

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 249/02
Misc Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicants. Banshidhar Boro

-Vs-

Respondant(S) H.O.I. Boro

Advocate for the Applicant(S) S. Ali, K. Chatterji

Advocate for the Respondant(S) CASE

249/02
1/16/01

Notes of the Registry	Date	Order of the Tribunal
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This

5.8.2002

Issue notice of motion, returnable by four weeks.

Meanwhile the respondents are directed not to make any recovery till the returnable date.

List the case on 6.9.2002 for admission.

K. Chatterji
Member

[Signature]
Vice-Chairman

bb

6.9.02

Heard learned counsel for the parties.

Application is admitted. Call for records. List on 4.10.02 along with O.A.No.163 of 2002.

In the meantime, the interim order dated 5.8.2002 shall continue.

lm

[Signature]
Vice-Chairman

Notices prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A.P.D.
vide D.No-2105 to 2107
Dtd- 6.8.02

24576-589
2-8-02
[Signature]

24576-589
6.8.02

(2)

8.10.2002

Mr.A.Deb Roy, learned Sr.C.G.S.C. makes a prayer for four weeks time to file written statement on behalf of Mr.B.C.Pataak, learned Addl.C.G.S.C. List the case on 15.11.2002 for order.

ICUShan
Member

No written Statement
has been filed.

28.11.02

LTII Due to circuit sitting at Shillong, the case is adjourned to 29/11/2002.

Mto
A.K. Jha

29.11.02

Respondents are yet to file written statement. On the prayer made by Mr.A.Deb Roy, Sr.C.G.S.C. four weeks time is allowed to the respondents to file written statement.

List on 3.1.03 for order. In the meantime, the interim order dated 5.8.2002 shall continue.

Order dtd. 29/11/02
Communicated to the parties
concerned.

lm

Vice-Chairman

No written Statement
has been filed.

23.1.03

24.1.03

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

Written statement has been filed by respondents No.1 and 3. The applicant may now file rejoinder, if any, within 3 weeks from today. The respondent No.2 may also file written statement within three weeks.

List on 28.2.03 for hearing.

Vice-Chairman

27.1.03
W/s submitted
by the Respondents 1 and 3.

pg

28.2.2003

It has been stated that Mr.S.Ali, Sr counsel for the applicant is on accommodation. The case is accordingly adjourned and listed on 25.4.2003 for hearing.

Vice-Chairman

bb

24.2.03
W/s submitted by
the 1 & 2.

25.4.2003 On the prayer of Mr. B.C. Pathak
learned Addl. C.G.S.C. for the respond-
ents the case is adjourned and posted
for hearing on 29.4.2003.


Vice-Chairman

mb

30.4.2003 None appears for the applica-
nt. Put up the matter on 13.5.2003
for hearing alongwith connected cases

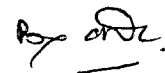

Vice-Chairman

mb

~~23.5.2003 Judgment delivered in open Court
kept in separate sheets. The application~~

13.5.03

Hearing concluded. Judgment
reserved.


Vice-Chairman

30.5.2003

Copy of the report
has been sent to
the D/Sec. for issuing
the fine to the applicant
as well as to the L/Advts
for the Respondents.

23.5.2003 Judgment delivered in open Court
kept in separate sheets. The applicatio-
is partly allowed. No order as to costs-


Vice-Chairman

mb

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.249 of 2002
Original Application No.316 of 2002
Original Application No.342 of 2002

And

Original Application No.367 of 2002

Date of decision: This the 23rd day of May 2003

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

O.A.No.249/2002

Shri Bangshidhar Boro and 3 othersApplicants
By Advocates Mr S. Ali and Mrs K. Chetri

- versus -

The Union of India and othersRespondents
By Advocates Mr A. Deb Roy, Sr. C.G.S.C.
and Mr B.C. Pathak, Addl. C.G.S.C.

O.A.No.316/2002

Shri Khagen Ch Medhi and 80 othersApplicants
By Advocates Mr A.C. Sarma, Mr C.M. Das
and S. Saikia

- versus -

The Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

O.A.No.342/2002

Shri Abhit Kumar Raha and 6 othersApplicants
By Advocates Mr A.C. Sarma, C.M. Das and
S. Saikia

- versus -

Union of India and othersRespondents
By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

O.A.No.367/2002

Shri P. Neogi and 60 othersApplicants
By Advocates Mr A. Sarma and Mr S. Saikia

- versus -

The Union of India and othersRespondents
By Advocate Mr A. Deb Roy, Sr. C.G.S.C.
and Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D E R

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CHOWDHURY. J. (V.C.)

All the four O.A.s were taken up together since it involves common questions of fact as well as law pertaining to the Special (Duty) Allowance.

