

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 13/2001

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. OA-13/2001 Pg. 1 to —
2. Judgment/Order dtd. 19/03/2001 Pg. 1 to 2 allowed
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 13/2001 Pg. 1 to 26
5. E.P/M.P. NIL Pg. to
6. R.A/C.P. NIL Pg. to
7. W.S. Pg. to
8. Rejoinder. Pg. to
9. Reply. Pg. to
10. Any other Papers. Pg. to
11. Memo of Appearance.
12. Additional Affidavit.
13. Written Arguments.
14. Amendment Reply by Respondents.
15. Amendment Reply filed by the Applicant.
16. Counter Reply.

SECTION OFFICER (Judl.)

GUWAHATI BENCH:GUWAHATI.5

Mr. Gustave Thoren & ors. . . . Applicant.

Union of India & Ors Respondents.

For the Applicant(s) Mr. P. Ahmed

For the Respondents. C.G.S.C.

DATE _____

ORDER

Vice-Chairman

12/2, m.d.s. Advanced to 19-2-2001.

Notice prepared and sent to
D/Sec for trans the respondent
No 153 by Regd AID with
Memo No 147 to 149 dt 11/01/07

19.3.01

Heard learned counsel for the parties. Hearing concluded. Judgement delivered in the open court, kept in separate sheets. The Application is allowed to the extent indicated in the order. No costs.

Member

Vice-Chairman

| trd |

11.5.2001

Copy of the Budget
has been sent to the
Sec. for scrutiny as
are to the Appnl
as well as the L/Adn
for the Respm.
SS

W

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

13 of 2001
O.A./RXXXXNo. of

DATE OF DECISION 19.3.2001.

Ms. Geetashree Thakur, PETITIONER(S)

Mr. A. Ahmed ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors. RESPONDENT(S)


Mr. A. Deb Roy, Sr. C.G.S.C. ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE MR. K.K.SHARMA, MEMBER (A).

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.



**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.13 of 2001

Date of order : This the 19th day of March, 2001.

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

Hon'ble Mr. K.K.Sharma, Member (A).

Ms. Geetashree Thakur
Scientific Officer, SB
Employee Code No. 2371,
Office of the Technical Director,
State Informatics Officer,
National Informatics Centre(NIC),
F-Block, Assam Secretariat,
Guwahati-781006.and 13 Ors.

Applicants

By Advocete Mr. A. Ahmed

-versus-

1. The Union of India,
Represented by the Secretary,
Ministry of Information Technology,
Electronics Niketan, 6, CGO Complex,
New Delhi-110003.
2. The Director General
National Informatics Centre,
Headquarter, New Delhi,
Lodhi Road, A-Block,
New Delhi-110003.
3. The Technical Director,
State Informatics Officer,
National Informatics Centre,(NIC),
F-Block, Assam Secretariat,
Guwahati-781006.

...Respondents

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

O R D E R (ORAL)

CHOWDHURY J.(V.C.).

The legality and validity of the O.M. dated 12.5.2000 is assailed in this proceeding under Section 19 of the Administrative Tribunals Act, 1985. The impugned Memorandum issued by the Respondents clarified regarding grant of Special (Duty) Allowance for civilian employees


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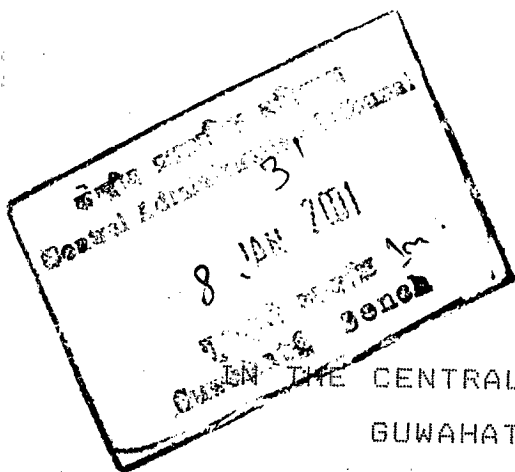
serving in N.E. states pursuant to a decision of the Supreme Court. By the said order directions were also issued to recover the Special (Duty) allowance if any paid to ineligible persons from such employees after 20.9.1994. The direction issued by the aforesaid communication per se cannot be flawed. The applicants in our view also not entitled for payment of Special (Duty) allowance since they are the resident of N.E. region and recruited locally. The order dated 12.5.2000 however cannot be retrospective, it would only be prospective. The order dated 12.5.2000 is accordingly modified. The order the make recovery of Special (Duty) allowance will be effective on or after 12.5.2000.

