

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No 2024/102.....

R.A/C.P No.....

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SECTION OFFICER (Judl.)

Sahib
28/11/17

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 204/2002

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicants. Lila Ramli Gohain Son

-Vs-

Respondant(s) Union of India Son

Advocate for the Appellant(s) Mr. D.R. Gogoi, Mr. P. Bhownick
Mr. S. Borah

Advocate for the Respondant(s) Cyse

Notes of the Registry

Date

Order of the Tribunal

27.6.02

Heard learned counsel for the parties.

Issue notice on the respondent to show cause as to why the application shall not be admitted. Returnable by 4 weeks. List on 30.7.02. for Admission.

Member

Vice-Chairman

1m

30.7.02

List again on 21.8.2002 to enable Mr. A. Deb Roy, learned Sr. C.G.S.C. for the Respondents to obtain necessary instructions on the matter.

In the meantime, the Respondents are directed not to make any further recovery of SDA.

Member

Vice-Chairman

C. H. for 24. 07. 2002
vide No. 5777/90
Dated 25.6.02

2-7-2002

Notices prepared and sent to Direction for issuing of the R. No- 1 to 9 by Regd. post with A/D. Vide -D. No-
Date -

24.02

21.8.02

Written statement has not been filed. None appears for the applicant. List on 29.8.02 for Admission and for disposal.

K. C. Sharma
Member

[Signature]
Vice-Chairman

19.8.02

MS. Submitted

by the Respondent Nos. 1 to 4.

lm

29.8.02

None appears for the applicant. The Respondents have filed the written statement. In the circumstances, the application is admitted. The matter may now be posted for hearing on 9.9.2002. If the learned counsel for the applicant is not present on that day, the matter shall be taken up for hearing as ex-party.

K. C. Sharma
Member

[Signature]
Vice-Chairman

mb

9.9.2002

Prayer has been made on behalf of the Mr D.R. Gogoi, learned counsel for the applicant, for a short adjournment. Prayer allowed. List it again on 16.9.02 for hearing.

[Signature]
Vice-Chairman

nkm

16.9.02

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

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

[Signature]
Vice-Chairman

Judgment did 16/9/02
Communicated to the
parties comm. & the
Applicant
[Signature]
28/9

Q#

1

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A.No.....204.....of 2002.

DATE OF DECISION..16-9-2002.....

Sri Lila Kanta Gohain & 22 others

APPLICANT(S)

Sri D.R. Gogoi

ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri A. Deb Roy, Sr, C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

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

Judgment delivered by Hon'ble Vice-Chairman

W

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 204 of 2002.

Date of Order : This the 16th Day of September, 2002.

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

1. Sri Lila Kanta Gohain,
2. Sri Prasenjit Koch,
3. Sri Subrata Bose,
4. Sri Tulshiram Gore,
5. Dr Chandan Talukdar,
6. Sri Jugaleswar Saikia,
7. Sri Jerbash Basumatari,
8. Sri Sidheswar Bora,
9. Sri Subhasis Adak,
10. Sri Tikaram Newar,
11. Sri Kegio Sega,
12. Sri Pranab Borpatra Gohain,
13. Sri Prabin Goswami,
14. Sri Ruwnder Ngamthoi Anal,
15. Sri Saral Kumar Sarma,
16. Sri Puneswar Borah,
17. Sri Hem Prasad Borah,
18. Sri Mohendra Borah,
19. Sri Narayan Upadhyaya,
20. Sri Juren Ch. Borah,
21. Sri Ashish Sarkar,
22. Sri Satyavir Singh,
23. Sri Chandra Kanta Bora.

...Applicants

By Advocate Sri D.R.Gogoi.

- Versus -

1. Union of India,
represented by the Home Secretary,
Ministry of Home Affairs, New Delhi.
2. Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.
3. Director General, SSB,
Block V(East), R.K.Puram,
New Delhi-110066.
4. Dy. Director of Accounts,
Pay and Accounts Office,
Ministry of Home Affairs,
Block V(East), R.K.Puram,
New Delhi-110066.

5. Divisional Organiser, SSB,
Shillong Division,
A.P.Secretariat Building, G.S.Road,
Shillong, East Khasi Hills Dist.,
Meghalaya.
 6. Divisional Organiser, SSB,
North Assam Division,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam.
 7. Divisional Organiser, SSB,
Arunachal Pradesh Division,
Khoting Hills, Itanagar, A.P.
 8. Area Organiser (Staff),
Office of the D.O., SSB,
Tezpur, Dist. Sonitpur, Assam.
 9. Area Organiser, SSB,
Kokrajhar,
P.O. Charaikhola (Adabari),
Dist. Kokrajhar (Assam) ...Respondents
- By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

The issue relates to payment of Special Duty Allowance (SDA) and consequent recovery.

2. The applicants No. 1 to 5 belong to Group A service of SSB, applicants No.6 to 14 belong to Group B service of SSB and applicants No. 15 to 23 are non Gazeted officers of the SSB working in different districts of North Eastern Region. The applicant No. 23 is a retired Section Officer, who retired on 28.2.2001 from SSB, North Assam Division, Tezpur. This application is made by these applicants having a common interest in the matter and accordingly they were allowed to espouse in single application in aid of Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules 1987. These

applicants were paid SDA though they belonged to North Eastern Region. The matters were agitated before the Tribunal. Finally the issue was resolved by the Supreme Court in Union of India and others vs. S.Vijaykumar and others, reported in 1994 (Supp. 3) SCC 649 which was followed in Union of India and others vs. Executive Officers' Association Group 'C' reported in 1995 (Supp. 1) SCC 757. The authority thereafter took steps for recovery of SDA paid. The basic grievance of the applicants is against the steps taken by the respondents for recovery of ^{already} SDA paid to them. In the absence of a direction from the authorities it was not lawful on the part of the respondents to recover the amount. The Government of India has already settled the issue vide O.M.No. 11(5)/97-E.II(B) dated 29.5.2002 whereby it was decided to waive those amount which were already paid to the applicants upto 5.10.2001. The applicants were paid SDA which were later on sought to be recovered by the authority.

In the light of the observation made in ^{of this Bench I} like cases/ direct the respondents not to make any recovery with retrospective effect and whatever amount already recovered from the applicants prior to 5.10.2001 are to be refunded to them. With this the application stands disposed of.

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

(D.N.CHOWDHURY)

VICE CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH

O. A. No. 204 of 2002

Shri Lila Kanta Gohain & Ors.Applicants.


- VS -

Union of India & Ors.Respondents.

I N D E X

<u>Sl. No.</u>	<u>DESCRIPTION OF DOCUMENTS RELIED ON</u>	<u>PAGE NOS.</u>
1.	Original Application	--- 1 to 22(A)
2.	Annexure- I (O.M. dated 14.12.83)	--- 23-24
3.	Annexure - II(O.M. dated 12.1.96)	---25-28
4.	Annexure - III(U.O. dated 10.6.97) and 7.5.97)	--- 29-30
5.	Annexure - IV(U.O. dated 2.5.2000)	--- 31-33
6.	Annexure - V (Order dated 28.7.99)	--- 34-38
7.	Annexure - VI (Order dated 30.3.2001)	-- 39-41.

Filed by :


(Santanu Bora)

Filed by Mr. Patil
Blanchard - Bane
Sambhram
Admission
26/6/2002

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Lila Kanta Gohain

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH :
AT GUWAHATI.

