

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No 201/2002  
R.A/C.P No.....  
E.P/M.A No.....

1. Orders Sheet..... O.A Pg. 1..... to 3.....

2. Judgment/Order dtd 17/2/2003 Pg. 1..... to 2..... *1/2 and 2nd*

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... 201/02 Pg. 1..... to 17.....

5. E.P/M.P..... Pg..... to.....

6. R.A/C.P..... Pg..... to.....

7. W.S..... Pg. 1..... to 39.....

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.)

*Salil*  
28/11/17

FRSM No. 4  
(SEE RULE 42 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 201/2002

Misc Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant(s) D. S. Sarma

-Vs-

Respondent(s) W.O.T. Town

Advocate for the Applicant(s) S. Sarma, U.K. Nair

Advocate for the Respondent(s) Cafe

Notes of the Registry	Date	Order of the Tribunal
	25.6.02	Heard Mr. S. Sarma, learned counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.
70577402 11-6-2002 24/6/02		The application is admitted. Call for the records.
2 - F - 2002		Issue notice to show cause as to why interim order as prayed for shall not be granted. Returnable by three weeks.
		In the meantime, the respondents are directed not to make further recovery of SDA till the returnable date.
		List on 22.7.2002 for orders.

Notice prepared  
and sent to D. Section  
bar issuing of the  
Same to the respondents  
through Regd. post with  
A.D.  
Vide D.No — 1901 to 1905  
Date — 3/7/02

I C Usha  
Member

Vice-Chairman

(2)

22.7.2002

List the case on 20.8.2002 on the prayer of learned counsel for the respondents for filing of written statement.

Interim order dated 25.6.2002 shall continue until further orders.

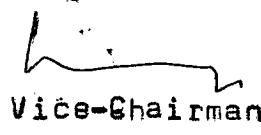
  
Vice-Chairman

bb

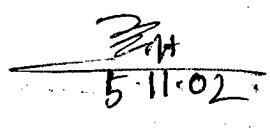
20.8.02

On the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the Respondents four weeks further time is allowed to the Respondents to file written statement. List on 17.9.2002 for orders.

  
Member

  
Vice-Chairman

No written statement has been filed.

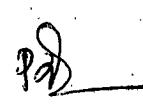
  
5.11.02

17.9.02

On the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the Respondents further four weeks time is allowed to the respondents to file written statement.

List on 6.11.2002 for orders.

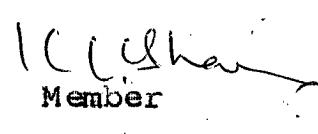
  
25-11-02

  
WJS submitted  
by the respondents.

mb

6.11.02

List again on 5.12.2002 to enable respondents to file written statement.

  
Member

  
Vice-Chairman

mb

5.12.02

Written statement has been filed. List the matter for hearing on 3.2.2003.

mb

  
Member

O.A. No. 201/2002.

3

03.02.2003 It has been stated by Mr. A.K. Choudhury, learned Addl. C.G.S.C. for the respondents that the appointed counsel Mr. B.C. Pathak, ~~is~~ is out of station. The case is accordingly adjourned and posted for hearing on 17.2.2003.

*S. Banerjee*  
Member

*Vice-Chairman*

mb

17.2.2003 Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is dismissed. No order as to costs.

*S. Banerjee*  
Member

*Vice-Chairman*

nkm

7.3.2003

*Copy of the Judgment  
was been sent to  
the Office for issue  
The same to the  
Adv. for the  
parties  
ss*

5

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. / XXXX No. 201 . . . of 2002

DATE OF DECISION 17.2.2003 . . . . .

Shri D. Sunil

APPLICANT(S).

Mr S. Sarma and Mr U.K. Nair

ADVOCATE FOR THE  
APPLICANT(S).

- VERSUS -

The Union of India and others

RESPONDENT(S).

Mr 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 S. BISWAS, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ? - Yes
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 ?

No

Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.201 of 2002

Date of decision: This the 17th day of February 2003

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman  
The Hon'ble Mr S. Biswas, Administrative Member

Shri D. Sunil  
Laboratory Technician,  
Office of the Group Centre Special Service Bureau,  
Basar, District West Siang,  
Arunachal Pradesh. ....Applicant  
By Advocates Mr S. Sarma and Mr U.K. Nair.

- versus -

1. The Union of India, represented by  
The Cabinet Secretary,  
Department of Cabinet Affairs,  
New Delhi.
2. The Directorate General of Security,  
Office of the Director,  
Special Service Bureau (SSB).
3. The Divisional Organiser, SSB  
Arunachal Pradesh Division,  
Itanagar, Arunachal Pradesh.
4. The Commandant, Group Centre, SSB.  
P.O. Basar, District- West Siang,  
Arunachal Pradesh. ....Respondents  
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY. J. (V.C.)

The controversy pertains to granting of Special (Duty) Allowance (SDA for short) in terms of the policy laid down by the Central Government in the matter of employment of persons from outside the region. The issue is no longer Res integra in view of the policy settled by a number of Office Memoranda on the basis of the Judgment

rendered by the Supreme Court 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.

2. In view of the facts and circumstances of the case we do not find any illegality on the part of the respondents in stopping the payment of SDA to the applicant. We are, however, of the opinion that the impugned action on the part of the authority in unilaterally recovering the amount of SDA retrospectively is too harsh. Admittedly, the applicant was paid SDA all along from 20.9.1994 to 31.8.2000 and the same is sought to be recovered by the order dated 1.9.2000. While upholding the action of the respondents in stopping the payment of SDA to the applicant, we, however, set aside the action of the respondents in recovering the amount retrospectively. The respondents are, therefore, directed to refund the amount which has already been recovered from the applicant within two months from the date of receipt of the order.

3. Subject to the observations made above, the application stands dismissed. No order as to costs.

*S. Biswas*

( S. BISWAS )  
ADMINISTRATIVE MEMBER

*D. N. Chowdhury*

( D. N. CHOWDHURY )  
VICE-CHAIRMAN

24

8

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Title of the case : U.A. No. 201 of 2002

BETWEEN

Shri D.Sunil ..... Applicant.

AND

Union of India & ors. .... Respondents.

L N D E X

Sl.No.	Particulars	Page No.
1.	Application	1 to 9
2.	Verification	10
3.	Annexure-1	11
4.	Annexure-2	12-13
5.	Annexure-3	14-15
6.	Annexure-4, 4A	16-17
7.	Annexure-5	18
8.	Annexure-6	19

\*\*\*\*\*

Filed by : U.K. Nair

Regn. No. :

File : WS7\SUNIL

Date : 1

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

(An application under section 19 of the Central  
Administrative Tribunal Act, 1985)

D.A. No. 201 of 2602

BETWEEN

Shri D. Sunil,  
S/o S. Dibakaran, presently working as  
Laboratory Technician in the office of  
the Group Centre Special Service Bureau  
(SSB) Basar, District West Siang,  
Arunachal Pradesh.