2. The employees of different posts in the Postal Department in Assam Circle and N.E. Circle through the office bearers of various unions of the postal employees working under the Chief Post Master General, Assam Circle, Guwahati and N.E. Circle, Shillong, in O.A. No.249/2002, mainly assailed the action of the respondents as regards the recovery of Special (Duty) Allowance (SDA for short) so far paid to them. In O.A. Nos.316, 342 and 367 of 2002, the applicants in addition, also assailed the action of the respondents in stopping the payment of SDA to the applicants and more particularly assailed the Office Memorandum whereby the respondents took steps for recovery of the amount of SDA paid to ineligible persons after 5.10.2001.

3. For the purpose of adjudication of the cases, the pleadings cited in O.A.No.249/2002 and O.a.No.342/2002 shall be referred to. The Office Memorandum bearing F.No.11(5)97-E.II(B) dated 29.5.2002 recounted the background of payment of SDA, the full text of which is reproduced below:

"The undersigned is directed to refer to this Department's O.M. No.20014/3/83 E.IV dated 14.12.83 and 20.4.1987 read with O.M. 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 CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgement delivered on 20.9.94 (in Civil Appeal No.3251 of 1993 in the case of UOI and Ors V/s 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' 1995 (Supp.1) SCC 757. Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite 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.....

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

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

7. These orders will be applicable mutatis mutandi for regulating the claims of Islands Special (Duty) Allowance which is payable on the analogy of Special (Duty) Allowance to Central Government Civilian employees serving in the Andaman & 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."

4. Mr A.C. Sarma, learned counsel for the applicants, in O.A. Nos.342 and 367 of 2002, however, strenuously urged that the applicants in the aforementioned O.A.s are entitled for SDA in view of the fact that these applicants have All India Transfer Liability, which was also admitted by the respondents in Annexure-16 annexed to O.A.No.342/2002. According Mr A.C. Sarma the aforesaid communication dated 31.3.2000/3.4.2000 clearly spelt out that SDA was paid to all categories of officers and members of the staff of the Meteorological Department posted in the North Eastern Region according to the conditions laid down in the Ministry of Finance (Department of Expenditure) O.M. No.11(3)/95-E.11(B) dated 12.1.1996 and clarificatory O.M. No.20014/3/83-E.II dated 20.4.1987 as they have actual 'All India Transfer liability'. The learned counsel for the applicants

contended.....

contended that in view of the aforementioned admission of facts, the respondents cannot now turn around and contend that these applicants are not entitled for SDA.

5. I have also heard Mr A. Deb Roy, learned Sr. C.G.S.C. who seriously disputed the claim of the applicants.

6. I have given my anxious consideration in the matter and also perused the lone document referred to by the applicants issued by the Deputy Director General of Meteorology (Administration & Stores). On the face of the available documents it cannot lead to the conclusion that the applicants are also entitled for the SDA. The issue raised in this application is no longer res integra in view of the consistent pronouncements made by the Supreme Court in Reserve Bank of India Vs. Reserve Bank of India Staff Officers' Association and others, reported in (1991) 17 ATC 295, Union of India and others Vs. S. Vijayakumar and others, reported in (1994) 28 ATC 598, Chief General Manager (Telecom), N.E. Telecom Circle Vs. R.C. Bhattacharjee and others, reported in AIR (1995) SC 813, Union of India Vs. Executive Officers' Association Group C, reported in 1995 SCC (L&S) 661, as well as the judgment rendered by the Supreme Court in Civil Appeal No.7000 of 2001, Union of India Vs. National Union of Telecom Employees' Union and others disposed of on 5.10.2001.

7. In the fact situation, therefore, the claim of the applicants for grant of SDA cannot be entertained. The only other issue for consideration is as to the admissibility on the part of the authority in recovering the amount of SDA already paid to the applicants. The aforementioned action of the respondents goes counter to

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the legal policy as well as in view of the consistent decision of the Supreme Court. In the case of Union of India and another Vs. National Union of Telecom Employees Union referred to by the respondents as well as the decision rendered by the Supreme Court in Civil Appeal No.8208-8213 (Union of India and others Vs. Geological Survey of India Employees' Association and Others) itself indicated the concern expressed by the Apex Court in disentitling the authority from recovering any part of the payment of SDA already made to the concerned employees. Such recovery is inequitable and will invite misery to the employees. The action of the respondents for recovering the amount already paid is, therefore, held to unsustainable in law and the respondents are accordingly directed not to make any further recovery.

8. The applications are thus partially allowed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GAUHATI BENCH
AT GUWAHATI.

O.A. No. 249 /2002.

Shri Bangshidhar Boro & Ors Applicants.

-VRS-

Union of India & Ors Respondents.