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

ORIGINAL APPLICATION NO. 204 /2002

1. Sri Lila Kanta Gohain,
Joint Area Organiser, SSB,
Office of the Divisional Organiser,
SSB, Shillong, Dist. East Khasi Hills,
Meghalaya.
2. Sri Prasenjit Koch,
Sub Area Organiser, SSB,
Office of the Area Organiser, SSB,
Kokrajhar, P.O. Kokrajhar,
Dist. Kokrajhar, Assam.
3. Sri Subrata Bose,
Sub Area Organiser, SSB,
Office of the Area Organiser, SSB,
P.O. Joriguri (Borguri),
District. Tinsukia, Assam..
4. Sri Tulshiram Gore,
Sub Area Organiser, SSB,
Office of the S.A.O., SSB, Bongaigaon,
P.O. & Dist. Bongaigaon, Assam.

Contd..p/-

5. Dr Chandan Talukdar,
Central Assistant Surgeon (Vety),
Office of the A.O.SSB, Kokrajhar,
P.O.&P.S Kokrajhar,
Dist -Kokrajhar, Assam.
6. Sri Jugaleswar Saikia,
Circle Organiser, SSB, Baroma,
P.O. Baroma, Dist Borpetta, Assam .
7. Sri Jerbash Basumatari,
C.O., SSB, Udalguri,
P.O. Udalguri, Dist. Darang, Assam.
8. Sri Sidheswar Bora,
C.O., SSB, Mankashar,
P.O. Singimari, Dist. Goalpara, Assam.
9. Sri Subhasis Adak,
C.O., SSB, Bongaigaon,
P.O. & Dist. Bongaigaon, Assam.
10. Sri Tikaram Newar,
C.O., SSB, Tezpur,
P.O. Tezpur, Dist. Sonitpur, Assam.
11. Sri Kegio Sega,
C.O., SSB, Nampong,
P.O. Nampong, Dist. Changlang, A.P.

Contd..p/-

Lila Kanta Gehain

12. Sri Pranab Borpatra Gohain,
C.O., SSB, Digboi,
P.O. Mulabari, Digboi,
Dist. Tinsukia, Assam.
13. Sri Prabin Goswami,
Assistant Engineer, SSB,
Office of the Divisional Organiser, SSB,
North Assam Division,
P.O. Tezpur, Dist. Sonitpur, Assam.
14. Sri Ruwnder Ngamthoi Anal,
C.O., SSB, Gosaigaon,
P.O. Gosaigaon,
Dist. Kokrajhar, Assam.
15. Sri Saral Kumar Sarma,
Personal Assistant,
Office of the Divisional Organiser, SSB,
North Assam Division, Tezpur,
P.O. Tezpur, Dist. Sonitpur, Assam.
16. Sri Puneswar Borah,
Accountant,
Office of the Divisional Organiser, SSB,
North Assam Division, Tezpur,
Dist. Sonitpur, Assam.
17. Sri Hem Prasad Borah,
Upper Division Clerk,
Office of the D.O., SSB,
North Assam Division, Tezpur,
Dist. Sonitpur, Assam.

Contd..p/-

Lila Kanta Gohain

Lila Kanta Bohain

18. Sri Mohendra Borah,
Stenographer,
Office of the Divisional Organiser, SSB,
North Assam Division, Tezpur,
Dist. Sonitpur, Assam.
19. Sri Narayan Upadhyaya,
Store Keeper Level II,
Office of the Divisional Organiser, SSB,
Tezpur, Dist. Sonitpur, Assam.
20. Sri Juren Ch. Borah,
Upper Division Clerk,
Office of the Divisional Organiser, SSB,
Tezpur, Dist. Sonitpur, Assam.
21. Sri Ashish Sarkar,
Senior Field Assistant (Vety)
Office of the A.O., SSB, Kokrajhar,
P.O. Kokrajhar, Dist. Kokrajhar,
Assam.
22. Sri Satyavir Singh,
Pharmacist,
Office of the A.O., SSB, Kokrajhar,
P.O. & Dist. Kokrajhar, Assam.
23. Sri Chandra Kanta Bora,
Section Officer (Retired)
Office of the D.O. ,SSB, Tezpur,
Dist. Sonitpur, Assam.

.....APPLICANTS.

- 5 -

- Versus -

1. Union of India,
Represented by the Home Secretary,
Ministry of Home Affairs, New Delhi.
2. Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.
3. Director General, SSB,
Block V(East) R.K. Puram,
New Delhi, - 110066.
4. Dy. Director of Accounts,
Pay and Accounts Office,
Ministry of Home Affairs,
Block V(East) R.K. Puram,
New Delhi - 110066.
5. Divisional Organiser, SSB,
Shillong Division,
A.P. Secretariate Building, G.S. Road,
Shillong, East Khasi Hills Dist.,
Meghalaya.
6. Divisional Organiser, SSB,
North Assam Division,
P.O. & P.S. Tezpur,
Dist. Sonitpur, Assam.

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Lila Kanta Bohari

7. Divisional Organiser, SSB,
Arunachal Pradesh Division,
Khoting Hills, Itanagar, A.P.

8. Area Organiser, (Staff)
Office of the D.O., SSB,
Tezpur, Dist. Sonitpur, Assam.

9. Area Organiser, SSB,
Kokrajhar,
P.O. Charaikhola (Adabari),
Dist. Kokrajhar, Assam.

.....Respondents.

1. Particulars of the Order against which the
application is made :-

Impugned order of stoppage of payment of Special Duty Allowance (SDA in short) vide U.O. No. 20/12/99-EA-1-1799 dated 2.05.2000 issued by the Cabinet Secretariat and forwarded by the Director General, SSB, New Delhi (Respondent No. 3) under cover of his office Memorandum No. 42/SSB/A1/99(18)/2486-2508 dated 5.5.2000 ~~whereby~~ whereby payment of SDA to the applicants has been discontinued and the total amount of SDA paid earlier is being recovered from the applicants.

2. Jurisdiction of the Tribunal :

The applicants declare that the subject matter

Contd..p/-

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Lila Kanta Gohain

of the orders against which they want redressal is within the jurisdiction of the Tribunal.

3. Limitation :

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case :

(i) That the applicant No. 1 belongs to Group A service of the Special Security Bureau (SSB in short) which is a department of the Govt. of India directly under the Cabinet Secretary. Similarly applicant Nos. 2, 3, 4, & 5 also belong to Group A of SSB. The applicants No. 6 to 14 belong to Group B of SSB and from applicants No. 15 to 23 are non Gazetted Officers of the SSB working in several Districts of North Eastern States. The applicant No. 23 is a retired Section Officer who went on Superannuation on 28.2.2001 as Section Officer Gazetted Group - B from SSB, North Assam Division, Dispur. The applicants have a common interest in the matter and, as such, they are filing a single application if granted to one of them will be equally applicable to all of them. The applicants therefore pray for grant of permission under Section 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987 to move this application to raise an identical cause.

Contd..p/-

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Lila Kanta Gohain

(ii) That the applicants who hail from the North Eastern Region were selected through direct recruitment on all India basis and have been posted to the SSB and they are functioning under the administrative control of the Divisional Organisers, SSB of Shillong and Manipur and Nagaland Divisions.

(iii) That the Govt. of India with a view to attracting and rotating the services of competent officers for service in the N.E. Region had decided to grant certain additional allowances/facilities to civilian employees of the Central Govt. serving in the N.E. Region. Among the various allowances, one was the payment of SDA to those officers; who have all India transfer liability. The decision was conveyed by the Govt. of India, Ministry of Finance, Department of Expenditure, vide Memorandum No. 20014/2/83/E.IV dated 14.12.83. In terms of the Memorandum, SDA was granted to the civilian employees of the Central Govt. serving in N.E. Region who have all India transfer liability at the rate of 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in this region.