\*\*\*\*\* Applicant.

VERSUS

1. Union of India,  
Represented by the Cabinet Secretary,  
Department of Cabinet Affairs, Bikaner House,  
Shahjahan Road, New Delhi.

2. The Directorate General of Security  
office of the Director, SSB.

3. The Divisional Organiser, SSB  
Arunachal Pradesh Division,  
Kathing Hill, Ganga, Itanagar,  
Arunachal Pradesh.

4. The Commandant, Group Centre, SSB  
P.O. Basar, Dist-West Siang,  
Arunachal Pradesh.

\*\*\*\*\* Respondents.

PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION  
IS MADE:

This application is directed against the action  
of the respondents in treating the applicant ineligible for  
the drawal of Special Duty Allowance (SDA) and against  
various orders by which recovery of the amount already paid  
to him on account of SDA has been sought to be made.

*Filed by:  
D. Sunil, Applicant  
through,  
Umi Krishnan Nair  
Advocate.*

10

**2. LIMITATION:**

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

**3. JURISDICTION:**

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

**4. FACTS OF THE CASE:**

4.1. That the applicant is a citizen of India and a permanent resident of Kediapattanam, Kanyakumari, Tamil Nadu and as such he is entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the name of the applicant was sponsored for the post of Laboratory Technician in SSB and pursuant to that the Assistant Director SSB invited him for interview on 6.10.93. Applicant in the said interview did well and got his appointment to the post of Laboratory Technician under the respondents and he was posted under the respondent No.3 at Basar. To that effect, respondents have issued an order dated 1.12.93 and subsequently applicant joined his service w.e.f. 17.7.94 at Basar. The respondents issued the offer of appointment to the applicant vide memorandum dated 24.6.94.

Copies of the letter dated 9.9.93 and 24.6.94 are annexed herewith and marked as Annexure-1 & 2.

4.3. That the applicant after joining the post of Laboratory Technician under the respondents continued to hold the same to the best of his abilities and to the satisfaction of all concerns without any blemish. Admittedly, applicant got his posting at SSB Station at Basar, which is a part of N.E.Region and as such automatically he became eligible for the incentives meant for the Central Govt.civilian employees on their posting in N.E. Region.

4.4. That the Govt.of India, Ministry of Finance issued an office memorandum dated 14.12.83 by which certain benefits have been extended to the Central Govt. Civilian Employees on their posting in N.E.Region. The scope and ambit of the said office memorandum dated 14.12.83 clearly indicates the fact that same has been issued to attract and retain the services of competent officers in N.E. Region. Special Duty Allowance is one of the incentives extended through this office memorandum to the Central Govt. Civilian Employees on the posting at N.E.Region.

A copy of the said OM dated 14.12.83 is annexed herewith and marked as Annexure-3.

4.5. That the Annexure-3 OM dated 14.12.83 extended certain benefits like SDA, tenure of posting etc. to the Employees on their posting in N.E.Region. In the said OM

12

dated 14.12.83, the eligibility criteria has been laid down for grant of SDA and the applicant fulfills all the said eligibility criteria. Immediately on his posting in N.E. Region the respondents on their own accord extended the benefit of the said OM by granting him SDA.

4.6. That the applicant begs to state that after issuance of the aforesaid OM dated 14.12.83, the concerned authority issued various clarifications from time to time, streamlining the issues regarding eligibility criteria of SDA. The aforementioned OM dated 14.12.83 also applicable to the Civilian employees working under the respondents and by issuing various clarifications, the respondents have adopted the aforementioned policy. However, while adopting the policy as enumerated vide OM dated 14.12.83 the respondent made several mistakes in respect of its interpretations and same resulted in issuance of various orders not in conformity with the basic guidelines of OM dated 14.12.83. Mention may be made of one of such order dated 1.9.2000 issued by the respondent No.5 indicating the fact that payment made on account of SDA to the applicant w.e.f. 20.9.94 would be recovered from his monthly salary. In the said order dated 1/9/2000, the respondents also have given the break out of over payment as enclosures.

Copies of the order dated 1.9.2000 enclosing the breakout are annexed herewith and marked as Annexure-4 and

4A.

4.7. That the applicant immediately on receipt of the said order dated 1.9.2000 preferred a representation dated

4.9.2000 apprising the factual position of the case with a request to exempt him from such recovery as was sought to be made through the order dated 1.9.2000.

A copy of the representation dated 4.9.2000 is annexed herewith and marked as Annexure-5.

4.8. That on receipt of the aforesaid representation dated 4.9.2000, the respondents issued another order dated 22.9.2000, by which the prayer made by the applicant has been rejected with a further direction to his controlling officer to effect the recovery of payment of SDA already made to him w.e.f. 21.9.94 would be recovered from his salary.

A copy of the said order dated 22.9.2000 is annexed herewith and marked as Annexure-6.

4.9. That the applicant begs to state that after issuance of the order dated 22.9.2000 the respondents however did not take any step for recovery of SDA acting on the request of the applicant. But now from last part of the year 2001, the respondents have started recovery the amount already paid to the applicant on account of SDA. Admittedly the applicant is not a local resident of N.E.Region and he fulfills all the required qualification for grant of SDA as described in the OM dated 14.12.83 and its subsequent clarifications issued from time to time. On the other hand similarly placed employees working under the respondents are still getting SDA and in their cases no such recovery has been made. Taking into consideration the aforementioned

N.Y

factual position, the applicant prays before this Hon'ble Tribunal for an appropriate direction to payment of SDA, treating him to be eligible and not to make any recovery of the same and to refund the amount already recovered.

4.10. That the applicant begs to state that the respondents have acted illegally in treating the applicant to be ineligible to draw SDA and in making recovery of the same from his monthly salary. It is stated that the matter pertaining to payment of SDA as well as the subsequent recovery have been subject matter of number of litigations before this Hon'ble Tribunal and this Hon'ble Tribunal has laid down the Law in those cases which was subsequently affirmed by the Hon'ble High Court. The respondents even knowing the factual aspect of the matter have issued the impugned order only to harass the applicant without any cause. Even no prior intimation has been made to the present applicant to place his say in the matter. taking into consideration the aforementioned factual position, the applicant prays before this Hon'ble Tribunal to pass an appropriate interim order directing the respondents not to make any further recovery of the amount of SDA already paid to him and to pay him the current SDA till finalisation of the OA. The applicant is a lowly paid employee and in the event of not granting the interim order as prayed for, he will suffer irreparable loss and injury. It is further stated that the present case is a fit case for passing an interim order as prayed for as the principles of balance of convenience lies very much in favour of the applicant.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the respondents have acted illegally in issuing the impugned order and in effecting in recovery of SDA paid to the applicant w.e.f. 21.9.94 and as such their action is liable to be set aside and quashed.