2. The applciation is allowed to the extent indicated above. There shall, however no order as to costs.


(K.K.Sharma)
Member(A)


(D.N.CHOWDHURY)
Vice-Chairman

trd



THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 13 OF 2001.

Ms. Geetashree Thakur & others
-Applicants.

-Versus-

Union of India & Others.

.. Respondents.

I N D E X

Sl.No.	Particulars	Page No.
1	Application	1 to 15
2.	Verification	16
3.	Annexure-A	17 to 18
4.	Annexure-B	19
5.	Annexure-C	20
6.	Annexure-D	21 to 22
7.	Annexure-E	23
8.	ANNEXURE - F	24 to 26

Filed by

Advocate.

(ADIC AHMED)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

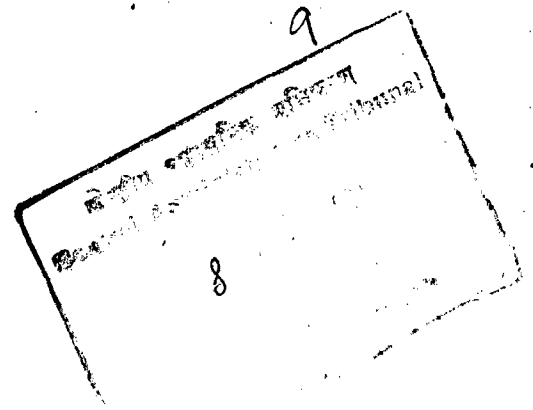
ORIGINAL APPLICATION NO. 13 OF 2001.

BETWEEN

- 1] Ms. Geetashree Thakur,
Scientific Officer, SB
Employee Code No. 2371
- 2] Sri Bibhujjal Kumar Bhattacharjya
Scientific Officer, SB
Employee Code No. 3944
- 3] Ms. Sunanda Chakraborty
Scientific Officer, SB
Employee Code No. 3946
- 4] Sri Bhaben Deka,
Driver,
- 5] Sri Dipak Malla Buzarbarooah
Scientific Officer, SB
Employee Code No. 4169
- 6] Sri Subrata Sahha,
Scientific Officer, SB
Employee Code No. 3942

Filed by 8
Geetashree Thakur
Applicant No. 1
Through [Signature]
(Adv. Ahmed)
Attorney

64



3

- 71 Shri Timothy Dkhar,
Scientist-D
Employee Code No. 2193
- 81 Sri Bidyut Ranjan Gohain
Scientist-C
Employee Code No. 2367
- 91 Sri Dipankar Sarkar,
Scientist-C
Employee Code No. 3877
- 101 Sri Deep Kamal Gohain,
Scientific Officer, SB
Employee Code No. 4083
- 111 Sri Kamal Sarma,
Scientific Officer, (SB)
Employee Code No. - 4084
- 121 Sri B. Lyngskor,
Scientist-B
Employee Code No. 3884
- 131 Mr. R. Pariat,
Scientist-B
Employee Code No. 3917
- 141 Ms. Manika Pathak,
Scientific Officer/
Engineer Gr. 'SB'
Employee Code No. 04081.

- Applicants.

64

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8

8/11/2004

All the above named applicants are working under the Office of the Technical Director, State Informatics Officer, National Informatics Centre, (NIC), F-Block, Assam Secretariat, Guwahati-781006.