An extract of the said Memorandum dated 14.12.83 relating to the grant of SDA is annexed hereto and is marked as Annexure- 1.

(iv) That the applicants beg to state that they

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Lila Kantu Gehain

Lila Kantabhai

were selected through direct recruitment test held at various Zonal Selection centres based on all India level, their promotions are also made on the basis of all India common seniority list and they also enjoy all India transfer liability.

(v) That the applicants beg to state that the SDA was granted to the applicants by the respondent authorities after being satisfied that the applicants are legally entitled with effect from their respective dates of appointment.

(vi) That thereafter the Govt. of India, Ministry of Finance, Department of Expenditure, Circulated their letter No. K(3)/95-E.II(B) dated 12.1.1996 regarding payment of SDA for civilian employees of the Central Govt. serving in the N.E. Region for strict compliance of the classification contained therein. In the said Memorandum dated 12.1.1996 it has been stated at paragraph 3 that it has been clarified vide O.M. dated 20.4.1987 that for the purpose of sanctioning of SDA, the all India transfer liability of the members of any service/cadre or incumbent to any post/group of posts has to be determined by applying the test 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 one appointment letter

Contd..p/-

to the effect that the person concerned is liable to be transferred anywhere in India didnot make him eligible for the grant of SDA.

It was further stated in paragraph 6 of the said Memorandum dated 12.1.1996 that the Hon'ble Supreme Court in their Judgeme-nt delivered on 20.9.94 (in Civil Appeal No. 3251/93) upheld the submissions of the Govt. of India that the civilian employees of the Central Govt. who have all India transfer liablilities are entitled to the grant of the SDA on being posted to any station in the N.E. Region from outside the region and the SDA would not be payable merely of the clause in the appointment letter relating to all India transfer liability. It was also stated that the Apex & Court further added that the grant of this allowance only to the officers transferred from outside the region to the N.E. Region would not be violation of the provisions contained in Article 14 of the constitution of India 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 SDA is concerned. In paragraph 7 of the said Memorandum, it is further stated that in view of the Judgement of the Hon'ble

Contd..p/-

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Lila Kanta Gohain

Supreme Court, as stated above, the matter has been examined in consultation with the Ministry of Law and it is accordingly decided that the amount already paid by way of SDA to the ineligible persons on or before 20.9.1994 will be waived and the amount paid to ineligible person after 20.9.1994 which also includes those cases in respect of which SDA was pertaining to the period prior to 20.9.1994, but payments were made after 20.9.1994 would be recovered.

It would be pertinent to mention here that SDA was initially paid as stated above by the respondent authorities on their own when it was found that they were eligible for grant of the SDA. The respondents are therefore, not justified at this stage to recover the SDA paid to the applicants from the monthly pay bill of the applicants and for stopping payment of the SDA to the present applicants by enforcing the said Memorandum dated 12.1.1996 issued by the Ministry of Finance, Govt. of India in as much as the applicants are liable to be transferr-ed from N.E. Region to the other states of the country and as such the applicants are saddled with all India transfer liability and they have been also recruited on all India basis having a common all India seniority list and their promotions are also made on all India basis. The

Contd..p/-

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Kila Kanta Gohain

present applicants are eligible for grant of and continuance of SDA in the context of Memorandum dated 14.12.1983.

A copy of the said Memorandum dated 12.1.96 is annexed herewith and marked as Annexure - II.

(vii) That the respondent authorities received the U.O. No. 11(3)/85-E-11(B) dated 7.5.1997 issued by the Ministry of Finance, Department of Expenditure, Govt. of India and the Cabinet Secretariate, vide U.O. No. 20/3/96-EA-1-1040 dated 10.6.97 and circulated the same amongst SSB and other ~~xxxxxxx~~ organisations for information and taking further action in the matter.

Copies of the said U.O. dated 10.6.97 issued by the respondent No. 1 circulating U.O. dated 7.5.97 issued by the Ministry of Finance is annexed herewith and marked as Annexure - III.

(viii) That the applicants were regularly paid SDA since 1984 and some of the applicants were paid SDA since their date of appointment, but the respondents suddenly stopped payment of SDA to the applicants illegally arbitrarily without affording them any opportunity of being heard and directed recovery of the amount paid to the applicants by way of SDA from their respective dates of enjoying SDA. Following is the chart showing as to since when the applicants were enjoying and since when SDA is recovered from them and also the amount :

Contd..p/-

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Lila Kanta Gohain

Lila Kanta Gohain

Sl. No.	Name	Designation	Date of Joining	Date and month of enjoying SDA	Month of recovery	Amount
1.	Sri Lila Kanta Gohain	Area Organiser (Shillong)	19.4.78	1984	March/02 at the rate of 5,200.00 per month	Rs. 15,600/-
2.	Sri Prasenjit Koch	Sub Area Organiser	11.1.90	11.1.90	April/01 @ 3000/-	Rs. 39,421/-
3.	Sri Subrata Bos-e	Sub Area Organiser	1.11.91	1.11.91	-----	Rs. 22,000/-
4.	Sri Tulshi Ram Gore	Sub Area Organiser	4.11.89	4.11.89	-----	
5.	Dr. Chandan Talukdar	C.A.S. (V)	4.5.98	4.5.98	July/2002 @ 3000/-	Rs. 29,576/-
6.	Sri Jugaleswar Saikia	Circle Organiser	27.4.92	27.4.92	June/2000 @ 3,400/-	Rs. 44,873/-
7.	Sri Jerbash Basumatary	Circle Organiser	8.5.96		June/2001	

Contd..p/-

Sl.No.	Name	Designation	Date of Joining	Date and month of enjoying	Month of recovery	Amount
8.	Sri Siddheswar Bora	Circle Organiser	1.11.91		June /2001 @ 4000/-	Rs.48000/-
9.	Sri Subhasis Adak	- do -	13.4.98		June/2000	Rs.9,457/-
10.	Sri Tikaram Newar	- do -	12.8.93		March /2002 @ 4,510/-	Rs.13,500/-
11.	Sri Kegio Sega	- do -	11.10.91			
12.	Sri Pranab Borpatra Gohain	- do -	14.5.92		June/2000	Rs.10,697/-
13.	Sri Prabin Goswami	Assistant Engineer	1.10.90		July /2000 @ 4760/-	Rs.44,760/-
14.	Sri Ruwnder Ngamthoi Anal	Circle Organis-er	1.5.76	1984	Jan /2001 @ 3000/-	Rs.41,810/-
15.	Sri Saral Kumar Sarma	P.A.	6.5.69	1984	Oct /2000	Rs.18,000/-
16.	Sri Puneswar Borah	Accountant	01.12.66	1984	Oct /2000	Rs.25,489/-
17.	Sri Hem Prasad Borah	U.D.C.	17.12.68	1984	Oct /2000	Rs.15,000/-

Contd..p/-

Sl.No.	Name	Designation	Date of Joining	Date and month of enjoying SDA	Month of recovery	Amount
18.	Sri Mohendra Borah	Stenographer	21.5.83	1984	Sep /96	Rs. 3,772/-
19.	Sri Narayan Upadhyaya	Store Keeper	1.10.84	1.10.84	Sep/96	Rs. 3,772/-
20.	Sri Juren Ch. Borah	U.D.C.	27.1.69	1984	Sep/96	Rs. 3,977/-
21.	Sri Ashish Sarkar	Senior Field Assistant (V)	29.9.83	1984	Aug /97 @ 370/-	Rs. 1850/-
22.	Sri Satyavir Singh	Pharmacist	31.5.96		7.5.97 @ 606/-	Rs. 3,030/-
23.	Sri Chandra Kanta Bora	Section Officer (Retired) 28.2.01	13.12.60	1984	30.12.96	Rs. 36,576/-

Kanta Bora

(ix) That thereafter, the applicants were shocked and surpris-ed when they came to know that the payment of SDA to the applicants is being discontinued from the date shown in the list by the Respondent authorities and recovery of amounts paid by way of SDA would be recovered from their respective dates of appointment in terms of the Cabinet Secretariat U.O. No. 20/12/99-EA-I-1799 dated 2.5.2000. In terms of this U.O. dated 2.5.2000 the present applicants have now been considered ineligible for grant of SDA and recovery is being made from the monthly pay bills of the applicants.