5.2. For that the applicant being a resident of Tamilnadu, he is entitled to draw SDA taking into consideration the OM dated 14.12.83 and its subsequent clarification issued from time to time. The respondents knowing fully well about the factual aspect, now have issued the impugned order and have started deducting the amount of SDA paid to him w.e.f. 21.9.94 treating him ineligible for drawal of SDA.

5.3. For that the applicant fulfills all the required condition for drawal of SDA as laid down in the OM dated 14.12.83 and its subsequent clarification issued from time to time, and as such there is no earthly reason as to why the respondents have issued the impugned order and started recovery.

5.4. For that the respondents have acted illegally in treating the applicant to be ineligible to draw SDA and there by stopping the current payment of SDA without taking into consideration the OM dated 14.12.83 and its subsequent clarification issued from time to time.

5.5. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

The applicant craves leave of the Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash the impugned office memorandum dated 22.9.2000.

8.2. To direct the respondents to allow the applicant to draw current SDA, treating him to be eligible for drawal

(8)

of SDA and not to recover with a further direction to refund the amount already recovered from his salary.

8.3. To set aside and quash any office order/orders or clarification pursuant to which the impugned communication dated 22.9.2000 has been issued.

8.4. Cost of the application.

8.5. Any other order/orders that the applicant may in the facts and circumstances of the case be entitled to the applicant.

9. INTERIM ORDER PRAYED FOR:

In the facts and circumstances of the case, Your Lordships may be pleased to direct the respondents not to make any recovery from the applicant of the amount already drawn by him as SDA and to pay him the current SDA.

10. \*\*\*\*\*

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 7G 577402
2. Date : 11-06-02
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

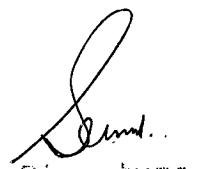
As stated in the Index.

18

VERIFICATION

I, Shri D.Sunil, son of S. Dibakaran, aged about 45 years, at present working as Laboratory Technician in the office of the Group Centre Special service Bureau (SSB), Basar, District- West Siang, Arunachal Pradesh, do hereby solemnly affirm and verify that the statements made in paragraphs 1,2,3,4.1, 4.3, 4.5, 4.7, 4.9, 4.10 and 5 to 12..... are true to my knowledge and those made in paragraphs 4.2, 4.4, 4.6 and 4.8 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the ... day of ..... of 2002.



Signature.

Annexure-1

NO: 6/SSB/A-2/92(10) 29/8/93  
DIRECTORATE GENERAL OF SECURITY  
OFFICE OF THE DIRECTOR:SSB  
BLOCK NO. V (EAST) R.K. PURAM

NEW DELHI, THE - 9/9/93

110066

MEMORANDUM

Subject: Recruitment for the post of Laboratory Technician.

.....

1. Your name has been sponsored for the post of Laboratory Technician in this Organisation. The post of Laboratory Technician carries the pay scale of Rs. 1320-30-1560-33-40-2040 plus all other allowances as are admissible to Central Government employees from time to time.

2. Please report to the undersigned for an interview at 0930 hrs., on 6/10/93 at the address mentioned above. You are requested to bring with you the original certificate showing your date of birth, educational qualification, Diploma in Lab. Tech., one year experience certificate and other testimonials. If you are SC/ST candidate, a certificate of competent authority to this effect may also please be brought with you.

3. It may please be noted that there is no vacancy in Delhi. Vacancy exist in the outstation units and the post carries all India transfer liability. You should come for interview only if you are willing for posting in our outstation units.

4. Please note that no TA/DA will be admissible in connection with the above call. However, second class Railway fare to SC/ST candidates will be given in connection with the above interview limited to the nearest Railway Station. Particulars of Railway Tickets may be brought along. (Those who are already in service of the Central/State Government etc., will however, not be entitled to such benefits). You may bring an un-employment certificate from a Gazetted Officer of your locality, in case you claim refund of money spent by Rail in connection with the interview. Local candidates belonging to same station would appear in the examination at their own cost.

*B.D. Adhikari*  
( B.D. ADHIKARI )  
ASSISTANT DIRECTOR (EA)

TO

35. D. Sunil.  
C.T. House, Attinkarai  
Kediapattanam (PO)  
Kanya Kumari, Tamilnadu  
Pin.-629253.

Dated, the 24.6.94.

MEMORANDUM

The undersigned hereby offers Shri D. SUNIL a temporary post of LAB. TECHNICIAN in the office of the D.O., SSB, A.P. Division, Itanagar in the pay scale of Rs. 1320-30-1560-EB-40-2040 with usual allowances as admissible under the rules and orders in force from time to time.

2. The post is temporary. His permanent appointment to the post if and when it is made permanent, will depend on various factors governing permanent appointment to such post in force at the time and will not confer on him title to permanency from the date of post is made permanent.

3. This appointment is purely temporary, but is likely to continue indefinitely. The appointment is likely to termination on one month's notice on either side without reasons being assigned. The appointing authority, however, reserves the right of terminating the services of the appointed forthwith or before the expiry of the stipulated period of notice by making payment to him a sum equivalent to the pay and allowances for the period of notice or the expired portion thereof.

4. The appointee shall be on trial for a period of XX TWO years which may be extended or curtailed at the discretion of the competent authority for such duration as the same may be required.

5. The appointment will be further subject to:-

1) Production of a certificate of fitness from the competent medical authority viz Civil Surgeon of District Medical Officer.

to service under the Government of India, no candidate who has more than one wife living, is eligible for appointment under the Government of India provided that Government may, if they are satisfied that there are special reason for doing so except any person from the operation of this rule. This offer of appointment is, therefore, conditional upon his/her furnishing to this office a declaration as in the Annexure-I of this letter, alongwith his/her reply. If, however, he has more than one wife living/She is married to a person having more than one wife living and desires to be exempted from the operation of the above mentioned rules for any special reasons, he/she should make representation in his behalf immediately. This offer of appointment should, in that case, be treated as cancelled and a further communication will be sent to him/her in due course if upon a consideration of his/her appointment.

3) Taking an oath of allegiance faithfulness to the constitution of India on making of a solemn affirmation to that effect.

4) Production of the following original certificates (if not produce already)

- Degree/Diploma certificate of educational and other technical qualifications;
- Certificate of age;
- Character certificate in the prescribed form Annexure-II to this letter.

1) Attested by a District Magistrate of Sub-Divisional Magistrate or their superior officer in the case of

(e) Discharge certificate in the prescribed form of previous employment, if any.

6. It may please be stated whether the candidate is serving or is under obligation to serve another Central Government/a State Govt. or a public Authority.

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

8. If Shri/Shrimati/Miss D. SUNIL accepts the offer on the above terms, he should report to the Office of the Commandant, S.S.B., G.C. BASAR, DISTT: WEST SIANA, A.P. within one month

of the date of issue of this Memorandum. If no reply is received or the candidate fails to report for duty by the prescribed date, offer will be treated as cancelled.

