

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No.:

Misc. Petition No.:

Contempt Petition No.:

Review Application No.:

39/2002 in O.A 148/01

Applicant (s) N. N. Talukdar & Ors

-Vs-

Respondent (s) U. O. I & Ors

Advocate for the Applicant (s)

B.K. Sharma, S. Sarma, U.K. Nair

Advocate for the Respondent(s)

Miss U. Das

C.G.S.C.

Notes of the Registry

Date

Order of the Tribunal

This Contempt Petition No. 5.9.2002
has been filed by the Counsel
for the Petitioner w/c 17.09.01
C.A.T. Act, 1985 for drawing up
of Contempt proceeding against
the Contemner for wilfull and
deliberate violation of the
Judgement and order dated
19.12.2001 passed by this
Hon'ble Tribunal in O.A 148/01.

Issue notice to show cause on
the respondents as to why Contempt
Proceeding against the alleged con-
temner shall not be initiated, re-
turnable by four weeks.

List on 7.10.2002.

I.C.Usha
Member

Vice-Chairman

bb

7.10.01

Heard Mr. S. Sarma learned
counsel for the applicant and also
Mr. A. Deb Roy, Sr. C.G.S.C. for Res-
pondent No. 1 and Mr. B. C. Pathak,
learned Addl. C.G.S.C. for Respondent
No. 2. It has been stated by Mr. A. Deb
Roy that the necessary steps were
taken for implementation of the order
of this Tribunal dated 19.12.2001

Laud before the
Hon'ble Court for further
orders.

4/9/02
Section officer

AP

contd/-

Notices prepared
and sent to D.Section
for issuing of the
Same to the respondent
through Regd. post
with A/D.

Vide D.No.
Dtd-

26/10/02

7.10.02

passed in O.A.No.148 of 2002. A copy
of the order No. DEO/GAU/SDA/STAFF/97
dated 5.10.2002 shall be produced
in records. ~~hence~~ In the circumstances
the Contempt Petition is dropped.

I C Uchar
Member

Vice-Chairman

In

24/10/2002
copy of the order
has been sent to the
Officer for issuing the
Same to the L/Advocate
for the party.

Ats

Filed by
Alka Das
Advocate
3/9/02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH.

OP No. 29/.../2002

OA No. 148/2001

Sri N.N. Talukdar & Ors.

-VS-

U.O.I. & Ors.

IN THE MATTER OF:

An application under section 17 of the Administrative Tribunal Act 1985 for drawing up of contempt proceeding against the Contemner for willful and deliberate violation of Judgment and Order dated 19.12.2001 passed in OA No.148/01.

- AND -

IN THE MATTER OF:

An application under Rule 24 at the Central Administrative Tribunal (Procedure) Rules 1987, for execution of Judgment and Order dated 19.12.2001 passed in OA No.148/01.

- AND -

IN THE MATTER OF:

Sri Nagendra Nath Talukdar & Ors.

----- petitioner.

- VS -

i. Sri Ranjan Dutta.

The Secretary to the Govt. of India,
Ministry of Defence, South Block,
New Delhi.

2. Smt. Ganga Purkutyy.

The Controller of Defence Accounts.

Udayan Bihar , Narangi,

Guwahati - 781171.

3. Sri A.S.Kausal.

The Defence Estate Officer.

Guwahati Circle.

(Ministry of Defence)

Silpukhri, Guwahati - 3.

The humble application on behalf of the applicants
above named:

MOST RESPECTFULLY SHEWETH:

1. That being aggrieved by non payment of SDA as well as
against the threatend action of recovery of payment made in
respect of SDA, the applicants above named preferred the above OA
148/02 before the Hon'ble Tribunal. The Hon'ble Tribunal after
hearing the parties to the proceeding was pleased to allow the
said OA vide Judgement and order dated 19.12.2001, directing the
respondents to SDA to the applicants w.e.f. July 1998 and pay the
arrears due thereon within a period of four months from the date
of receipt of this order.

A copy of the said Judgement and order
dated 19.12.2001 is annexed herewith and
marked as ANNEXURE-A.