A copy of the aforesaid U.O. No. 20/12/99-EA-I-1799 dated 2.5.2000 is annexed herewith and is marked as Annexure - IV.

(x) That it would be pertinent to mention here that the applicants were not at fault to receive the SDA in as much as it was paid to them voluntarily by the respondent authorities and the applicants had reason to believe that they were entitled to receive the SDA. The amount already paid to the applicants ought not to have been recovered as no notice was given to the applicants as to the proposed action, to be taken against the applicants. The recoveries that are being made is

Contd..p/-

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Lila Kanta Gohain

in flagrant violation of the principles of Natural Justice and as such this is a fit case where this Hon'ble Tribunal would exercise jurisdiction and grant relief..

(xi) That the applicants beg to states that the respondent authorities have discontinued payment of SDA to the applicants from the month shown in the list and at the same time recoveries are being made from the pay bills of the applicants from the date shown in the list in terms of the said impugned U.O. dated 2.5.2000 which is evident from the monthly pay bills of the applicants and in the present circumstances finding no other remedy, the applicants have now approached this Hon'ble Tribunal praying for protection of the rights and interests of the applicants and for adequate relief.

(xii) That the applicants beg to state that some employees of the Base Hospital No. 151, Basistha, Guwahati who were similarly situated like the present applicants filed two cases before this Hon'ble Tribunal which were numbered as O.A. No. 45/98 and O.A. No. 90/98. As both the applications involved similar facts and law, this Hon'ble Tribunal by a common order

Contd..p/-

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Lila Kantar Gohain

dated 28.7.1999 disposed off both the applications.

Relying on several cases decided by the Hon'ble Apex Court, as referred to in the order, the action of the respondent authorities to receive the amount of SDA paid was set aside and quashed. The respondents were further directed to refund the amount of SDA, if any, recovered from the applicants within a period of 2 months from the date of receipt of that order.

A copy of the said common order dated 28.7.99 passed by this Hon'ble Tribunal in original Application No. 45/99 and Original Application No. 90/98 are annexed hereto and marked as Annexure - V.

(xiii) That the applicants state that some Group - C & D employees of the SSB who are also similarly situated like the present applicants filed an application before this Hon'ble Tribunal Which was numbered as Original Application No. 243/2000. This Hon'ble Tribunal vide order dated 30.3.2001 had directed examination of the cases of the applicants as to whether they are eligible for grant of SDA and has further directed that the amount of SDA recovered from the applicants shall be refunded.

A copy of the aforesaid order dated 30.3.01 is annexed hereto and is marked as Annexure - VI.

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Lila Kanta Gohain

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Lila Kanta Gohary

(xiv) That the applicants beg to state that all of them, are saddled with all India transfer liability and have been recruited on all India basis having a common seniority list and promotions are also made on all India basis are similarly situated like those who were applicants in the above noted Original Applications and, as such, the case of the present applicants are squarely covered by the orders passed by this Hon'ble Tribunal in the above mentioned original Applications.

(xv) That the applicants beg to state that this Hon'ble Tribunal be pleased to direct the respondents not to deduct the SDA instalments from the monthly pay bills of the applicants as an interim measure, in as much as the applicants shall suffer irreparable loss and injury if the deductions are allowed to continue.

(xvi) That this application is filed bonafide and for the ends of justice.

5. Grounds for relief with legal provisions :

(i) For the applicants have the eligibility criteria for grant of SDA in terms of O.M. dated 14.12.83 and U.O. dated 7.5.1997 issued by the Ministry of Finance, Govt. of India, Department of Expenditure, and, as such, the unilateral discontinuance of SDA in.

Contd..p/-

terms of the impugned U.O. dated 2.5.2000 is extremely arbitrary, illegal and unfair and as such the action of the respondents is bad in law and the applicants are entitled to receive SDA.

(ii) For that it is unfair on the part of the respondents to recover the amount of SDA paid to the applicants on their own ~~wix~~ volition and without issuing any notice of any kind whatsoever whereby ignoring the principles of natural justice and Administrative fair play.

(iii) For that the impugned action of the respondents in depriving the applicants the benefits of SDA and directing recovery of the amount already paid is highly arbitrary and, as such, amounts to denial of equality and is therefore, violation of Article 14 of the Constitution of India.

(iv) For that the case of the applicants is squarely covered by the orders passed by this Hon'ble Tribunal in matters relating to recovery and refund of the SDA and, as such, the applicants are legitimately excepting that their interest will be similarly protected as has been done in these original applications. The orders passed in this regards are placed at ANNEXURES - V & VI respectively.

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28
Xila Karta Gohain

(v) For that in any view of the matter, the action of respondents in recovering the amount of SDA paid to the applicants are bad in law and liable to be set aside.

6. Details of remedies exhausted

That there is no other equally efficacious alternative remedy and the remedy, prayed for if granted should be just, adequate and complete.

7. Matters not previously filed or pending in any Court :

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

8. Relief sought :

It is, therefore, prayed that your Lordships would be pleased to admit this application, call for the records of the case and direct the respondents to show cause as to why they should not be directed to continue to pay SDA to the applicants and as to why recoveries of the amount paid to the applicants should not be stopped and the recoveries made by way of SDA should not be

Contd..p/-

29
Xila Kanta Bohain

refund and upon bearing the parties set aside and quash the impugned U.O. dated 12.05.2000 issued by the Cabinet Secretariat and direct the respondents to continue to pay SDA to the applicants, refund the amount recovered from the applicants and refrain from making further recoveries and/or pass such further order or other orders as may be deemed fit and proper.

9. Interim order, if any, prayed for :-

To direct the respondents not to make any recovery by way of SDA from the monthly pay bills of the applicants.

10. The application is filed through Advocate.

D.R. Gogoi, P. Bhawmic, S. Bora

11. Particulars of the posted order in respect of the application filed :-

I P O No. 76 577790

dated 25-6-2002

Issued by GPO, Guwahati payable at Guwahati.

12. List of enclosures :-

As stated in the index.

.....Verification.....

22
Kila Kanta Gohain

VERIFICATION

I, Shri Lila Kanta Gohain, son of
P. R. Gohain presently serving as Joint Area
Organiser, SSB, Office of the Divisional Organiser,
SSB, Shillong do hereby verify that the contents in
paragraphs 1,2,3,4,7,8,9,10,11, & 12 are true to
my personal knowledge and those made in paragraphs
5 and 6 are believed to be true on legal advice
and that I have not suppressed any material fact.

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

Place : Guwahati.

Date : 25.6.2002

Lila Kanta Gohain

SIGNATURE OF THE APPLICANT.

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

New Delhi, the 14th Dec '83

OFFICE MEMORANDUM

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

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

i) Tenure of posting/deputation.

x x x x x x x x

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

x x x x x x x

iii) Special (Duty) Allowance :

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

Contd..

*Minister
for Finance
26/12/83*

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

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

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's O.M. No. 20014/3/83-E.IV dated 14.12.1983 and 20.4.1987 read with O.M. No. 20014/16/86-E.IV/E.II (b) dated 1.12.1988 on the subject mentioned above.