9. No travelling allowance will be allowed for joining the appointment, unless it is admissible under the rules.

10. He is liable to be transferred any where in India.

*Frankly 2nd May*  
Area Organiser (Staff)  
SSB:AP:Division, Itanagar

To  
Shri/Shrimati/Miss D. SUNIL

VILL: KADIADATTANAM

PS&PO: MANAVALAKORICHI, DISTT: KANYAKUMARI

TAMAR NADU

Copy for information and necessary action to the Commandant, S.S.B., G.C. BASAR, WEST SIANA, ARUNACHAL PRADESH. He is requested, on his joining D. SUNIL, as a Lab. Tech, the following report and other allied documents in connection with his appointment be forwarded to Mr. H.O.S. for ~~consideration~~ issue of formal appointment order.

*✓*  
AREA ORGANISER (STAFF)

No. 20014/3/83/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 sometime. The Government had appointed a committee under the Chairmanship of Secretary, Department of Personnel and 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 x x x x x x x

ii. Weightage for Central deputation/training abroad and special mention in confidential reports.

x x x x x x x 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% of basis pay subject to a ceiling of Rs.400/- per month on posting to any station in

Contd.....

Annexure-2 (Contd.)

e North Eastern Region. Such of these employees who  
exempted 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 the  
deputation duty allowance already being drawn subject to  
the condition that the total of such Special (Duty)  
Allowance will not exceed to Rs. 400/- p.m. Special Allowance  
like Special Compensatory (Remote Locality) Allowance,  
Construction Allowance and Project Allowance will be drawn  
separately.

x x x x x x x x  
x x x x x x x x  
x x x x x x x x  
x x x x x x x x

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

No.GCB/ACS/074/00-01/ 8960-61  
Office of the Commandant  
Group Centre SSB Basar,  
P.O. Basar, Dist W/Siang  
Arunachal Pradesh-791101.

Dated the ..01/9.../2000

Q B D E R

As per provision laid down in cabinet Sectt. U.O. No.20/12/99-EA-1-1799 dated. 2.5.2000 cases of over payment of S.D.A. w.e.f. 20.9.94 onwards are required to be reviewed. Accordingly the following amounts as noted against each of this GC personnel are required to recover from their monthly salary immediately.

1. SI (T) Promod Kumar	Rs. 2752/- WEF 1-5-2000 to 31-8-2000
2. Lab.(T) D.Sunil	Rs. 24933/- WEF 20-9-94 to 31-8-2000
3. CT. (T) Umesh Barman	Rs. 1314/- WEF 1-6-2000 to 31-8-2000
4. CT. (T) Dill Bag Singh	Rs. 1227/- WEF 1-6-2000 to 31-8-2000

The record of recovered amount should be kept properly.

OFF. COMMANDANT  
GC SSB BASAR

Distribution:-

1. Pay Section
2. Individual concerned.

No. 008/ACB/Income Tax/08-2000/ 1823  
 Office of the Commandant  
 Group Centre, SSB, Basar  
 PO: Basar Dist: West Siang (AP)  
 Dated, the 21st Feb' 2000

INCOME TAX CALCULATION SHEET FOR THE YEAR 1999-2000

Name of officer

D. SUNIL

Designation

Lab. Tech

Address

GC SSB Basar Coy HQ

a) Details of Income

March '99 Rs. \_\_\_\_\_  
 April '99 Rs. \_\_\_\_\_  
 May '99 Rs. 4500/-x4  
 June '99 Rs. \_\_\_\_\_  
 July '99 Rs. \_\_\_\_\_  
 Aug '99 Rs. \_\_\_\_\_  
 Sept '99 Rs. \_\_\_\_\_  
 Oct '99 Rs. 14600/-x8  
 Nov '99 Rs. \_\_\_\_\_  
 Dec '99 Rs. \_\_\_\_\_  
 Jan '2000 Rs. \_\_\_\_\_  
 Feb '2000 Rs. \_\_\_\_\_  
 Mar 2000 Rs. \_\_\_\_\_  
 TOTAL Rs. 521000/-

XXXXXX

XXXXXX

DA Arrears Rs. 20276/-  
 from 1/1/99  
 to 31/12/99

Bonus for the  
 year 08-09 Rs. 2419/-

SDA Arrears Rs. 26029/-

G/TOTAL Rs. 102329/-

SDA recovery Rs. 1114/-

P.M. Relief  
 Fund Rs. 150/-

GROSS INCOME Rs. 102260/-

b) Reduction of rebateable amount

1) CPP deposited during  
 the year @ Rs. 1000/-x12  
 PM Rs. 12,000/-

2) CGDIS deposited during  
 the year @ Rs. 30/-x12  
 for 12 months Rs. 360.00

3) \_\_\_\_\_ ✓ Rs. 0/-

4) \_\_\_\_\_ ✗ Rs. 0/-

TOTAL Rs. 12360/-

c) Calculation:

Total salary income Rs. 102260/-

standard deduction Rs. 20,000/-

TOTAL Rs. 82260/-

Income Tax upto. 6000/-  
 10% of next  
 80% of balance amount  
 of Rs. 22260/- Rs. 1452/-

TOTAL Rs. 5452/-

Tax rebateable/rebated  
 20% of deposited amounts. 2472/-

Total Income Tax comes  
 to Rs. 2980/-

(Rupees Two thousand nine hundred  
eighty only)

N.S.m.

COMMANDANT 21/2/2000  
 GC SSB, Basar

To

Shri D. Sunil  
Lab. Tech

-18-

25

To

The Commandant,  
Group Centre SSB,  
P.O: Basar, Dist: W/Siang,  
Arunachal Pradesh.

Sub: Recovery of S.D.A.

Ref: Your order No.GCB/ACS/074/00-01/8960 dated 1.9.2000.

Respected Sir,

I would like to invite your kind attention to the point that, it is learnt that in accordance with the Order No.42/SSB/AI/99(18)/2486 - 2508 dated 8.5.2000, the Special Duty Allowance given to me (Group C employee) might be recovered from my salary.

I may please be permitted to say that I do not fall under the category of Group 'C' employees of whose already paid SDA is to be recovered.

I would like to quote the clarification given by 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 for your ready reference please.

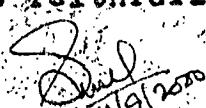
"The payment made to employees hailing from NE Region and posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employees hailing from NE Region and posted in NE Region be recovered from the date of payment or after 20th Sep'99 whichever is later". There is no any question of recovery of SDA from the employees hailing from outside of the NE Region and posted in NE Region as per the said order.

I therefore, would like to request you to exempt me from the category of employees of whose already paid SDA is to be recovered as per the latest order.

Submitted for your kind perusal and further necessary action please.

Thanking You.

Yours faithfully,

  
(D.SUNIL)  
LAB. TECHNICIAN  
CO SSB BASAR.