-Versus-

- 1] The Union of India, represented by the Secretary, Ministry of Information Technology, Electronics Niketan, 6, CGO Complex, New Delhi -110003.
- 2] The Director General National Informatics Centre, Head Quarter, New Delhi, Lodhi Road, A-Block, New Delhi- 110003.
- 3] The Technical Director, State Informatics Officer, National Informatics Centre, (NIC), F-Block, Assam Secretariat, Guwahati-781006.

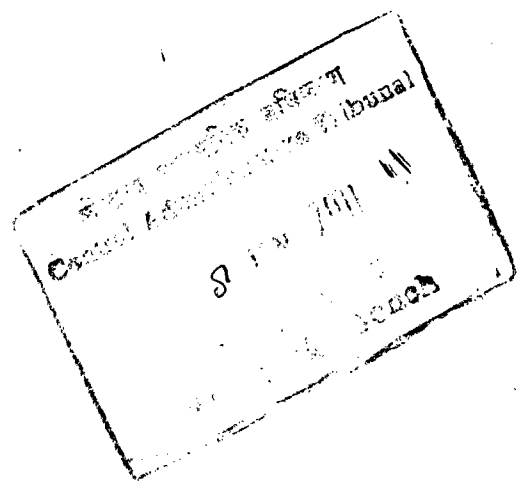
- Respondent

DETAILS OF THE APPLICATION:

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

This application is made against the impugned Order of recovery of payment of Special Duty Allowance in short, (S.D.A.), vide Office Memorandum No. 2(3)/97-P&V dated

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12-05-2000 issued by the Respondent No. 2 at Annexure-D.

2) JURISDICTION OF THE TRIBUNAL

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

3) LIMITATION

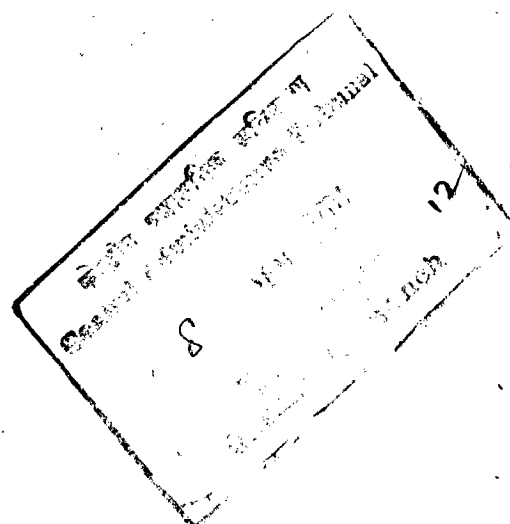
The applicant further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4) FACTS OF THE CASE :

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

4.2 That your applicants beg to state that the National Informatics Centre's Head Quarter is at New Delhi. It is a Central Government Department under the Ministry of Information Technology. There are State Units in all the state Capital and Union Territory Head Quarters and the District Centres is more than 540 districts of India. The Department Employees a large numbers of efficient technical manpower at the NIC Head quarters a large number of application division exists

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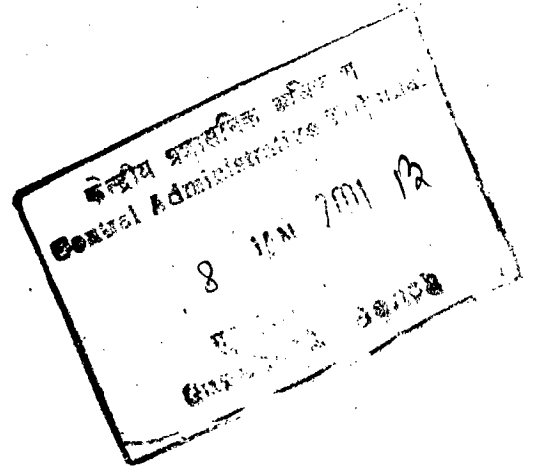
which provide total Informatics supports to the Ministers and Departments of Central Government including Prime Minister's Office, Rastrapati Bhawan, Parliament House, etc. Apart this the Department also provide Informatics support to State Government and District Level by providing effective informatics support to the development, administration, revenue and also judiciary administration of the districts.