2. That the applicants on receipt of the copy of the
aforesaid Judgement submitted the same before the concerned
authority for taking appropriate action in this regard. But till
date nothing has been done in the regard and till date contemners
have not taken any steps for implementation of the said

judgement. It is pertinent to mention here that the contemners however, taking the guideline from the aforesaid judgment made payment of SDA to similarly placed employees of which mention may be made of, one Sri G.M. Paul, an employee of ~~DEO~~ Guwahati is drawing SDA. On the other hand basing on the said Judgment dated 19.12.2001, the staff of DEO Jorhat is drawing SDA, but for the reasons best known to the contemners, the benefit of the Judgement has been denied to the present petitioners.

3. That the petitioners kept on pursuing the matter before the authority concerned, but when nothing came out fruitful, they submitted a legal notice to the contemners for implementation of the Judgement but even then, no the contemners have not yet released their arrears, nor they have been paid their due SDA.

A copy of the legal notice is annexed herewith and marked A1 ANNEXURE-B.

4. That the petitioners beg to state that the contemners in fact sought clarification on the Ministry of Law in this regard and accordingly the concerned Ministry has given the clarification that the petitioners are entitled to draw SDA.

A copy of said letter is annexed herewith and marked as ANNEXURE-C.

5. That the petitioners beg to state that admittedly the contemners are well aware of the Judgement and order dated 19.12.2001 and there is no doubt that they have also understood the direction contained in the Judgement as there is no ambiguity. However, even after the expiry of period contained in

the said Judgement and hence they are liable to be punished for committing contempt of Court's order. Accordingly, appropriate punishment need be imposed on each contemners for their aforesaid willful and deliberate violation of the Judgement and order dated 19.12.2001 passed in OA No.148/01.

6. That the petitioners beg to state that to the best of their knowledge , the contemners have not yet informed this Hon'ble Tribunal as to why the implementation of the Judgment and order dated 19.12.2001 took such long time. From the action it is clear that the contemners have willfully and deliberately violated the Judgment and order mentioned above and as such appropriate direction need be issued to the respondents for execution/implementation of the Judgment and order dated 19.12.2001 passed in OA No.148/01 and to pass appropriate order imposing an interest of @ 21% on the delayed payment of SDA as well AS the arrears invoking the power under Rule 24 of Central Administrative Tribunal (procedure) Rule 1987.

7. That the application has been made bonafide and to secure ends of justice.

In the premises aforesaid, it is most respectfully prayed that yours Lordships would graciously be pleased to draw up appropriate contempt proceedings against each of the contemners for their willful and deliberate violation the Judgment and order dated 19.12.2001 passed in OA No. 148/01 and to punish them severely for their such contemneous action/inaction.

-AND-

Be further be pleased to pass necessary order directing the respondents to implement the Judgment and order dated 19.12.2001 passed in OA No.148/01 and to direct the respondents to pay the current SDA and the arrears along with an interest @ 21% p.a. on the delayed payment, and/or be pleased to pass any such order/orders as may be deemed fit and proper considering the facts and circumstances of the case.

And for this act of kindness the petitioners in duty bound shall even pray.

- DRAFT CHARGE -

Where as Sri Ranjan Dutta, Secretary, Ministry of Defence, New Delhi, Smt. Ganga Purkutty, the Controller of Defence Accounts, Udayan Bihar, Narengi Guwahati and Sri A.S.Kausal, the Defence Estate Officer, Silpukhuri Guwahati-3, are liable to be punished under the provisions of Contempt of Courts order for their willful and deliberate violation of the Judgment and order dated 19.12.2001 passed in OA No.148/01 by this Hon'ble Tribunal.

Signature

AFFIDAVIT

I Sri Nagendra Nath Talukadar, S/O Late A.Talukadar aged about 46 years, at present working as SDO III, do hereby solemnly affirm and state as follow :

1. That I am petitioner instant petition and as such, acquainted with the facts and circumstances of the case and competent to swear the present affidavit.

2. That the statements made in paragraphs ...⁵⁻⁷..... are true to my knowledge and those made paragraphs ...¹⁻⁴.... being matter of record are true to my information derived therefrom which I believe to be true and rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this the day of ^{2nd} day of Sept 2002 at Guwahati.

Identified by
Usha Das.
Advocate ~~Associate~~

Deponent.

