Dr. Ghosh.

The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in

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Reserve Bank of India vs. Reserve Bank of India Staff Officers Association & Ors. [(1991) 4 SCC 132] to which an attention has been invited by the learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

In view of the above, this Court allowed the appeals of the State and held that the respondents were not entitled to the allowances but whatever amount was paid upto the date of the judgment, was directed not to be recovered from them. The petitioners are relying upon the Office Memorandum dated July 11, 1996 which provided that "it is not applicable from one station to another station within the region of Group A and B staff will further continue to get the facilities". They have filed this writ petition contending that while the Group C and D employees have been denied the benefit of the above judgment, special duty allowance benefit is being granted to Group A and B; it tantamounts to violation of Article 14 and, therefore, the writ petition should be allowed so as to give them the same benefit. Admittedly, the petitioners are Group C and D employees and are bound

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by the above declaration of law made by this Court. Merely because they were not parties to the judgment, they cannot file writ petition under Article 32. The contention that they are entitled to get the benefit at par with Group A and B officers under the above Memorandum dated July 11, 1996 ^{is not correct} Apart from the fact that Group A and B employees are entitled to special duty allowance contrary to the law declared by this Court in the above judgment, they too are bound by it; whether or not they are entitled to the above benefit due to this Court's judgment, the petitioners are not entitled to the benefits of the allowances as claimed by them. The judgment of this Court would indicate that it did not make any distinction between Group C and D and Group A and B Officers. All are governed by the law under Article 141. The petitioners are not entitled to the payment of the special duty allowance irrespective of whether or not they were parties to the judgment rendered in Vijay Kumar's case [supra]; they cannot be permitted to raise new grounds, though not raised or argued in earlier case, to canvass the correctness of the judgment by filing the writ petition under Article 32.

Of late, we have been coming across this type

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of writ petitions filed by several parties. We are constrained to take the view that the learned counsel who are advising them to move this court under Article 32 should certify to the court that though they advised the petitioners that the judgment of this Court binds them and cannot canvass its correctness and still, in spite of such advice, the party insisted upon filing the writ petition. It would then be for this Court to consider and deal with the case appropriately. Hereinafter, it would be necessary that the Advocate-on-Record should file, as part of the paper book of the writ petition filed under Article 32, a statement and certificate that the party concerned was advised that the matter is covered by the judgment of this Court and yet the writ petitioner insisted to file the same. Should such certification form part of the record of the petition, then by the Court would deal with the writ petition. In view of the fact that Class C and D employees are not entitled to special duty allowance declared by this Court, the petitioners are not entitled to the benefit.

It is now contended that the Government recovering as per memorandum dated January 17, 1996 the amounts paid which is contrary to the direction issued

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by this Court in the above judgment. The petitioners are not right in their contentions. It is seen that the Government have limited the payments already made after the date of the judgment of this Court; payments made prior to that date are not being recovered.

Under those circumstances, we do not think that there will be any justification to direct the respondents not to recover the amount from the petitioner after the date of the judgment of this Court.

The writ petition is accordingly dismissed.

.....J.
(K. RAMASHASTRY)

.....J.
(S. P. KURUMKAR)

NEW DELHI;
OCTOBER 25, 1996.

SEALED IN MY PRESENCE
12/11/96

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APPENDIX

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Cabinet Secretariat
EA.I Section

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

Reference this Secretariat's UO of even number dated 17.7.85 (enclosed) in which a clarification after discussion with Ministry of Finance was issued that Group 'C' employees recruited locally in the NE Region but who are liable to serve anywhere will be eligible for Special Duty Allowance (SDA) though they may not have been transferred out of that region since their joining the service due to administrative reasons.

2. In the context of a court case, the Min. of Finance requested this Sectt. to make available our file in which the above clarification was issued. On perusal of the papers, Ministry of Finance informed that they had not agreed to the decision contained in the clarification but they made it clear that SDA is not admissible to the locally recruited employees. It was later on clarified vide their O.M. dated 20.4.87 (enclosed). In view of the position that Ministry advised us to withdraw our clarification issued on 17.7.85 forthwith. It was also envisaged that besides stopping irregular payments of SDA, recovery of the over payments may also be made on account of SDA paid under our clarification dated 17.7.85.