4.3 That your applicants beg to state that all the applicants are working under the Office of the Technical Director, State Informatics Officer, National Informatics Centre, (NIC), F Block, Assam Secretariat, Guwahati-781006. The applicants are working as the Scientist-C, Scientist-B, Scientist-D, Scientist Engineer, Senior System Analyst, Scientific Officer, Upper Division Clerk and Lower Division Clerk, etc.

4.4 That your applicants beg to state that as the grievances and reliefs prayed in this application are common, therefore, they pray for grant of permission under Section 4 (5)(a) of the Central Administrative Tribunal (Procedure) rules, 1987 to move this application jointly.

4.5 That the Government of India, Ministry of Finance, Department of Expenditure granted certain improvements and facilities to the Central Government Civilian Employees of

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7

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

*(iii) Special (Duty) Allowance:

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

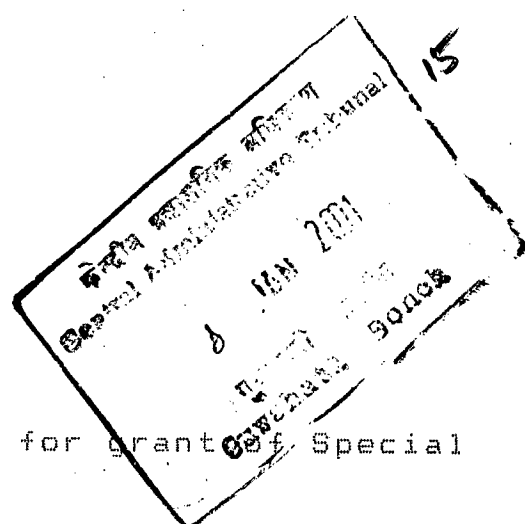
43

(Remote) Locality Allowance, Construction Allowance and Project Allowance will be drawn separately."

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

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

4.7 That the present applicants beg to state that they are saddled with All India Transfer Liability in terms of their offer of appointment and with this said liabilities they have received the offer of appointment and joined the service of the respondents. Be it stated that, they are liable to be transferred outside the North Eastern Region. Therefore, the applicants are in practice saddled with all India Transfer Liability and in terms of Office Memorandum dated 14-12-1983



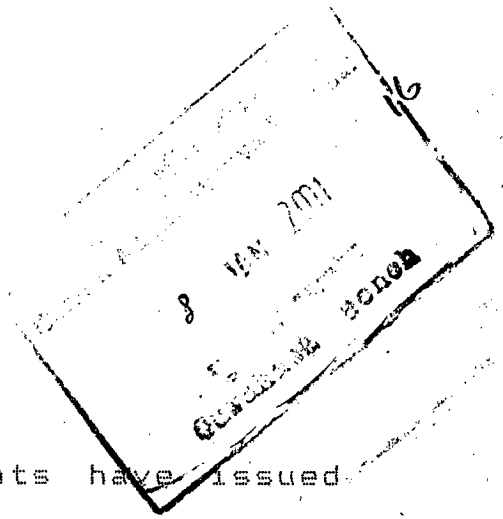
they are legally entitled for grant of Special (Duty) Allowances.

Annexure-C is the photocopy of one such transfer order issued to the applicants.

4.8 That your applicants beg state that the Respondents No. 2 issued the impugned Office Memo. No. 2(3)/97-P&V on 12-05-2000 by giving direction to the Respondent No.4 to recover the Special Duty Allowance from the applicants. The Special Duty Allowance amount, which has been paid to the applicants during the period from 1994 to 1997 have been ordered to recover. The applicants have approached the authority concerned not to make any recovery of Special Duty Allowance which has been paid by the authority. But the Respondents refused to give relief to the applicants as such the applicants have compelled to approach this Tribunal for seeking justice.

Annexure-D is the photo copy of Office Memorandum No. 2(3)/97 P & V dated 12-05-2000 issued by the Respondent No. 2.