No.NGE/F-9(A)/96-2000/302  
 Directorate General of Security  
 Office of the Divisional Organiser  
 SSB, A.P. Division, Khating Hills  
 Itanagar  
 Dated, Itanagar the 22 Sept/2000

MEMORANDUM  
 Sub: SDA for civilian employees of the central Govt. serving  
 in the States and Union Territories of North Eastern  
 Region- regarding.

Please refer to your letter No.GC/BSR/SDA/074/2000/  
 9267 dated 10.7.2000 regarding clarification for recovery/stoppance  
 of SDA as per the Cabinet Sectt. U.O. NO.20/12/99-EA-I-1799 dated  
 2.5.2000.

2. In this connection, it is intimated that the question  
 of payment/stoppance of SDA is based on the judgement of Hon'ble  
 Supreme Court dated 20.9.94 incorporated in the Ministry of  
 Finance O.M. dated 12/1/96 in which it was clearly decided that  
 payment of SDA to in-eligible person on or before 20.9.94 will  
 be waived and payment made after this date will be recovered. All  
 the instructions issued thereafter, are based on the above  
 Ministry of Finance O.M. and also subsequent judgement of Hon'ble  
 Supreme Court dated 28.11.96. Therefore, there was no necessity of  
 issuing further clear cut instruction for recovery of the amount of  
 SDA paid to ineligible employees and it is implied that all such  
 recovery should be effected w.e.f 21.9.94 or from the date of  
 joining of employee in service in N.E. Region.

3. Be it regard to the application of Shri D. Sunil, Lab, Tech  
 , GC Basar , he is not entitled to the grant of SDA and therefore  
 the payments already made to his should be recovered w.e.f. 21.9.94  
 or from the date of his joining service whichever is later.

4. This issues with the approval of DC AP.

Sd/-

22.9.2k  
 AREA ORGANISER(S)  
 DIVL.HQRS :SSB: ITANAGAR

To

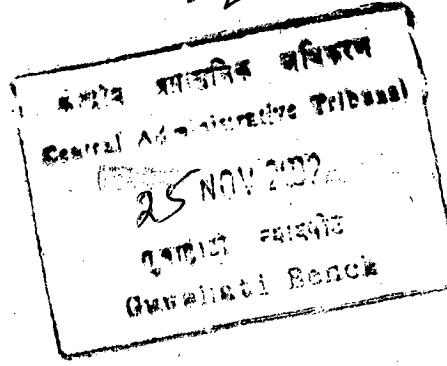
The Commandant  
 Group Centre SSB  
 Basar

No.GCB/ACS/SDA/074/2000-2001/11493-94 Dated 12/11/2000

Copy to:-

1) Account Branch GC,SSB,Basar	for strict similar action and confirm. Deduct of SDA paid on 20.9.94
2) Lab.Tech. D.Sunil GC,SSB,Basar	for information wrt his application dated 4.9.2000 and 6.10.2000.

SECOND -IN -COMMAND  
 GC,SSB,BASAR



Filed by:

*B. C. Pathak*  
25/11/02

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

*B. C. Pathak*

27  
Dy. Inspector General  
SSB/A.P. Division  
Itanagar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GAUHATI BENCH : GAUHATI

OA NO. 201/2002

SHRI D. SUNIL

VRS

UNION OF INDIA AND OTHERS

AND

IN THE MATTER OF :-

Written statement submitted by the respondents.

The respondents beg to submit the written statement as follows :-

1. That with regard to para 1 to 4.1 of the O.A. the respondents begs to offer no comments as the same are matter of records.
2. That with regard to para 4.2 to 4.10 of the O.A. the respondents begs to say that the

28

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Dy. Inspector General  
SSB, A.P. Division  
Itanagar

( 2 )

petitioner was selected through direct recruitment test held at various zonal centres during onwards based on all India level having all India transfer liability. The petitioner hails from outside of the North Eastern Region and was posted to SSB in the North Eastern Region on his first appointment.

3. With regard to the averments made by the petitioner in the aforesaid O.A. the respondents begs to submit that the SDA was granted to the petitioner-after being satisfied that the petitioner legally entitled to get the SDA and he was getting SDA regularly with effect from the date of his appointment under the administrative control of Divisional Organiser, SSB, Arunachal Pradesh Division, Itanagar, in his monthly salary bill.

29  
Refugee  
By Inspector General  
SSB/A.P. Division  
Itanagar

( 3 )

Thereafter, the Government of India, Ministry of Finance, Department of Expenditure, circulated letter No. 11(3)/95-8.11(5) dated 12.1.96 regarding payment of SDA for civilian employees of the Central Government serving in the North Eastern Region for strict compliance of the clarifications contained therein. In the said memorandum dated 12.1.96, it was also stated in paragraph 3 that for the purpose of Sanctioning of 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

Dy. Inspector General  
SSB/A.P. Division  
Itanagar

- 23 -

( 4 )

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 12.1.96, that the Hon'ble Supreme Court in their Judgment delivered on 20.9.94 (in Civil Appeal No. 3251/93) upheld the submissions of the Government India that the civilian employees of the Central Government who have All India Transfer Liabilities are entitled to the grant of the SDA on being posted to any station in the North Eastern 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

31  
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Dy. Inspector General  
SSB, A.P. Division  
Itanagar

( 5 )

transferred from outside the region to the North Eastern Region would not be violative of the provisions contained in 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 the respondents or for that matter to other similarly 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 Judgment 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

B. Chanda

Dy. Inspector General  
SSB/A.P. Division  
Itanagar

( 6 )

after 20.9.94 which also includes those cases in respect of which the SDA was pertaining to the period prior to 20.9.94 but payments were made after 20.9.94 would be recovered.

That the SDA was initially paid to the petitioner by the respondent authorities of their own when it was found that they were eligible for grant of the SDA. The contention of the petitioner is therefore not justified at this stage for stopping payment of the SDA to the present applicant by enforcing the said memorandum dated 12.1.96 issued by the Ministry of Finance, Government of India inasmuch as the petitioner are liable to be transferred from North Eastern Region to the other states of the country and as such the petitioner is saddled with All India Transfer Liability and he was also recruited on All India recruitment test basis held at various Zones and

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Dy. Inspector General  
SSB, A.P. Division  
Itanagar

( 7 )

posted to North Eastern Region. The present petitioner will become eligible for grant of SDA in the context of memorandum dated 14.12.83 etc. etc.

A copy of the memorandum dated 12.1.96 is annexed herewith and marked as Annexure-'R'-1.

4. That although the petitioner was regularly getting SDA with effect from the date of his appointment , the petitioner authority suddenly stopped payment of SDA to the applicants illegally and arbitrarily without affording any opportunity of being heard and directed recovery of the amount paid to the respondents by way of SDA with effect from 21.9.94 or from the date of their appointment whichever is later in as much as the respondents were treated as ineligible persons being local

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Dy. Inspector General  
SSB A.P. Division  
Itanagar

( 8 )

recruits only due to some amount of confusion at the level of Divisional Head Quarters, SSB, Itanagar.