Nagendra Nath Talukdar

Solemnly affirm and state by
The deponent who is identified
by. Miss U.Das Advocate.

Nagendra Nath Talukdar

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 148 of 2001.

Date of Order : This the 19th Day of December, 2001

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

THE HON'BLE T. K. N. BHARMA, ADMINISTRATIVE MEMBER

1. Shri Nagendra Nath Talukdar
S.D.O. - III2. Shri Biswanath Brahma
UDC.3. Shri Ramesh Das
Daftry.4. Shri Surendra Borgohain
SDO-I.5. Shri Rothin Bhattacharjee
SDO-I.6. Shri Barid Baran Purkayastha
UDC. . . . Applicants.

By Mr. B.K. Sharma, Mr. S. Saikia & Mr. U.K. Nair.

- VENUES -

1. Union of India

Represented by the Secretary to the
Govt. of India, Ministry of Defence
South Block, New Delhi.

2. Union of India

Represented by the Secretary to the
Govt. of India, Ministry of Finance
North Block, New Delhi.3. The Controller General of Defence Accounts
R.K. Puram, Sector-I
New Delhi-66.4. The Controller of Defence Accounts
Udayan Bihari, Narangi
Guwahati-781171.5. The Area Accounts Officer
River Road, Shillong. . . . Respondents.

By Mr. B.C. Pathak, Addl. C.A.O.H.C.

Contd.. 2

Armed
W.D.
ADW

CHUNNULAL, LALU

This application pertains to the same familiar issue as to the payment of Special Duty Allowance. These six applicant are working under the respondents and posted in the Office of Defence Estate, Guwahati Circle. In this application the applicants stated that they were provided with the Special Duty Allowance till July, 1998, but after July, 1998 the respondents in a most illegal fashion stopped the payment of SDAL on the ground that they belong to N.E.Region. As per the pleadings these applicants though belong to N.E.Region initially, they were subsequently transferred out of N.E.Region but re-posted to N.E.Region after some that they are serving in N.E.Region.

2. The respondents filed its written statement denying and disputing the averment made by the applicants. On later stage at our instance Mr.B.C.Pathak, learned Adl.C.G.S.C. took further instruction from the office of the Defence Estate, Guwahati Circle and he submitted a statement showing the service particulars, more particularly, the transfer of these applicants. The statement to that effect is placed on record. From the aforementioned statement it appears that the applicant No.1 Nagendra Nath Talukdar was appointed in Group-C and

Contd.. 3

RECORDED

Attested
Niranjan
H.S.

and his initial posting was in N.E. Region. He continued to work in such status till the date of joining on 1.6.1976 till 12.5.1988. He was posted outside N.E. Region at Siliguri on 13.5.1988 and he worked there to 1.2.1989. Similarly, the other applicants though initially appointed in N.E. Region, they were posted outside N.E. Region and re-posted to N.E. Region. In that view of the matter all these applicants are eligible for the SDA on their re-posting.

Mr. B.C. Pathak, however, stated that the applicant No. 4 & 5 would not be eligible for payment of SDA since both of them were transferred out prior to coming into force 1983 Scheme. Mr. Pathak pointed out that Sri Ramesh Das was transferred to Kolkata on 16.7.1975 and he worked there till 30.4.1977. Similarly, Rathin Bhattacharjee was transferred to Secunderabad on 22.11.1974 and he continued there till 23.10.1978. Mr. Pathak submitted that since they were transferred before coming into force of 1983 Scheme, they would not be entitled for SDA. The said contention of Mr. Pathak cannot be accepted. The question is the admissibility of SDA and for that purpose it is to be ascertained as to whether they were ever posted out of N.E. Region and thereafter they were re-transferred. As per the clarification issued by the Cabinet Secretariat in this regard it did not limit the benefit only to those

contd..4

Attested
U.Son
Adv.

transferred after 1983 Scheme came into force. The applicant Nos. 4 & 5 were employees belonging to N.E.Region, posted to N.W.Region initially, but subsequently transferred out of N.E.Region but re-posted to N.E.Region after sometime. In this circumstance, all these applicants including the applicant Nos. 4 & 5 are eligible for SDA.