4.9 That the applicants beg to state that the payment of Special (Duty) Allowance is made to the applicants with effect from 01-11-1983 or from the respective dates of their joining in this Department. The payment of Special (Duty) Allowance is made to the applicants only after full satisfaction of the



Respondents. Now the Respondents have issued the recovery order of Special (Duty) Allowance. As such, the act of the respondents is arbitrary regarding recovery of payment of Special Duty Allowance. As such, the Hon'ble Tribunal may be pleased to direct the Respondents not to make any recovery of any amount of the Special (Duty) Allowance which has been paid by the Respondents to the applicant.

4.10 That your applicants beg to state that in other similar cases filed before the Hon'ble Central Administrative Tribunal, Guwahati Bench, the Hon'ble Tribunal directed the concerned authority not to make any recovery of Special Duty Allowance paid earlier.

It may be stated that similarly situated persons who are also working with the applicants have also approached this Hon'ble Tribunal for not to recover the Special Duty Allowance amount which has been paid by the Respondents and this Hon'ble Tribunal vide its common judgment and order passed in O.A. No. 149/99 and others similar cases on 22-12-2000 directed the Respondents not to make any recovery of Special Duty Allowance. In case, any amount on account of payment of Special Duty Allowance has been recovered/withheld from retirement dues, the same shall be refunded/released to the applicants immediately.

94

Annexure-E is the photocopy of interim order passed in O.A. No. 21 of 2000 by the Hon'ble Tribunal.

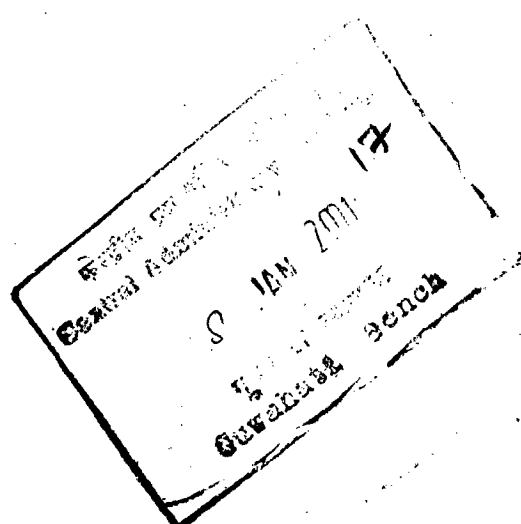
Annexure-F is the photocopy of judgment and order passed by the Hon'ble Tribunal in O.A. No. 110/97.

4.11 That your applicants beg to state that the Respondents have already made some recovery from the applicants inspite of their representations and under the circumstances finding no other alternative the applicants approached this Hon'ble court for protection of rights and interests of the applicants through this Original Application and this Hon'ble Tribunal may be pleased to stay the impugned order of recovery issued under Office Memo. No. 2(3)/97-P&V dated 12-05-2000 as interim measure and further be pleased to set aside and quash the Office Memorandum dated 12-05-99 at Annexure-D.

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

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

5) GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:



Q

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

5.21 For that the action of the Respondents are mala fide and illegal and with a motive behind. As such, the impugned order of recovery is liable to be set aside and quashed.

5.31 For that the Respondents have paid the Special (Duty) Allowance to the applicants after being full satisfaction with their eligibility criteria. Also in terms of the Office Memorandum dated 14-12-83 and Office Memo. Dated 01-12-88 issued by the Ministry of Finance, Government of India. Hence, the impugned recovery order of Special Duty Allowance is mala fide, illegal and without jurisdiction.

5.41 For that the payment of Special (Duty) Allowance was not obtained by the applicants by any fraudulent means but the Respondents after finding them eligible, paid the Special (Duty) Allowance to the applicants.

5.51 For that that the applicants are having practically All India transfer liability. As such, they are legally

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entitled to draw the Special (Duty) Allowance as per Office Memorandum dated 14-12-83 and 01-12-83.

5.61 For that the order issued in terms of impugned Office Memorandum dated 12-05-2000 is without following any established procedure of rules and law.