That, thereafter the petitioner authorities received the U.O. No. II(3)/B5-EA-II(B) dated 7.5.97 issued by the Ministry of Finance, Department of Expenditure, Government of India and the Cabinet Secretariat vide - U.O. No. 20/3/96-EA 1-1040 dated 10.6.97, circulated the same among SSB and other Organizations for information and taken further necessary action in the matter. It was stated in the said U.O. dated 7.5.97 inter alia, that the Cabinet Secretariat may determine in each case whether the employees were locally recruited in North Eastern Region who rejoin the North Eastern Region on their transfer to North Eastern Region from outside and the Central Government Civilian employees who are posted on

85

- 26 -

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Dy. Inspector General  
SSB/A.P. Division  
Itanagar

( 9 )

first appointment from outside North Eastern Region to North Eastern region fulfills the 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 North Eastern Region to North Eastern Region then they are entitled to SDA, otherwise not.

Copy of the said U.O. dated 10.6.97 issued by the petitioner No. 1 circulating U.O. dated 7.5.97 issued by the Ministry of Finance is annexed herewith and marked as Annexure-'R'-2.

5. That, thereafter the payment of SDA to the petitioner were made in terms of the U.O. dated 7.5.97 but, the Cabinet Secretariat vide U.O. 20/12/99-EA-1-1799 dated 2.5.2000 which was circulated by the petitioner No. 3 vide O.M. dated 5.5.2000 clarified the position by the SSB Directorate regarding/entitlement of SDA for the

29

Copy

Dy. Inspector (3rd year)  
SSB/A.P. D. Officer  
Guwahati

( 10 )

petitioner wherein it was contended that a person who has been appointed in North Eastern Region on his first appointment after being selected in various recruitment centres based on All India basis are not entitled to the benefit of SDA but, after transfer posting from North Eastern Region to outside and thereafter reporting to North Eastern Region makes them entitled to the benefit of SDA provided they are not local recruits. The respondent No. 3 circulated the same to different SSB units by O.M. dated 26.5.2000.

A copy of the U.O. dated 2.5.2000 is filed hereto and marked as Annexure-'R'-3.

6. That the Petitioner as applicants have challenged the aforesaid Order dated 02.05.2000 and all follow up orders before the Central Administrative Tribunal, Guwahati Branch at

*Guwahati*  
Guwahati  
Dy. Inspector General  
SSB/A.P. Division  
Itanagar

( 11 )

Guwahati by filing O.A. 201/2002 inter-alia praying for a direction to the petitioner authority to continue payment of SDA to the applicant and to stop recovery of the amount already paid and also to set aside the U.O. dated 2.5.2000 and all other follow up orders.

7. That the petitioner contested the claim by filing written statements, wherein substantially following contentions had been made, viz.

(i) The allowances and facilities provided in the Office Memorandum dated 14.12.1983 (Annexure - A herein) were with a view to accepting and retaining the services of the competent officers for serving in North Eastern Region. Now, the applicant of O.A. was recruited on the basis of all India level selection list and posted to North Eastern Region initially, he do

Ref. No.  
Dy. Inspector General  
SSB, A.P. Division  
Itanagar

( 12 )

not possess any competency/experience in service hence according to the basic principal for granting SDA he being purely raw in experience and competency, not entitled to get SDA at this stage. Hence the claim of the applicants in O.A. is devoid of merit according to the fundamental criteria for grant of the said additional allowance.

(ii) The aforesaid position has since been reviewed on the basis of Cabinet Secretariat U.O. No. 20/12/99-EA-I-1799 dated 2.5.2000 (Annexure-D hereto), which clearly indicates that a person belonging to outside N.E. Region but appointed on first appointment posted in North Eastern Region after selection through all India direct recruitment basis having a common/centralised seniority list and all India transfer liability are not entitled to drawl of SDA.

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Dy. Inspector General  
SSB A.P. Division  
Itanagar

-32-

( 13 )

(iii) In the instant case the applicant is posted in North Eastern Region on initial appointment which constitutes that he was neither employed nor transferred from outside the North Eastern Region to North Eastern Region and therefore, he is not entitled to grant of SDA in terms of judgment of Apex Court dated 20.9.94, wherein it has been clearly indicated that SDA would be paid to the civilian employees who have all India transferred liability and posted to North Eastern Region from outside this Region on transfer, and grant of SDA to such category of employee would not be violative of Article 14 of the Constitution.

(iv) On the basis of the order of Cabinet Secretariat dated 10.06.1997 SDA was paid to the applicant, but the said payment being irregular

40

B. P. B.  
Dy. Inspector General  
SSB/A.P. Division  
Itanagar

-33-

( 14 )

shall have to be recovered as per the revised/amended instructions of Cabinet Sectt. issued vide their U.O. dated 2.5.2000 (Annexure-R-4 hereto).

In the instant case the applicant was posted in North Eastern Region on initial appointment which constitute that he was not transferred from outside the North Eastern Region to North Eastern Region; and moreover he was not competent/experienced as contemplated in the O.M.  
Dated 14.12.1983.

Under the aforesaid position stoppage of drawl of SDA in respect of the applicant was in order, and the order for recovery of the amount already paid was not illegal and arbitrary. A copy of the statements showing the transfer and posting of

Rejaul  
Dy. Inspector General  
SSB, A.P. Division  
Itanagar

( 15 )

the applicant throughout his entire service career based on the service Book/personal file of the applicant is filed herewith. That statement would clearly show that the applicant has been posted in N.E. initially and working in the NE Region uphill now without any transfer. So, he is not entitled to grant of SDA.

(v) The recovery of irregular payment of SDA made to the applicants cannot be termed as violation of the principles of natural justice as already explained. 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 irregular payment of SDA can make up his mind and determine his eligibility for award of SDA. Undoubtedly the applicant was at fault in

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Dy. Inspector General  
SSB/A.P. Division  
Itanagar

( 16 )

receiving the irregular payment of SDA.

8. The deponent further beg to submit that in a recent appeal filed by Telecom Department(Civil Appeal No.7000 of 2001 arising out of SLP No.5455 of 1999) Supreme Court of India has ordered on 5.10.2001 that this appeal is covered by the judgement of this court, in the case of UOI and others Vrs Executive Officers Association Group 'C'(1995(Supp,1)SCC757). Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

In view of the aforesaid judgments, the criteria for payment of Special Duty Allowance, as

13

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Dy. Inspector General  
SSB, A.P. Division  
Itanagar

- 36 -

( 17 )

upheld by the Supreme Court, is reiterated as under :-

"The Special Duty Allowance shall be admissible to Central Government employees having All India Transfer Liability on posting to North-Eastern region (including Sikkim) from outside the region."

All cases for grant of Special Duty Allowance including those of All India Service Officers may be regulated strictly in accordance with the above mentioned criteria.