3. A proposal for waiver of payment of Special Duty Allowance made to locally recruited employees of Group 'C' and 'D' of DGS and R&AW serving in the NE Region was mooted for the consideration of Ministry of Finance stating that at this belated stage, it will not be possible to recover the amount paid wrongly to the employees as possibly most of them have retired/quit service/died and it would be a difficult task to ascertain the exact amount paid to various such employees. In view of the position that Ministry was requested to agree waiver of such payments made to the employees who were not eligible as per Ministry of Finance ruling. That Ministry has conveyed their decision as follows:

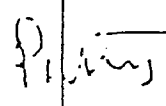
"that the clarifications issued by Cabinet Sectt. on 17.7.85 was not correct and the payments made to the ineligible employees merit recovery. However, in a recent judgement dated 20 September 94 pronounced by the Hon'ble Supreme Court, while the stand of the Govt. of India in the payment of SDA as clarified vide Ministry of Finance O.M. dated 20th April 87 has been upheld, it has been directed that the amount already paid would not be recovered. In this connection, a copy of the O.M. dated 12.1.96 issued by Ministry of Finance is enclosed according to which the irregular payments made on or after 20 September 94 have to be recovered."

Section Officer
SSE Itanagar

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4. In view of the Min. of Finance ruling in the preceding paragraph, DGS/R&AW may kindly regulate the SDA of their locally recruited Group 'C' & 'D' employees serving in the NE Region and stop payment of SDA to them forthwith. Recovery of irregular payments made may also be effected. A compliance report in this regard may be sent to this Sectt. at an early date.


(P.N. Thakur)
Director (SR)

1. R&AW (Sh. Gurinder Singh, JS(Pers.))
2. DGS (Sh. S.R. Mehra, JD(P&C))
3. DACS (Sh. C.V. Avadhani, Director)
Cab.Sectt. U.O.No.7/47/84-EA.I / dated 117 APR 1996

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AD (Corr)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 43 of 2000

Date of decision: This the 11th day of January 2001

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

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Mathuresh Nath and 4 others

.....Applicants

The applicants are employees of the
Special Service Bureau, Arunachal Pradesh Division.

By Advocate Mr K.P. Singh.

- versus -

1. The Union of India
(Represented by the Cabinet Secretariat),
Department of Cabinet Affairs,
New Delhi.
2. The Director General of Security,
Block-V R.K. Puram,
New Delhi.
3. The Director, SSB,
Block-V R.K. Puram,
New Delhi.
4. The Director of Accounts,
Cabinet Secretariat,
New Delhi.
5. The Divisional Organiser,
Arunachal Pradesh Division, SSB,
Itanagar, Arunachal Pradesh.

.....Respondents

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

O R D E R (ORAL)

CHOWDHURY J. (V.C.)

The admissibility of Sepcial (Duty) Allowance (SDA for short) is the key question raised in this application. The applicants are five in number and they are working in the Secretarial Cadre of Service under the respondents. They are claiming SDA in terms of the Central Government Notification dated 14.12.1983 and other Notifications issued from time to time.

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2. The applicants on their own stated that though they hail from the North Eastern Region and are permanent residents of Assam, they were recruited in the Special Service Bureau (SSB) for short in the initial stage and consequent upon the promulgation of the Cadre Rules they were absorbed in D.C.(S) Secretarial Cadre Rules during 1975. Since they are borne in the Cadre Rules they have All India Transfer liability.

3. The issue raised in this application is no longer Res integra in view of the judgment of the Supreme Court rendered in Civil Appeal No.3251 of 1993 disposed of on 20.9.1994 in Union of India and others vs. S. Vijay Kumar and others, reported in (1994) 28 ATC 598. As per the aforementioned decision, Central Government employees who have All India Transfer liability are entitled to grant of SDA on being posted (emphasis supplied) to any station in the North Eastern Region from outside the region and SDA would not be payable merely because of the clause in the appointment letter relating to All India Transfer liability. Consequent thereto, the concerned Ministry issued necessary instructions not to disburse SDA to ineligible persons. There are also a number of like decisions rendered by the Tribunal as well as the High Court.

In the circumstances there is no scope for directing the respondents to pay SDA to the present applicants. Mr K.P. Singh, learned counsel for the applicants cited the instance of some persons who are allegedly being paid SDA though they are similarly situated like the present applicants. Assuming that the respondents are paying SDA to ineligible persons contrary to the provisions of law that would not be a ground for giving similar unlawful benefit to the applicants by the Tribunal.

Considering all the aspects of the matter and upon hearing the learned counsel for the parties we do not find any merit in this application. Accordingly the same is dismissed. There shall, however, be no order as to costs.

Sd/ VICE CHAIRMAN

Sd/MEMBER (JCH)

Certified to be true Copy
प्रमाणित प्रतिलिपि

Section Officer (JCH)
Central Administrative Tribunal
Guwahati Bench, Guwahati
प्रादेशिक प्रशासनिक न्यायालय
गुवाहाटी बेंच, गुवाहाटी