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

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

6) DETAIL REMEDY EXHAUSTED:

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

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

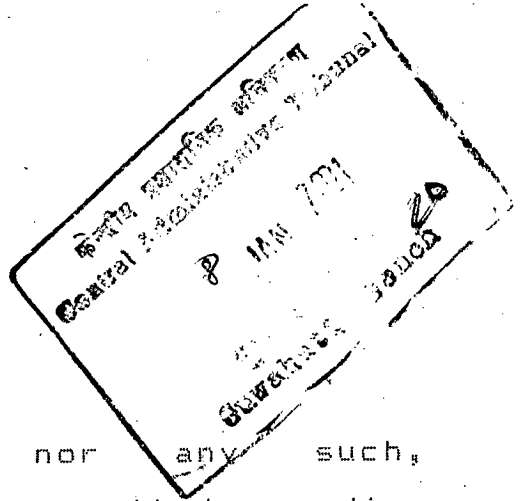
The applicants further declares that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of

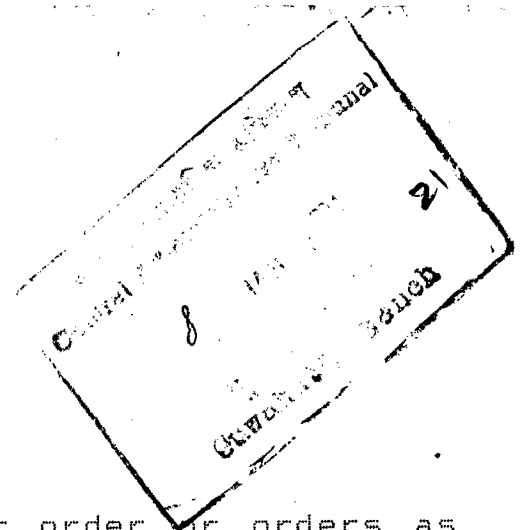
this Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8) RELIEF PRAYED FOR:

Under the facts and circumstances stated above your Lordships may be pleased to admit this petition and show cause as to why the impugned recovery order dated 12-05-2000 issued by the Respondent No. 2 should not be quashed and after hearing the parties your Lordships may be pleased to pass following reliefs:

- 8.1 That Hon'ble Tribunal may be pleased to direct the Respondents to continue the Special Duty Allowance to the Applicants.
- 8.2 That the Hon'ble Tribunal may be pleased to declare that the applicants are entitled to draw the Special (Duty) Allowance in terms of Office Memo. No. 20014/3/83 E-IV dated 14-12-83 and Office Memorandum No. 20014/16/86 IV/E II (B) dated 01-12-88.
- 8.3 The impugned Office Memorandum vide No. 2(3)/97-P&V dated 12-05-2000 issued by the Respondent No. 2 directing recovery of Special Duty Allowance at Annexure-D may be set aside and quashed.





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

8.5 Cost of the application.

9) INTERIM ORDER PRAYED FOR:

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

9.1) That the Hon'ble Tribunal may be pleased to stay the impugned order of recovery dated 12-05-2000 at Annexure-D.

10. APPLICATION IS FILED THROUGH ADVOCATE.

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

I.P.O.No./Bank Draft: 66771911
 Date of Issue : 30.12.2000
 Issued from : Guwahati
 Payable at : Guwahati

12) LIST OF ENCLOSURES:

As stated in index.

-Verification.

84

Verification

I Ms. Geetashree Thakur, Scientific Officer, 'SB', Employee Code No. 2371 working in Office of The Technical Director, State Informatics Officer, National Informatics Centre, (NIC), F-Block, Assam Secretariat, Guwahati-781006 applicant No. 1 of this instant application and as authorised to sign this verification on behalf of other applicant and verify the statement made in accompanying application and in paragraph 4.1 to 4.4, 4.6, 4.9 to 4.11 are true to my knowledge and those made in paragraphs 4.5, 4.7, 4.8, - -

— are true to my information being matter of records and which I believe to be true and those made in paragraph 5 are true to my legal advise and I have not suppressed any material facts.

I signed this verification on this day 8th of January, 2001 at Guwahati.

(Signature)
T. (GEETASHREE THAKUR)
Declarant.