2. The Government of India vide the above mentioned OM dt. 14.12.83 granted certain incentives to the Central Government Civilian employees posted to the N.E. Region. One of the incentives was payment of a Special Duty Allowance (SDA) to those who have All India Transfer Liability.
3. It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowances' the All India Transfer Liability of the members of any service/cadre or incumbents or 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 or an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

Contd...

*Attested
Sanjay Kumar
24/6/2002*

35

4. Some employees working in the N.E. Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment letters carried the clause of All India Transfer Liability and, accordingly, directed payment of SDA to them.

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministries/Departments against the Orders of the CAT.

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

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

- i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
- ii) the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments were made after this date i.e. 20.9.94) will be recovered.

8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.

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

10. Hindi version of this OM is enclosed.

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

To

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

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

*Attended
Date
A.M.*

-28-

From Shri A Chandra Sekhar, Additional Secretary (S.R.)
(Cab. Sectt. U.O No. 7/47/84-NC 1 dated 17.7.85 (Cabinet
Sectt.)).

RIKET

RIKET HOUSE (Annexure) is appended below :

CABINET SECRETARIAT

BIKANER HOUSE (ANNEXURE).

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

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

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

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

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

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

A. Chandra Sekhar
C.S.R.
D.S.R.

ANNEXURE - 111

COPY

Cabinet Secretariat
E.A.1 Section

Subject : Special Dut. following the arrival of employees of the Central Government in the States and Union Territories of North Eastern Region regarding.

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

(Jagdish Chandra)
Desk Officer

1. Deputy Director (B) ARC w.r.t. his U.O.No.ARC/Coord./16(3)/94 dated 29/10/1996.
2. AD (EA) SSB w.r.t. UO.No. 42/SSB/A1/92(61)-1855 dated 9/ /1996.

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

*Attesting
Sundar Banerjee
22/6/2002*

- 30 -
Ministry of Finance
Department of Expenditure
L-11(B) Branch

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

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

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

sd/-

(P.S. Walia)

For Under Secretary to the Govt. of India.

Cab. Sectt. Bikaner House Annex. (Sh. P.N. Thakur Director
MOF (Exp)'s U.O.No.11(3)/95 EA-11(B) dt. 7th May 1997

COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(E.A.I Section)

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

.....

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

- i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.
 - a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer Liability.
 - b) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/ service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.
 - ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-E.IV dated 14.12.83 and 20.4.87 read with

No

No

Contd.

*Attended
Smt. B. B. B.
26/6/2002*

ON 20014/16/80 dated 1.12.1981 but subsequently the post/cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his own list in the NE Region, though they can be transferred out to any place outside the NE Region having All India Transfer Liability.

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

YES

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

YES

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

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

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vi) Based on point (i) above, some of the units of SSB/LGS 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 i.e. on fulfilling the criteria of All India Recruitment Test & to promotion of All India Common Seniority basis having been satisfied are all the employees eligible for the grant of SDA.

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

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

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

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

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

1. Shri R.S.Bedi, Director, ARC
 2. Shri R.P.Kureel, Director, SSB
 3. Brig (Retd) G.S.Uban, IG, SFF
 4. Shri S.R.Mehra, JD(P&C), DGS
 5. Shri Ashok Chaturvedi, JS(Pers), R&AW
 6. Shri B.S.Gill, Director of Accounts, DACS
 7. Smt. J.M.Menon, Director-Finance(S), Cab.Sectt.
 8. Col.K.L.Jaspal, CIOA, CIA
- Cab. Sectt. UO No.20/12/99-LA-I-1799 dated 2.5.2000

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

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

Shri G.L.Sanglyine, Administrative Member.

Original Application No. 45 of 1998.

Shri Ajitangshu Deb and 16 others.

Original Application No. 90 of 1998.

Shri S.K.Benerjee and 4 others.

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

- Versus -

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

. . . Respondents

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

ORDER

G.L.SANGLYINE, ADMIN.MEMBER.

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

2. Seventeen applicants in O.A.No.45/98 and five applicants in O.A.No.90/98 are Group 'C' and Group 'D' employees, as the case may be, in the Base Hospital No.151, Basilatha, Guwahati. They were allowed to draw Special(Duty) Allowance (SDA for short) in terms of Office Memoranda issued from time to time with regard to payment of SDA. But from July 1996 the payment of SDA was stopped. Further recovery of SDA paid from 20.7.1996

contd. . .

*Attested by
Sanjay Kumar
Advocate
28/7/2002*

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

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

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

i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived;

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

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

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- 3 -

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

contd.. 4

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

4. I have heard counsel of both sides. In both the O.As the applicants are local residents of North Eastern Region and recruited locally to work in the region. In such situation they are not eligible to benefit of SDA in view of the decision dated 20.9.1994 of the Hon'ble Supreme Court mentioned above. However, in these cases they continued to be paid SDA till it was stopped in July 1996. The decision to recover the amount paid after 20.9.1994 was taken by O.M. dated 12.1.1996 and adopted by the Ministry of Defence, respondent No.1 on 18.1.1996. No recovery was however made till February 1998. In February 1998 the recovery was initiated without giving any notice to the applicants regarding the action proposed to be taken against them by the respondents. The letter dated 13.2.1998 referred to by Mr Pathak is not addressed to any of the applicants and there is no indication that the contents of the above letter were brought to the notice of the applicants. The respondents had not therefore acted fairly and reasonably in making recovery of the amount of SDA paid to the applicants between 20.9.1994 and 30.6.1996. The recovery therefore is not sustainable in law. Moreover, in view of the facts and circumstances relating

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

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

SC/ MEMBER (ADM)

- 39 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.243 of 2000

Date of decision: This the 30th day of March 2001

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

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

Shri Pradeep Kumar and 21 others

.....Applicants

By Advocates Mr G.K. Bhattacharyya and Mr G.N. Das

versus -

1. The Union of India, represented by
The Cabinet Secretary,
Department of Cabinet Affairs,
New Delhi.
2. The Director General of Security,
Block-V (East),
New Delhi.
3. The Director, SSB,
Block-V (East),
New Delhi.
4. The Divisional Officer, SSB,
A.P. Division,
Itanagar, Arunachal Pradesh.
5. The Area Officer, SSB,
Bomdilla, Arunachal Pradesh.
6. The Area Officer, SSB,
Along, Arunachal Pradesh.
7. The Area Officer, SSB,
Tura, Arunachal Pradesh.
8. The Area Officer, SSB,
Khouna, Arunachal Pradesh.

.....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C. and
Mr B.S. Basumatary, Addl. C.G.S.C.

O R D E R (ORAL)

CHOWDHURY, J. (V.C.)

The issue relates to grant of Special (Duty) Allowance (SDA for short) to the applicants who are twentytwo in number, serving under the Divisional Officer, Special Service Bureau (SSB for short), Arunachal Pradesh Division, Itanagar. The applicants belong to Groups 'C' and 'D' cadre. In this application they have claimed SDA on the

*Alfred
Santi Prasad
H. N. Das
20/4/2002*

ground that they were recruited on All India basis and they have a common seniority list and therefore, eligible for SDA.