We have also heard Mr. S. Sarma, learned counsel for the applicants. The application is accordingly allowed. The respondents are directed to pay the applicants SDA from July, 1998. The respondents are also ordered to pay the arrears within four months from the date of receipt of this order.

There shall, however, be no order as to costs.

Sd / VICECHAIRMAN
Sd / MEMBER (A)

certified to be true
dated 10/10/98

bb

10/10/98
Sd / Member (A)
Court of Administrative Tribunal
C. N. Bhattacharya
10/10/98

Attested
Nutan
A.D.W.

Kotekar

DDHARTHA SARMA
Advocate

M. A. Road, Rehabari.
Guwahati - 781008
Phone No. - 522995
Date.....

Ref:.....

To

Date: 16.8.2000

1. The Controller of defence Accounts

Udayan Bihar, Narengi

Guwahati - 781171

2. The Area Accounts Officer

Bivar Road, Shillong.

Sub: Legal Notice.

Sir,

Upon authority and as per instruction of my clients (1) Shri N. Janta Nath Talukdar, SDO-III, (2) Shri Biswanath Brahma, UDC, (3) Shri Ramesh Das, (4) Shri Surest Borthi, SDO-I, (5) Shri Rathin Bhattacharjee, SDO-I, (6) Shri Barid Baran Purkayastha, UDC, (7) Shri Akhil Barman, C/Man in the office of the Defence Estate, Guwahati Circle, Silpukhuri, Guwahati-3, I give you this notice as follows:-

That my aforesaid clients ^{are} aggrieved by non-payment of Special Duty Allowance (SDA) in the revised rate after the commencement of 5th Pay Commission Report since August '97 whereas other similarly situated employees working in the other circle i.e. Defence Estate office

Attested
DDW.

Tezpur Circle, Asstt. Defence Estate office Agartala and Joint Director defence Estate office Shillong. they are also aggrieved by non payment of SDA whereas the employees of Defence Account Department are still getting SDA regularly in the revised rate.

That my aforesaid clients being aggrieved by the said action made certain queries to the concerned authority however; inspite of ascertain nothing has been done so far in his case. My clients' bill for arrear SDA has been disallowed by the Area Accounts Officer, Shillong whereas the same officer has issued the bill in respect of employees of Jorhat, Tezpur, Agartala and Shillong. Admittedly all those employees are similarly situated like that of my clients and all of them are governed by a single set of rule. To the best of knowledge of my clients till date no separate rule has been framed disallowing them the said benefit of SDA including arrear. It is noteworthy to mention here that the employees of Defence Account Department i.e. the Paying Authority are still getting SDA. To that effect name of one Shri R.N.Bhagawati, Auditor, in the office of the Controller of Defence Accounts who is presently attached to the Defence Estate office Guwahati are still getting SDA at the revised rate. Said Sri Bhagawati has also been paid his arrear SDA as per the 5th Central Pay Commission Report. Similarly Shri S.Dass Asstt.Defence Estate Officer is also getting SDA like said Shri Bhagawati without any difficult-

Attested
Wilson
ADW

ties. However, being similarly situated like that of the aforesaid officials, my clients ~~are~~ ^{are} still deprived of his legitimate claim of current as well as arrear SDA in view of subsequent pay revision notice dated 6/97.

That there has no dispute that my clients ~~is~~ ^{are} employee of Defence Estate office and his service condition is similar to the other sets of employees more particularly the employees as has been discussed above who are in receipt of regular SDA in the revised rate. In that view of the matter the differential treatment meted out to my client is ~~per~~se illegal and discriminatory in nature.

In view of the aforesaid facts and circumstances I give you this notice making a demand that my clients be paid ~~their~~ arrear SDA (revised) as well as the current SDA along with 10% interest due thereon on the delayed payment within a period of 30 days from the date of receipt of this notice failing which instruction of my clients is to take the legal recourse.

I hope and trust that there would be no such occasion for further litigation.

Thanking you.

Sincerely yours

(M. Sarma, Advocate)

Copy to:-

Controller General of Defence Accounts
R.K.Puram Sector 10, New Delhi-110010.

Relested
C. S. A.
Adv.