All the Ministries/Departments etc. are requested to keep the above instructions in view of strict compliance. Further, as per direction of Hon'ble Supreme Court, it has also been decided that -

i) The amount already paid on account of Special

44

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Dy. Inspector General  
SSB/A.P. Division  
Itanagar

-37-

( 18 )

Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.2001, which is the date of judgment of the Supreme Court, will be waived. However, recoveries, if any, already made need not be refunded.

ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5.10.2001 will be recovered.

A copy of GIMF OM No. 11(5)/97-E-II(B) dated 29.5.2002 is annexed herewith as (Appendix-R- 5 )

9. In an analogous case in a recent appeal filed by the Union of India Vrs Pradeep Kumar & Others vide WP(C) No.7250/2001, in the interim judgement of the said case The Hon'ble Gauhati High Court has stated that under the circular of the Union of India an outsider who is appointed

45

B. J. Banerjee  
Dy. Inspector General  
SSB, A.P. Division  
Itanagar

38-

( 19 )

for the first time in North Eastern States is not entitled to S.D.A. Such an employee would be entitled if he is transferred after his first posting from North Eastern States to outside N.E. States and is re-transferred to North Eastern States. In such an eventuality, the incumbent would be entitled to SDA only from the date of his transfer to the North Eastern States.

( A copy of the interim judgment dated 8.10.2001 in connection with their said W.P(C) is attached as Appendix-R-6 )

10. Regarding admissibility of Special Duty Allowance in a analogous case in O.A. No.43/2000 titled Mathuresh Nath and others versus Union Of India the Hon'ble CAT bench of Guwahati vide their judgment dated 11.1.2001 has stated that the issue

39

( 20 )

raised in this application is no longer res integra in view of judgment of the Supreme Court rendered in Civil Appeal No.3251 of 1993 disposed of on 20.9.94 in Union of India and others versus S. Vijay Kumar and others, reported in(1994) 28 ATC 598. As per the aforementioned decision, Central Govt. employees who have all India transfer liability are entitled for grant of SDA on being posted ( emphasis supplied ) to any station in the North Eastern Region from outside the region and SDA would not 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.

( 21 )

( A copy of judgment dated 11.1.2001 passed by the Hon'ble CAT bench of Guwahati is attached as Appendix- R-7 )

11. That with regard with the relief sought and interim order as prayed for vide para 8 and 9 of the petition this declarant reiterates that statements made in the foregoing paras of this written statement and submission before this Hon'ble Tribunal that the petitioner being ineligible are not entitled for drawl of SDA hence, relief sought by him is bad in law and therefore, interim order passed by the Hon'ble Tribunal dated 25.6.2002 needs to be reviewed in the context of the judgment of the Apex Court dated 20.9.94. The applicant is not entitled to any relief what so ever as prayed for and hence the application is liable to be dismissed with cost as devoid of any merit. In the premises

48  
Before

Dy. Inspector General  
SSB, A.P. Division  
Itanagar

( 22 )

aforesaid, it is therefore, prayed that your Lord  
Ship would be pleased to hear the parties, peruse  
the records and after hearing the party and  
perusing the records shall further be pleased  
to .lsid dismiss the application with cost.

VERIFICATION.

I, Shri R.C. Pande S/o Late. T.R. Pande  
aged about 55 years presently serving as Deputy  
Inspector General, SSB, A.P. Division, Itanagar,  
Arunachal Pradesh being competent and duly  
authorised to sign this verification. I do hereby  
solemnly affirm and state the statements made in  
para 1, 2 and 11..... are true to my  
knowledge and belief and those made in the  
para 3, 4, 5, 7, 8, 9 and 10.... are matter of records  
are true to my information derived therefrom and

42

49

( 23 )

the rest are humble submission before the Hon'ble Tribunal. I have not suppressed any material fact.

And I sign the verification in this day... 20th NOV,... of 2002 at Itanagar.

Brande  
DECLARANT  
Dy. Inspector General  
SSB/A.P. Division  
Itanagar

43-

ANNEXURE 2 '1'

SD

No.II(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 OM No.20014/3/83-E.IV dated 14.12.83 and 20.04.1987 read with OM NO. 20014/16/86-E.IV/E.II(B) dtd. 01.12.88 on the subject mentioned above.

2. The Government of India vide the above mentioned OM dtd. 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 dtd. 20.04.87 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.

28/11/96 23\*96  
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V O I V Sadhan Co. Goswami  
S S B.

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 20.09.94 (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 Constitutions 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 divisions have been taken :

- i) The amount already paid on account of SDA to the ineligible persons on or before 20.09.94 will be waived; &
- ii) The amount paid on account of SDA to ineligible persons after 20.09.94 (which also includes 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. 20.09.94) 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 Govt. 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.

ANNEXURE 2 '2'

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

Sub :-

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 dtd. 08.04.97 on the above mention subject and to say that for the purpose of sanctioning SDA to Central Government Civilian Employees, the all India transfer liability of the members of any service/cadre or incumbents 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 a 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 any where in the India does not make him eligible for the grant of special duty allowance.

2. Therefore, Cabinet Secretariat may determined in each case whether the employees locally recruited in NE Region, who join in NE Region on their transferred to NE Region from outside and 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 Transferred Liability, or not. If they fulfil all the conditions of All India transferred 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 case may be referred to this Ministry along with the views of IFU thereon.

Sd/-

(P.S.Walia)

For under secretary to the Govt. of India.

GOI (Exp) U.O. No.11(3)/85.E-II(B) dtd 07.05.97

Locally below in NE Reg

COURT CASE  
MOST IMMEDIATE

Cabinet Secretariat  
(EA.I Section)

Sub:- 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)-2369 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 02.09.99 have been examined in consultation with out 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 :

1) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the

grant of SDA on being posted to N.E station to N.E Region from the outside the region and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view of clarifications issued by the Ministry of Finance vide their U.O.No. 11(3)/95.E.II(B) dated 07.05.97.

a) A person belongs to outside N.E Region No. but he is appointed 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/ centralized seniority list and All India Transfer Liability.

b) An employee hailing from the N.E Region No. selected on the basis of an all India recruitment test and borne on the centralized cadre/service common seniority on the 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 No. appointed as Group No.'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 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 out side the NE Region having All India Transfer Liability.

iii) An employee belongs to NE Region and YES 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.

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

v) The MOF. Deptt. of Expdr. vide their UO No.11(3)/95-E.II(B) dated 07.06.97 have clarified that a mere clause in the appointment to the effect that the personed concerned is liable to be transferred any where 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

In case the employee, hailing from N.E. Region is posted within NE region he is entitled to SDA till he is once transferred out of that Region

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 of 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 employee hails from NE Region or posted to NE Region from outside the N.E Region.

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 others, the 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 that is on fulfilling the criteria of All India recruitment test and to promotion of All India common seniority basis having been satisfied are all the employees eligible for the grant of SDA.

vii) Whether the payment made to some employees hailing from NE Region and posted in NE Region be recovered after 20/09/91 i.e the date of decision

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.