2. The respondents in their written statement stated that the applicant No.4, Shri Bibhu Ranjan Parida, is not posted in the office of the Divisional Officer, Arunachal Pradesh Division, Itanagar and that the applicant No.11, Shri Vikash Khajuria, applicant No.14, Shri T.P. Prajapati and the applicant No.14, Shri Jay Prakash Ray were not selected through direct recruitment tests held at various zonal selection centre, during 1989 onwards based on all India level as contended, but they were recruited locally by the respective Divisional Officers and therefore, they are not entitled to SDA. In Misc. Petition No.49 of 2001 disposed of on 15.2.2001, it was stated that the applicant No.4 is serving as stenographer in the office of the Area Officer, SSB, Tezu under the administrative control of the Divisional Officer, SSB, A.P. Division, Itanagar though in the O.A. he was shown as serving in the office of the Divisional Officer, SSB, A.P. Division, Itanagar. In the circumstances the applicant No.4, Shri Bibhu Ranjan Parida, cannot be distinguished from the rest of the other applicants.

3. We have heard Mr G.N. Das, learned counsel for the applicants and Mr A. Deb Roy, learned Sr. C.G.S.C. Admittedly, save and except applicant Nos.1, 14 and 20, are persons appointed on All India basis by the respondents and these persons have All India Transfer liability. The aforesaid persons are posted in the North Eastern Region. In the light of the O.M.s, more particularly, in the light of the Circular dated 2.5.2000 referring to SSB Directorate's letter dated 31.3.2000 and in the light of the Judgment and Order in O.A.No.136 of 2000 disposed of on 20.12.2000, all these applicants, save and except applicant Nos.11, 14 and 20, per se, cannot be excluded from the benefit of SDA. The applicants had to move to the North Eastern Region on the basis of their posting.

3. For the foregoing reasons the impugned order dated 26.5.2000 issued by the respondent No.4 is set aside and quashed and the respondents are directed to pay SDA to these applicants with effect from the date

joining or from the date of entitlement. The respondents are also directed to pay the arrears preferably within three months from the date of receipt of the order.

4. As regards the applicant Nos. 11, 14 and 20 the respondents, more particularly, the Divisional Officer, SSB, Itanagar, shall examine as to whether these three applicants also possess All India Transfer liability and have come from outside the North Eastern Region and whether their promotions were done on All India basis based on common seniority list. In consideration it appears that these three applicants also are from outside the North Eastern Region and their promotions as well as promotions are made on All India basis and All India seniority, in that case these three applicants shall also be given the benefit of SDA.

5. The respondents shall refund the amount, so far, recovered from the applicants, save and except applicant Nos. 11, 14 and 20. The cost of refunding to these applicants will arise only in case they are found eligible by applying the test laid down.

6. The application is allowed to the extent indicated. There shall, however, be no order as to costs.

SO/ VICE CHAIRMAN
SO/ MEMBER (Adm)

Certified to be true Cop
प्रमाणित प्रतिलिपि

Section Officer (J)
आनुमान अधिकारी (न्यायिक शाखा)
Control Administrative Tribunal
केन्द्रीय प्रशासनिक आयोग
Guwahati Bench, Guwahati-6
गुवाहाटी बेंच, गुवाहाटी-६

27/1/20

19/02

Filed by
19/02/02
(A. DEB (J))
Sr. C. J. C.
C. A. T. Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI.

O.A. NO. 204/2002 .

Shri L.K. Gohain and Others.

..... Applicants.
- Vs-

Union of India & Others.

..... Respondents.

(Written Statements on behalf of the respondents
No. 1 to 9)

The Written Statements of the abovenoted respondents
are as follows :-

1. That the copy of the O.A. No. 204/2002 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being similar the respondents have filed their common written statements.

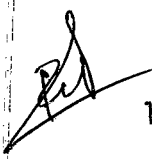
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.

3. That before traversing the various paragraphs of the application, the respondents give a ~~brief~~ parawise comments as under :-

4. That with regard to the statements made in para 1, of the application the respondents beg to state that the order for stopping payment of SDA and recovering the amounts already paid to the applicants unauthorisedly are intra vires in terms of UO. No. 20/12/99 EA-1-1799 dated 02.05.2000 (Annexure -I) issued by the Cabinet Secretariat (now represented by the Secretary Ministry of Home Affairs) and Circulated by the Director, SSB, New Delhi (Respondent No.3) and stopping the recovery of overpaid amounts is not sustainable in the eyes of law and the petition may please be dismissed with costs in limini. The Hon'ble CAT, Guwahati Bench has already dismissed similar~~y~~ situated O.A. No. 43/2000 Mathuresh Nath Vs. U.O.I & Others vide order dated 11.01.2001 (Copy of the order annexed as Annexure - II).

5. That with regard to para 2 and 3 of the application, the respondents beg to offer no comments.


6. That with regard to the statements made in para 4.I of the application the respondents beg to state that the admitted to the extent that the petitioner are Group 'A' and Group 'B' Officers but denied that they are entitled for the grant of SDA in accordance with the Honourable Supreme Court Order No. 794 of 1996 para-7 page 4. The extract is read as follows.

 " The contention that they are entitled to get the benefit at par with Group- A and B Officers under the above memo dated July, 11, 1996 is not correct. Apart from the fact that Group- A and B employees are entitled to get SDA

is contrary to the law declared by this Court in the above judgement, they too are bound by it; whether or not they are entitled to the above benefit due to this Court's Judgement, the petitioner are not entitled to above benefit due to this Court's Judgement. The petitioners are not entitled to the benefits of the allowances claimed by them. The Judgement of this Court would indicate that it did not make any distinction between Group- C & D and Group- A & B Officers. All are governed by the law under Article-141 of the Constitution of India".

Hence their contention is not correct and petition may please be dismissed with no costs (Annexed as Annexure-II)

In this context recent Swamy's Compilation for the month of July '02 has also clearly mentioned in reference to Tele Department Civil Appeal No.7000 of 2001 arising out of SLP No. 5455 of 1999 under which Honourable Supreme Court of India has ordered on 05.10.2001st this appeal is to be allowed in favour of the U.O.I. 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 Judgements, the criteria for payment of Special Duty Allowances, 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 SDA 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 for strict compliance. Further, as per direction of Honourable 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 05.10.2001 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 05.10.2001 will be recovered. (Annexed as Annexure- IIIA).

7. That with regard to the statements made in para 4.II of the application the respondents beg to state that admitted to the extent as they are initially recruited in N.E. Region and they remained posted in N.E. Region since their initial appointment and they are not entitled for the grant of SDA until and unless they are not transferred out of N.E. Region on the transfer from outside the N.E. Region, which is a

pre-requisite for grant of SDA for Central Govt. Servant.

8. That with regard to the statements made in para 4.III of the application the respondents beg to state that admitted to the extent that to attract the services of competent Officers to serve in N.E. Region had granted certain allowances/ facilities to Civilian employees of Central Govt. But denied that they are appointed on the same analogy their contention is incorrect and they are misguiding the Honourable CAT by giving false statement that they are entitled for the grant of SDA even they hailed from N.E. Region from the day of their ~~xxxxxxx~~ appointment initially and till date they have been serving in the N.E. Region and their claim is not legal in the eyes of law. It is therefore, requested that this petition may please be dismissed in view of similar situated O.A. No. 43/2000 titled Mathuresh Nath and 4 Others Vs. U.O.I. and others which was disposed off by the Honourable CAT Guwahati on the 11th January, 2001 (Annexed as Annexure - II).

9. That with regard to para 4.IV of the application the respondents beg to offer no comments being matter of record.

10. That with regard to the statements made in para 4.V of the application the respondents beg to state that the contention of the petitioners is not correct and they are not entitled for the grant of SDA and the amount over paid to them erroneously is a legal liability of the individuals to re~~pay~~ pay the over paid amount to the Government Exchequere being illegal payment received by them.