22/12/14

~~17~~ Annexure-1 (Extract)

17- 23

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

ANNEXURE - A

New Delhi, the 14th Dec '03

OFFICE MEMORANDUM

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

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

- i) Tenure of posting/deputation.
x x x x x x x x
- ii) Eight-ann for Central deputation/training abroad and special mention in confidential Records.
x 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
[Signature]
Accounts

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

XXXXXX

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XXXXXXXXXX

31/12/1951

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Attested
Advocate

19-19-
25-
21-
Annexure-2 (Extract)

ANNEXURE-B

No. 20014/1/LG/E.IV/E.II (9)
Govt. of India, Ministry of Finance
Department of Expenditure

New Delhi the 1 Dec 1964

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this
Ministry's No. 20014/1/LG-E.IV dated 14th December,
1963 and with effect from 1st March, 1964 on the subject mentioned
above and to say that the question of making suitable
improvements in the allowances and facilities to Central
Government employees posted in North Eastern Region
comprising the States of Assam, Nagaland, Manipur,
Mizoram, Tripura, Arunachal Pradesh and Meghalaya has been
drawing the attention of the Govt. Accordingly the
President is now pleased to decide as follows.

- i) xxxxxxxxxxxx
- ii) x x x x x x

iii) Special (Duty) Allowance.

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

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

Attest
Signature
Advocate

- 20 -
~~222~~

ANNEXURE - C
21/11/91 26

No.18(2)/91-P&V
Government of India
Planning Commission
National Informatics Centre

A-Block, GO Complex
Lodi Road, New Delhi-3.

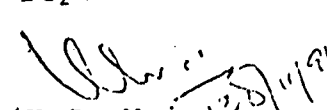
November 30, 1991

OFFICE ORDER

Shri Rubaiyat Ul Ali, District Informatics Officer (Employee Code No.2605), NIC North Cachar Hills District, Assam is hereby transferred to NIC Headquarters on existing terms and conditions of his appointment with immediate effect and until further orders.

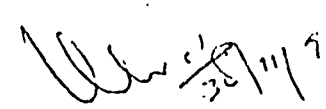
2. Shri Rubaiyat Ul Ali will be eligible for TA/DA, Joining time as per normal rules.

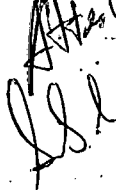
3. Shri Rubaiyat Ul Ali should obtain relieving order from State Informatics Officer Assam State Unit, Guwahati by producing no due certificate from all concerned. On arrival at NIC Headquarters, New Delhi Shri Rubaiyat Ul Ali will report to Shri M. Moni, Additional Director.


(K.G. Nair)
Joint Director

Copy to:

1. Accounts Officer, Pay and Accounts Office, NIC Hqrs., New Delhi.
2. Cash & Accounts Section, NIC Hqrs., New Delhi
3. DDO, NIC Assam State Unit, Guwahati
4. Shri Rubaiyat Ul Ali, District Informatics Officer
5. Shri M. Moni, Additional Director
6. SIO, NIC Assam State Unit, Guwahati
7. All Sections and Divisions at NIC Hqrs., New Delhi
8. Personal file/probation file/Guard file
9. Notice Board
10. MC (ER) BBSR


(K.G. Nair)
Joint Director

Attested

Advocate

21-

No.2(3)/97-P&V
Government of India
Ministry of Information Technology
National Informatics Centre
A-Block, CGO Complex, Lodi Road, New Delhi-110 003-ANN

ANNEXURE - D

May 12, 2000

OFFICE MEMORANDUM

Subject: Grant of Special (Duty) Allowance for Civilian Employees
serving in the States of North Eastern Region - reg.

A number of queries were received regarding grant of Special (Duty) Allowance (SDA) for Civilian employees serving in the States of North Eastern Region. The matter was taken up with Ministry of Finance and the clarifications given by the Ministry of Finance, Department of Expenditure, E.H(B) and the judgement of Hon'ble Supreme Court, are reproduced below for guidance:

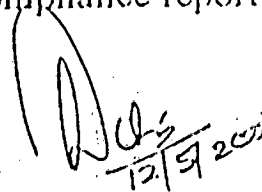
(A) Special Duty Allowance would not be admissible on transfer made on personal basis. This will also not be given in case of initial posting in North Eastern Region. Special Duty Allowance will be admissible only if the condition of All India Transfer Liability is fulfilled and the officer concerned is posted to North Eastern Region from outside that region, as clarified by the Ministry of Finance, in their OM No.11(3)/95-11(13) dated 12.1.96.