The payment made to employees hailing from

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.

NE Region and posted in NE Region be recovered from the date of its payment. It may also be added that the payment make to the ineligible employees hailing from NE Region and posted in NE Region be recovered from the date of payment or after 20.9.94 which ever is later.

03. This issues with the concerns 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 30.03.00.

Sd/-

(P.N.Thakur)  
DIRECTOR (SR)

01. Shri R.S. Bedi, Director, ARC
02. Shri R.P. Kureel, Director, SSB
03. Brig(Retd), G.S.Uban, IG,SFF
04. Shri S.R. Mehra, JD(P&C),DGS
05. Shri Ashok Chaturvedi, JS(Pers),R&AW.
06. Shri B.S.Gill, Director of Accounts, DACS
07. Smt.J.M.Menon, Director Finance(S), Cab.Sectt.
08. Col.K.L.Jaspal, CIOA,CIA.

Cab. Sectt. UO No.20/12/99-EA-I-1799 dated 02.05.2000

G.I., M.F., O.M.No.11(5)/97-E.II(B), dated 29-5-2002

**Special Duty Allowance to civilian employees posted  
from outside the region only**

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 and O.M.No.11(3)/95-E.II(B), dated 12-1-1996(SI.Nos.214 and 103 of Swamy's Annual, 1988 and 1996 respectively) on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted in N-E. region vide OM, dated 14-12-1983. Special Duty Allowance (SDA) is one of the incentives granted to the Central Government employees having "All India Transfer Liability". The necessary clarification for determining the all India Transfer Liability was issued vide OM, dated 20-4-1987, laying down that 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 Special Duty Allowance.

3. Some employees working in N-E. region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UoI. The Hon'ble Supreme Court in judgement delivered on 20-9-1994 (in Civil Appeal No.3251 of 1993 in the case of UoI and Others v. S.Vijaya Kumar and others) have 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 Special Duty Allowance 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 a clause in the appointment order relating to All India Transfer Liability.

4. In a recent appeal filed by Telecom Department (Civil Appeal No.7000 of 2001- arising out of SLP No.5455 of 1999), Supreme Court of India has ordered on 5-10-2001 that this appeal is covered by the judgement of this Court, in the case of UoI and Others v. S. Vijaya Kumar and Others, (reported as 1994 (Supp. 3) SCC, 649) and followed in the case of UoI and Others v. Executive Officers' Association Group 'C' ( 1995 (Supp. 1) SCC, 757). Therefore, this appeal is to be allowed in favour of the UoI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the

5. In view of the aforesaid judgements, the criteria for payment of Special Duty Allowance, as upheld by the Supreme Court, is reiterated as under:-

"The Special Duty Allowance shall be admissible to Central Government employees having All India Transfer Liability on posting to North-Eastern region (including Sikkim) from outside the region."

All cases for grant of Special Duty Allowance including those of All India Service Officers may be regulated strictly in accordance with the above-mentioned criteria.

6. All the Ministries/Departments, etc., are requested to keep the above instructions in view for strict compliance. Further, as per direction of the Hon'ble Supreme Court, it has also been decided that –

- (i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5-10-2001, which is the date of judgement of the Supreme Court, will be waived. However, recoveries, if any, already made need not be refunded.
- (ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5-10-2001 will be recovered.

7. These orders will be applicable mutatis mutandis for regulating the claims of Islands Special (Duty) Allowance which is payable on the analogy of Special (Duty) Allowance to Central Government Civilian Employees serving in the Andaman and Nicobar and Lakshadweep Groups of Islands.

8. In their application to employees of Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor-General of India.

Sd/-

Under Secretary to the Govt. of India

8.10.2001.

36

BEFORE

ANNEX - R-6

HON'BLE THE CHIEF JUSTICE, MR R.S. MONGIA  
THE HON'BLE MR JUSTICE D. BISWAS

Heard Mr GP Showmick, the learned  
counsel for the writ petitioners.

The learned counsel for the writ peti-  
tioners, inter-alia contends that under the Circu-  
lar of the Union of India an outsider who is  
appointed for the first time in North-Eastern  
States is not entitled to S.D.A.. Such an employee  
would be entitled to SDA if he is transferred after  
his first posting from North-Eastern States to  
outside N.E. States and is re-transferred to North-  
Eastern States. In such an eventuality, the

contd...

Noting C. Officer or Advocate Serial Date Office Notes, Reports, Orders  
No. of proceeding with signature

8.10.2001. incumbent would be entitled to SDA only from the date of his retransfer to the North-Eastern States.

Issue notice of motion returnable within 6 weeks. Steps be taken for serving respondents within one week.

Till further orders, the operation of the judgment and order dated 30th March, 2001 passed by the Central Administrative Tribunal, Guwahati in O.A. No. 243/2000 shall remain stayed.

Sd/- D. Biswas Sd/- R. S. M. (Signature)  
Judge Chief Justice

21/4/08

18/12/01

CERTIFIED TO BE TRUE COPY	
Date 18/12/2001	
Superintendent (Clerking Section)	
Guwahati High Co	
Authorised U/S 76, Act I, 1872	

18/12/2001

-38-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Annex - R-73  
APPENDIX R-73  
SL. No. 1.9

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

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.

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

.....Applicants

.....Respondents

ORDER (ORAL)

CHOWDHURY, J. (V.C.)

The admissibility of Special (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 14.12.1993 and other Notifications issued from time  
to time.

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 20.3.1994 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 on hearing the learned counsel for the parties we do not find any merit in this application. Accordingly the same is dismissed. There shall, however,

(b) no order as to costs.

Sd/ VICE CHAIRMAN  
S/ MEMBER (ads)

affidavit to be true Copy  
K. P. Singh  
Advocate  
Secty to the Vice Chairman  
Central Administrative Tribunals  
Secty to the Vice Chairman  
Government of Assam  
Government of Assam  
Government of Assam

Dt.

66

Notice

From

B.C. Pathak Addl. C.G.C

CAT. Guwahati Bench

Guwahati - 5

To,

Shri S. Sarma  
Advocate

Sub:- ~~on~~ WIS in OA NO-  
201/2002 filed by Shri  
D. Sunil vs Union of India  
vs -

Sir,

Please find enclosed herewith the copy of  
the WIS in OA NO. 201/2002 filed by the  
suspandent in the Hon'ble Tribunal.

Kindly acknowledge the receipt of the  
same.

Revd. the copy

Advocate for the  
Applicant

Yours Sincerely  
B.C. Pathak

(B. C. Pathak)  
Addl. Central Govt. Standing Counsel  
Central Administrative Tr.ribunal  
Guwahati Bench : Guwahati

I undertake to furnish a  
copy of the Applicant's Advocate  
who is not present in the Court  
today i.e.

B.C. Pathak

(B. C. Pathak) 28/11/02  
Addl. Central Govt. Standing Counsel  
Central Administrative Tr.ribunal  
Guwahati Bench : Guwahati