11. That with regard to the statements made in para 4.VII and VIII of the application the respondents beg to state that the contention of the applicants is not maintainable because they were erroneously paid SDA and later on the payment of SDA was found un-justified in view of the orders as stated in the anterior paras and the amount of SDA so paid after 20.09.1994 is recoverable from the applicants who are not legally entitled as per the MOF (espr)'s UO. No. 11(3)/95-EA-II(B) dated 7th May 1997 Annexure-IV. It has been clearly mentioned that if there is any doubt about the grant of SDA the matter may be referred to them and on various correspondence, clarification was received vide Cabinet Secretariat (Now represented by Secretary Ministry of Home Affairs) UO No. 20/12/99-EA-1-1799 dated 02.05.2000, which is clear and the amount of over payment of SDA after 20.9.1994 has to be recovered from the petitioners is legally valid to honour the orders of the Honourable Supreme Court and the applicants have no legal right to request for un-authorized amount which has been received by them illegally. Hence the petition may please be dismissed.

12. That with regard to the statements made in para 4.IX of the application the respondents beg to state that it is not correct, they should not become shocked and also not to surprise to refund the unauthorised amount which they have received illegally. It is their moral duty to refund the same to Govt. Exchequer, from which it was drawn by them un-authorizedly. Similar situated O.A. No. 43/2000 titled Mathuresh Nath and 4 others (Applicants) Vs. U.O.I. and Ors.

has already been disposed off by the Hon'ble CAT Guwahati on the 11th January, 2001 by dismissing the same without cost (Annexure -II).

13. That with regard to the statements made in para 4.X of the application the respondents beg to state that it would be ~~per~~ pertinent to mention here that if any amount is paid to the petitioners erroneously does not mean that it is not to be recovered from them as per procedure laid down in Accounts Rules and it is denied that the amount was paid voluntarily to them, but it is a fact that it was their duty to refund the amount being honest Govt. Servant/Officers when they were aware that they are not entitled to get this SDA as per the orders passed by the Hon'ble Supreme Court in their Judgement stated in para No. 4 anterior and illegal payment made to the applicants by the Director of Accounts being the PAO in respect of Gazetted Officers is recoverable from them ~~untill~~ untill and unless the payment is not authorised to them by the Hon'ble Supreme Court without reviewing their orders passed in earlier cases, otherwise it will be contempt of the Hon'ble Supreme Court orders. Hence their contention is devoid of merit, misguiding and mis-convincing and contrary to the orders of Hon'ble Supreme Court's orders and is not justified in the eyes of law and required to be dismissed in limini to honour the orders of Hon'ble Supreme Court of India being the highest Court of the country.

14. That with regard to the statements made in para 4.XI of the application the respondents beg to state that admitted and illegal payment made to the applicants is to be

realised from them in view of orders passed by Hon'ble Supreme Court of India and to Honour the law of the land hence their contention is bad in the eyes of law. In this case it is therefore requested that no relief should be granted which is not justified in the eyes of law in this case.

15. That with regard to the statements made in para 4.XII of the application the respondents beg to ~~state that~~ offer no comments being matter of record. However the case of the said petitioners is similar situated as O.A. No. 43/2000 disposed of by the Hon'ble CAT Guwahati on dated 11.01.2001 (Copy of the order annexed as Annexure -II) as stated above. Hence the petition is liable to be dismissed in limini.

16. That with regard to para 4.XIII of the application the respondents beg to offer no comments being matter of record.

17. That with regard to the statements made in para 4.XIV of the application the respondents beg to state that it is denied that they are having all India Transfer Liability till date they have not gone outside the N.E. Region and they were initially recruited in N.E. Region and cannot claim the benefit of SDA merely it is mentioned in the appointment orders that they are having all India Transfer Liability but being the initial appointment they are not entitled for SDA as per Supreme Court's Order.

18. That with regard to para 4.XV of the application the respondents beg to offer no comments.

19. That with regard to the statements made in para 4.XVI of the application the respondents beg to state that this application is misconvincing and unjustified in law and not to be sustained in the eyes of law.

20. That with regard to the statements made in para 5.I of the application the respondents beg to offer no comments being matter of record and latest order are to the implemented in view of Supreme Court Orders dated 25th October, 1996 and the UO. dated 7.5.1997 and Govt. of India, M.F.O.M. No. 11/5)97-E-II(B) dated 29.5.2002 issued by the Ministry of Finance, G.O.I. Department of Expenditure and as such the unilateral discontinuance of illegal payment of SDA is intra vires and not arbitrary it is legal and fair for the end of justice and the applicants are misguiding the Hon'ble CAT by giving false statement that they are eligible for the grant of SDA when they are initially recruited in N.E. Region and they are bonafide resident of North Eastern Region, they can not pressurise for the grant of SDA and, they are bound to honour the orders of the Supreme Court and not to insist for illegal claim of SDA and being Govt. Officers they should deem it their moral duty to repay the illegal amount they have already drawn erroneously. Hence their plea is not tenable in law.

21. That with regard to the statements made in para 5.II, 5.III, 5.IV and 5.V of the application the respondents beg to state that for the end of justice it is legal and fair to recover the unauthorised amount of SDA from the applicants which they have received erroneously, it is not violation of Articles 14 of the Constitution of India, otherwise Hon'ble Supreme Court could have taken the issue in consideration but it has been clearly mentioned in their order that it is not violatory under the provisions of Article 14 of the Constitution of India and they are misleading the Hon'ble CAT by giving false statement. It is not the question of equality as stated by the Hon'ble Supreme Court in their order stated above.

22. That with regard to para 6 of the application the respondents beg to offer no comments.

23. That with regard to the statements made in para 7 of the application the respondents beg to offer no comments.

24. That with regard to the statements made in para 8 of the application the respondents beg to state that they are not entitled to any relief because it will amount to dishonour the orders of Hon'ble Supreme Court and it will be bad in law if any un-authorised amount is granted to the applicants. Hence for the end of justice this application may please be dismissed without granting any relief in the light of case No. 43/2000 Mathuresh Nath and others Vs. U.O.I. and others which was dismissed by the Hon'ble CAT Guwahati Bench with cost.

25. That with regard to para 9 and 10 of the application the respondents beg to offer no comments.

26. That with regard to para 11 and 12 of the application the respondents beg to offer no comments.



Verification

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

I, Shri Ramchand Parmar S/o Late Shri
Shake Ram Parmar
being authorised do hereby solemnly

affirm and declare that the statements made in this
written statement are true to my knowledge and information
and I have not suppressed any material fact.

And I sign this verification on this 13th
day of August, 2002.

Identified by
S. S. Chatterjee
Atrocities Cell, Shillong,
13/8/02

Ram Chand Parmar

By, Inspector General
Deputy
Shillong Division,
Shillong-793001

Signed before me
M. Shalun
13/8/02



null

Ministry of Law & Justice
Department of Legal Affairs
Branch Secretariat Calcutta

69

This has reference to the departmental letter NoSD/C.C./OA-204/2002/4002-03, dt. 2/8/2002, regarding vetting of draft Written Statement in OA No. 204 of 2002 in the case of Lila Kanta Gohain & Ors. -Vs- Union of India & Ors. intended to be filed in the Id. CAT, Guwahati Bench, Guwahati.

On perusing the papers, it appears that the draft Written Statement is formally in order subject to the following :

The blank portions in the Verification Clause may please be filled up in consultation with the drafting counsel before finalisation.

That apart, the department are advised to satisfy themselves about the veracity of the factual aspects stated in the said draft before it is filed in the Id. CAT.

All papers are returned herewith.



(Kranti Deo, (I.L.S. ?)
Assistant Legal Adviser

Area Organiser (Admn) Shillong Division, Shillong.