Ministry of Law, Justice & Co. Affairs
Dongch Hexietian, Collanta

Dy. No. 1241/02 Adv. (Cal) dt. 18.4.2002

Pushed the Department's reference being No 360192/NNT 24
Ora / Ternate/LC-17 d/12.4.2002 regarding feasibility of filing an
appeal/with against the injunction/order d/ 12.12.2001 in C.A. No 149 of
2001 Subj. Ternate d/12.12.2001. The Regd. No. 916 of Wilson of India to Ora
pushed by the short/14.4.2002 by Venkatesh Bappa.

On perusing it appears that the Honorable C.A.T. etc. considering all the points mentioned by the parties by way of the written objection as well as oral representation in the interest of the said mentioned subject came to the conclusion that the wife of the said I. V. Venkateswara, belonging to N.B. Region, entitled to N.B. Region initially but subsequently transferred out of N.B. Region but re-posed to T.D.T. Region after becoming inc. entitled to SDA. Accordingly at the application of the said including the applicants No. 4 and 5 are eligible for SDA. Therefore, they are entitled the amounts pay for such allowances from 7 July, 1981.

We have ^{also} ~~been~~ through ^{issued} ~~the~~ following issued by the Comptroller
Secretariat vide letter NO.20/12/0634.1.1/200 dated 25.2.2000 and it
appears that the para (ii) and (iv) in their ~~judgement~~ ^{order} stated that an
employee hailing from P.E. Region posted to N.E. Region initially, but
subsequently transferred out of N.E. Region but re-posed to N.H. Region
after serving in N.E. Region are entitled to SDA. The
Hon'ble C.A.T in the title of pronouncing their judgment have also
considered this aspect and passed the order accordingly.

In view of the above, we are of the view that this is not a fit case for preferring an appeal against the order against the above CAT's Order before the Madras High Court at Chennai.

IS DR LAL ANUP KUMAR CHOPRA

(P. K. Shah)
Ass't. Legal Adviser
2.5.2002

1841-1851

20 hours old, 100% ³H, 25°C, Western Chromatog.
1.5, 100% ³H, 100% ³H, 100% ³H, 100% ³H

MB L- 48-18-112-13-3, 1200 ft. (600 ft.)

Atested
over,
John

ANNEXURE - C

Ministry of Law, Justice & Affairs
Branch Secretariate : Kolkata

By No. 1241/02 Adv (Cal) dt. 18.4.2002.

Pursued the Departments reference being 360192/NNT/ & Ors/ Thane/LC-17 dt.12.4.2002 feasibility of filing an appeal/ Writ against the jurisdiction/Order dt.12.12.2001 in O.A. No. 149 of 2001 Shri Nagendra Nath Talukdar & Ors Vs Union of India & Ors passed by the Hon'ble CAT Guwahati Bench.

On pursuing it appears that the Hon'ble CAT etc. considering all the points mentioned by the parties by way of filling writ objection as well as oral arguments, passed the Order in the above mentioned subject case that the applicants No. 4 and 5 were employees belonging to N.E Region posted to N.E.Region initially, but subsequently transferred out of N.E.Region but re-posted to N.E.Region after sometime entitled to SDA. Accordingly all the applicants in this case including the applicants No. 4 and 5 were eligible for SDA. Therefore, they are entitled the arrears pay for such allowances from July, 1997.

We have also gone through the clarification issued by the Cabinet Secretariat vide their UO No.20/12/99-EA-I-1799 dt.2.5.2000 and it appears that in para (iii) and (iv) in their guidelines stated that an employee shailing from N.E. Region posted to N.E.Region initially, but subsequently transferred out of N.E.Region but re-posted to N.E.Region after sometime serving in Non N.E. Region are entitled to SDA. The Hon'ble CAT in the title of pronouncing their judgement have also considered this appeal and passed the order accordingly.

In view of the above, we are of the view that this is not a fit case for preferring an appeal and/ a filling writ against the above CAT Order before the Hon'ble High Court at Guwahati.

JS & L, may kindly see.

Director, Defence Estates,
Eastern Command,
13, Camac Street,
Kolkata.

Sd/- x x x
(P.K.SAHA)
Asstt. Legal Advisor
2.5.2002.

Attested
W.D. Saha
Adv.