(B) The Hon'ble Supreme Court in their judgement delivered on 20.9.1994 (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 North Eastern Region from outside the region and Special Duty allowance 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.

Albert
S. L. Advocate

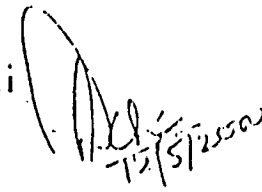
- 22 -

2. All officers/staff posted in North Eastern Region, are requested to keep the above instructions in view for strict compliance. Special Duty Allowance if any paid to ineligible employees after 20.9.1994 may be recovered from such employees immediately and a compliance report sent to the undersigned latest by 30.6.2000.


12/9/2000
(K. Subbiah)
Director

Copy forwarded for information and necessary action to:

1. Pay and Accounts Office, NIC Hqrs., New Delhi.
2. DDO, NIC Hqrs., New Delhi/DDOs of NIC Assam & West Bengal State Units
3. SIO, NIC West Bengal State Unit, Calcutta
4. SIO, NIC Assam/Meghalaya/Tripura/Arunachal Pradesh/Mizoram/Manipur/Nagaland/Sikkim
5. All DDGs/PS to DG(NIC)/AFA
6. State Coordinator, NIC-North Eastern Region
7. All Divisions/Sections at NIC Hqrs., New Delhi
8. Guard File/Notice Board


12/5/2000
(K. Subbiah)
Director

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO. 21/2000 OF 199

Applicant(s) Sri Louis Khysiem and others

Respondent(s) Union of India and ors.

Advocate for Applicant(s) Mr. A. Ahmed

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

Notes of the Registry	Date	Order of the Tribunal
	21.1.2000	<p>Present: Hon'ble Mr Justice D.N.Baruah, Vice-Chairman</p> <p>Hon'ble Mr G.L.Sanglyine, Administrative Member.</p> <p>Application is admitted. Issue usual notice.</p> <p>List on 21.2.2000 for written statement and further orders.</p> <p>Mr A.Ahmed, learned counsel for the applicants prays for an interim order. Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents opposes the prayer. Recovery of Special Duty Allowance shall not be made until further orders.</p>

Sd/-VICECHAIRMAN
Sd/MEMBER (A)

Certified to be true Copy

25/1/2000

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Admitted
Admitted

- 20 - 24

ANNEXURE - F

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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.15 of 1998
Shri R.P. Thakur and 84 others
9. O.A.No.75 of 1998
Shri A.K. Gohain and 5 others

.....Applicants
By Advocates Mr J.L. Sarker, Mr B.K. Sharma,
Mr M. Chandra, Mr A. Ahmed, Mr S. Sarma and
Mr H.D. Gogwami.

- versus -

Union of India and othersRespondents
By Advocates Mr S. Ali, Sr. C.G.S.C. and
Mr A.K. Choudhury, Addl. C.G.S.C.

(2)

Advocate



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ORDER - 25 -

HARIHAR, J. (V.C.)

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/BJ.W-IV dated 14.12.1981, 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 issued 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

A. K. S.
Sd/-
Advocate

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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.

1. I have heard both sides. After hearing the learned counsel for the petition 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/- Vice-Chairman

Certified to be true Copy
प्रमाणित प्रतिलिपि

[Signature]
20/8/98
Section Officer (J)

राष्ट्रिय प्रशासनिक आयोग
Central Administrative Tribunal
राष्ट्रीय प्रशासनिक आयोग
Guwahati Bench, Guwahati-8
গুৱাহাটী বেঞ্চ, গুৱাহাটী-৮

[Signature]

[Signature]
+
Advocate