MOI. UO NO. 2737/02-Adv(Cal), dt. 8/8/2002.

Annexure-I

14

COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(EA.I Section)

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

.....

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

- i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.
 - a) A person belongs to outside N.E.region but he is appointed and on first appointment posted in the N.E.Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer Liability.
 - b) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/ service common seniority on first appointment and posted in the N.E.Region. He has also All India Transfer Liability.
- ii) An employee belongs to N.E.Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-E.IV dated 14.12.83 and 20.4.87 read with

No

NO

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

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

YES

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

YES

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

In case the
employee,
hailing from
NE Region is
posted within
NE Region he
is not entitled
to SDA till he
is once trans-
ferred out
of that 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 i.e. on fulfilling the criteria of All India Recruitment Test & to promotion of All India Common Seniority basis having been satisfied are all the employees eligible for the grant of SDA.

15
It has already been clarified by MOR that a mere clause in the appointment order regarding All India Transfer Liability does not make him eligible for grant of SDA.

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

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

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

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

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

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

dated 2.5.2000

17 26 SL No 119
FAX

199
ANNEXURE-16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.43 of 2000

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

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

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

Shri Mathuresh Nath and 4 others

.....Applicants

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

By Advocate Mr K.P. Singh.

versus

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

.....Respondents

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

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

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

18 27 198 68

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.G.(S) Secretarial Cadre Rules during 1975. Since they are borne in the Cadre Rules they have All India Transfer liability.

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

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

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

Sd/ VICE CHAIRMAN
Sd/MEMBER (Adm)

NO:-NGE/F-9(A)/96/2000(152)
Government of India
Ministry of Home Affairs
Office of the Divisional Organiser
SSB, A.P. Division, Itanagar.

Copy to:-

Dated :-07.3.2001

1. The Jt. Dy. Director(EA) for information & Necessary action please. w.r.t SSB Dte sig.No.2932 dt.26/2/01.
2. The Divisional Organiser, SSB, Shillong Division for information please. w.r.t DO Shillong sig No.10422 dtd 6/3/01.

AREA ORGANISER (STAFF)

Certified to be true Copy
प्रमाणित प्रतिलिपि

Section Officer (Adm)
Central Administrative Tribunal
Guwahati Bench, Guwahati-8
গুৱাহাটী কেন্দ্রীয় প্রশাসনিক ট্রিবিয়াল

All communications should be addressed to the Registrar, Supreme Court, by designation, by name
Telegraphic address :—
"SUPREMECO"

No. 3366/96/X
D. SUPREME COURT
INDIA

Dated New Delhi, the 26th November, 1996.

FROM: ASSISTANT REGISTRAR (JUDL)

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

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

WITH
INTERLOCUTORY APPLICATION NO. 1
(Application for ex-parte stay)

Sadan Kumar Goswami & Ors.

.. PETITIONERS

VERSUS

Union of India & Ors.

.. RESPONDENTS

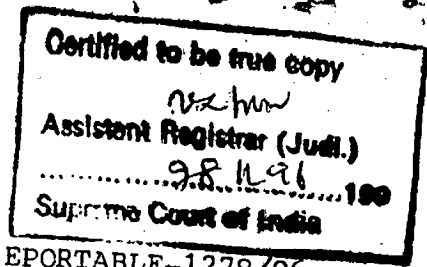
Sir,

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

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR (JUDL)



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

133721

(Under Article 32 of the Constitution of India)

Sub-Inspector Sadhan Kumar Goswami &
Ors.

...Petitioners

v.

The Union of India & Ors.

...Respondents

THE 25TH DAY OF OCTOBER, 1996

Present:

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

Sankar Ghosh, Sr. Adv. and Anjan Ghosh, Adv. with him for
the Petitioners.

O R D E R

The following Order of the Court was delivered:

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

Sub-Inspector Sadhan Kumar Goswami &
Ors.

... Petitioners

Versus

The Union of India & Ors.

... Respondents

O R D E R

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

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

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

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learned Additional Solicitor General Shri Tuli for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 29.10.1986 which has been quoted in the memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1983 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining" the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining thereby taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting, which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North-Eastern Region". This aspect is made clear beyond doubt by the 1987 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1983 the subject was mentioned as quoted above is not enough to concede to the submission of Dr. Ghosh.

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

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

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

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

Of late, we have been coming across this type

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

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

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

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

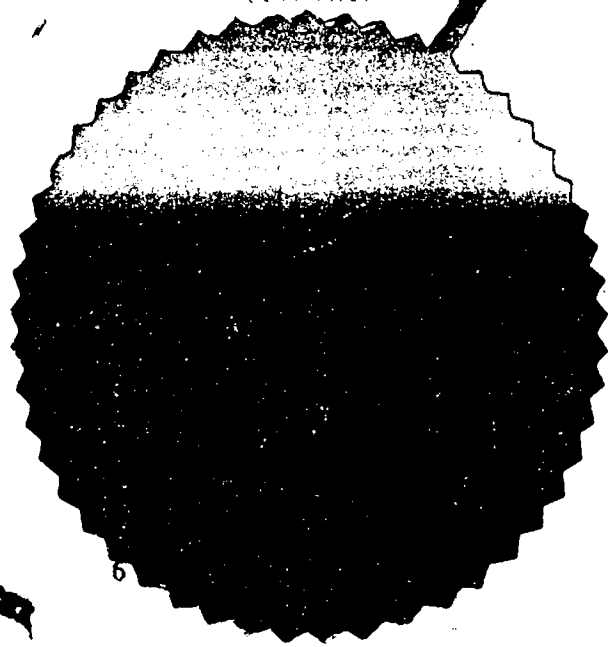
The writ petition is accordingly dismissed.

.....J.
(K. RAMASWAMY)

.....J.
(S. P. KURUKAR)

NEW DELHI;
OCTOBER 25, 1996.

SEALED IN MY PRESENCE
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Annexure = IIIA P.04

13/6/2002

F.No.11(5)97-E.II(B)
 Government of India
 Ministry of Finance
 Department of Expenditure

New Delhi, dated the 29th May, 2002OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No.20014/16/86-E.IV/E II.(B) dated 1.12.88, and OM No.11(3)95-E.II.(B) dt. 12.1.1996 on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted in NE region vide OM dt. 14.12.83. 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 dt.20.4.87, 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 NE 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 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 20.9.94 (in Civil Appeal No. 3251 of 1993 in the case of UOI and Ors. Vs. Sh. S. Vijaya Kumar and Ors) have upheld the submissions of the Government of India that C.G. 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 & Ors. vs. S. Vijayakumar & Ors, reported as 1994 (Supp.3) SCC, 649 and followed in the case of UOI & Ors vs. Executive Officers' Association 'Group C' 1994.

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(Supra) 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 employees by way of SDA will not, in any event, be recovered from them in spite of the fact that the appeal has been allowed.

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 Hon'ble Supreme Court, it has also been decided that:-

- (i) The amount already paid on account of Special Duty Allowance to 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 disbursement of Islands Special (Duty) Allowance which is payable on the analogy of Special (Duty) Allowance to Central Government Civilian employees serving in the Andaman & Nicobar and Lakshadweep Groups of Islands.

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

Under Secretary to the Government of India

All Ministries/Departments of the Government of India, etc.

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

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

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

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

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

Sd/-

7-5-97

(P.S. Walia)

For Under Secretary to the Govt. of India.

Cab. Sectt. Bikaner House Annex. (Sh. P.N. Thakur, Director).
MOF(Exp)'s U.O.No.11(3)95-E.II(3) dated 7th May, 1997.