

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI
....

ORDER SHEET

Original Application No : _____
Misc. Petition No. _____
Contempt Petition No. 39/2002 W.O.A 148/01
Review Application No. _____

Applicant (s) N. N. Talukder & Ors

-Vs-

Respondent (s) W. O. I & Ors

Advocate for the Applicant (s) B.K. Sharma, S. Sarma, U.K. Rain
Miss U. Das

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

Notes of the Registry

Date

Order of the Tribunal

This Contempt Petition has been filed by the Comd for the petitioner W/O 17. 2. 11 e.A.T. Act, 1985 for drawing up of Contempt proceeding against the Contemner for wilful and deliberate violation of the Judgement and order dated 19.12.2001 passed by this Honble Tribunal W.O.A 148/01.

5.9.2002

Issue notice to show cause on the respondents as to why Contempt Proceeding against the alleged contemner shall not be initiated, returnable by four weeks.

List on 7.10.2002.

Member

Vice-Chairman

bb

7.10.01

Laod before the Honble Court for further orders.

Heard Mr.S.Sarma learned counsel for the applicant and also Mr.A.Deb Roy, Sr.C.G.S.C. for Respondent 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

contd/-

Section Officer

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

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 ^{placed} produced
on records. ~~With~~ In the circumstances
the Contempt Petition is dropped.

Member

Vice-Chairman

in

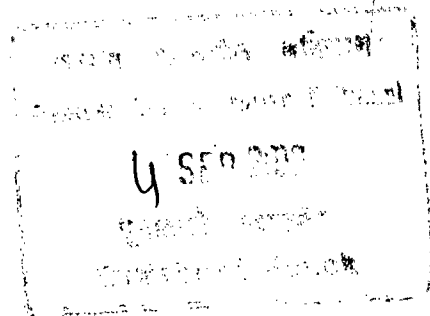
Vide D.No.
Dtd.

24.10.02

24.10.2002

Copy of the order
has been sent to the
Office for issuing the
same to the L/Advocate
for the party.

HS



Filed by
Usha Das
Advocate
3/9/02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH.

CP No. 37.../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 -

1. 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 contemnors have not taken any steps for implementation of the said

judgement .It is pertinent to mention here that the contemnners however, taking the guideline from the aforesaid judgment made payment of SDA to similarly placed employees of which mention may be made of, one Smt 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 contemnners, 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 contemnners for implementation of the Judgement but even then, no the contemnners 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 contemnners in fact sought clarification 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 contemnners 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 contemnors 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 contemnors 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 contemnors 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 contemnors 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 contemnteous action/inaction.

--AND--

8

5 -

Be further be pleased to pass necessary order directing the respondents to implement the Judgment and order dated 19.12.2001 passed in DA 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.

- 6 -

B

- DRAFT CHARGE -

Where as Sri Ranjan Dutta, Secretary, Ministry of Defence, New Delhi, Smt. Ganga Purkutyy, 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

- 7 -

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} ~~Jan~~, 2002 at Guwahati.

Identified by
Usha Das
Advocate ~~Usha Das~~

Deponent.

Nagendra Nath Talukadar

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

[Signature]

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. CHOWDHURY, VICE CHAIRMAN

THE HON'BLE J. K. M. BRAHMA, ADMINISTRATIVE MEMBER

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

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

- Versus -

1. Union of India
Represented by Lt. 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.G.A.C.

Contd.. 2

Attended
W.D. as
Adv

~~CONFIDENTIAL~~ (U.C.)

This application pertains to the same familiar issue as to the payment of Special Duty Allowance. These six applicants 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 SDA on the ground that they belong to H.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 Addl. 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

Kolkata.

Attested
by
Adv.

and his initial posting was in N.E. Region. He continued to work in such since the date of joining on 1.6.1976 till 12.5.1980. He was posted outside N.E. Region at Siliguri on 13.5.1980 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 Secendrabad 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
W.S.
Adv.

transferred after 1983 Scheme came into force. The applicant Nos.4 & 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. 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)

RECEIVED
11/11/98

bb

For
2/1/98
Page 1 of 1 (4)
Control & Administration
Checked Bench
15/24/12/98

Attested
10/11/98
Adv.

Kolkata.

ADHARTH 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) Sri N. Jyoti Nath Talukdar, SDO-III, (2) Shri Biswanath Brahma, UDC, (3) Shri Ramesh Das, (4) Shri Surest Borghain, 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
W.D. S. Adh.

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 assurances 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 difficul-

Attested
Adv.

ties. However, being similarly situated like that of the
aforesaid officials, my clients ^{are} still deprived of his
legitimate claim of current as well as arrear SDA in view
of subsequent pay revision since Aug 1 1977.

That there has no dispute that my clients ~~is~~ ^{are} an
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 re-
ceipt 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
~~this~~ 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
B.K. Puram Sector 3, New Delhi 110 054.

Attested
Adm.

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

Pursued the Department's reference being No 360192/NINT &
 On / Thursday 14-17 de 12-2002 regarding feasibility of filing an
 appeal/writ against the imprisonment de 12-12-2001 in C.A. No 149 of
 2001. After consultation with the J.P. de San Carlos de la Cruz de la Cruz
 passed by the J.P. de San Carlos de la Cruz de la Cruz.

On perusing it appears that the Directorate etc. considering all the points submitted by the people by way of the various objections as well as the representations, and in order to the above mentioned subject note that the applicant (1) and (2) were employed as a boy to N.B. Region posted to N.B. Region last fully, but subsequently transferred out of N.B. Region but reported to N.B. Region after nomination are entitled to SDA. Accordingly, in the application of them came including the applicants No. 4 and 5 are eligible for SDA. Therefore, they are entitled the stream pay for such allowances from July, 1991.

also through issued
We have given through the communication issued by the Chairman
Secretariat vide Jmr LEO NO.20/12/983A.1.1739 dt.2.5.2000 and it
appears that the para (iii) and (iv) in their ^{undelivered} ~~undelivered~~ stated that an
employee having 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 some time serving in N.E. Region are entitled to SDA. The
Hon'ble C&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 1st & 2nd appeals, the above C.A. Order before the Hon'ble High Court at Calcutta.

IS de La Compagnie des Indes

CP. K. Anubhai
Asstt. Legal Adviser
2.5 2002.

[illegible]

Ms. B. 1.6 v. 10, p. 73 / 2002-1981

Accepted
W.D. Adm

Ministry of Law, Justice & Govt. affairs
Branch Secretariate : Kolkata

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

Pursued the Departments reference being 360192/NNT/ & Ors/ Inre/ 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 belong 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 are 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 hailing 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
by
Adv.