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Pages</u>
1.	Original Application	1 to 11
2	Annexure-1 S.C. Notice —	12-13
3	Annexure-2 Peti for S.L.P —	14-16.
4	Annexure-3 — S.C. Judgement —	17-18
5	Annexure-3(1) — Judgement in O.A. 149/As —	19-30
6	Annexure-3(2) H.C. Judgement —	31-33
7	Annexure-4 — Impugned order for recovery —	34.
8	Annexure-4(1) 14. A.P.M.G., Shillong —	35.
9	Annexure-5 —	36-37.
10	Annexure-5(1) —	38.

Filed by:-

Krishna Chellai
Advocate. 5/8/2002.

Filed by the
Applicant through
me - Krishna Chellai
Advocate.
5/8/2002.

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Sajer Rahman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL GAUHATI BENCH
AT GUWAHATI.

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

O.A. No. 249 /2002.

Sri Bangshidhar Boro & 3 Ors Applicants.

-VRS-

The Union of India & Ors Respondents.

1. PARTICULARS OF THE APPLICANT :-

1. Sri Bangshidhar Boro,
Circle Secretary, National Federation of
Postal Employees, Assam Circle, Guwahati.
2. Sri Balendra Boro,
Circle Secretary, Federation of Postal
Organisation(FNPO), Assam Circle, Guwahati.
3. Sri Ramani Bhattacharyya,
Circle Secretary, National Federation of
Postal Employees (NFPE), N.E. Circle,
Shillong.
4. Sajer Rahman,
Circle Secretary, National Federation of
Postal Employees, NFPE (RMS), Assam Circle,
Guwahati.

2. PARTICULARS OF THE RESPONDENTS:-

1. The Union of India, represented by the
Director General of Posts, Govt. of India,
Sansad Marg, Dak Bhawan, New Delhi.

✓
Sayer Ramon

2. The Chief Post Master General,

Assam Circle, Meghdoot Bhawan, Guwahati-1.

3. The Chief Post Master General,

N.E. Circle, Shillong.

3. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION HAS BEEN MADE :-

Office memo contained in No. EST/15-4/2002/Rlg/ Pt.I dated 26.7.2002 issued by the Chief Post Master General, Assam Circle, Guwahati-1, and order dated 25.7.2002 issued by the Chief Postmaster General, N.E. Circle, Shillong.

4. JURISDICTION OF THE TRIBUNAL :-

The applicants declare that the subject matter of the order against which this application is made is within the jurisdiction of this Hon'ble Central Administrative Tribunal, Guwahati.

5. LIMITATION :-

The applicant further declare that this application is within the limitation of provision of section 21 of the Central Administrative Tribunal Act, 1985.

6. FACTS OF THE CASE :-

6.1. That your applicants are office bearers of various Unions of the postal employees working under the Chief Post Master General, Assam Circle, Guwahati and N.E. Circle, Shillong. The applicants represented the following Unions in this application:-

1) Bangshidhar Boro, Circle Secretary,

National Federation of Postal Employees

(NFPE) Assam Circle Guwahati.

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Sajer Rahman

- ii) Balendra Boro,
Circle Secretary, Federation of Postal
Organisation (FNPO), Assam Circle, Guwahati.
- iii) Ramani Bhattacharyya,
Circle Secretary, National Federation of
Postal Employees (NFPE), N.E. Circle, Shillong.
- iv) Sajer Rahman,
Circle Secretary, National Federation of
Postal Employees, NFPE (RMS), Assam Circle,
Guwahati-1.

6.2. That there are about 3000 employees
in different posts of the Postal Department in Assam and
N.E. Circle, Shillong.

6.3. That under the Govt. scheme employees
working in different departments of the Central Government
were given various facilities in Assam Circle and N.E.
Circle specially the employees have been paid SDA under
the Central Govt. scheme dated 14.12.1983.

6.4. That the original Posts & Telegraph (P&T)
has been bifurcated into Telecom Department and Postal
Department. The Postal Department employees are working
under the Chief Post Master General, Assam Circle, Guwahati
and the Postal Department employees in N.E. Circle have
been working under Chief Post Master General, N.E. Circle,
Shillong.

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Sujai Kumar

6.5. That the Central Govt. have been paying SDA to various employees of various departments working in Assam Circle and N.E. Circle but no SDA was paid to the employee of Telecom Department and Postal Department.

6.6. That the applicants representing various unions of the Postal Department represented to the Central Govt. for payment of SDA to the employees as they are also working in a similar situation like that of the other employees who were getting S.D.A.

6.7. That the P&T employees filed O.A. no.88/1989 before this Hon'ble Tribunal, Gauhati Bench at Guwahati and the Hon'ble Tribunal after hearing both sides allowed the above O.A. No.88/1989.

6.8. That the Union of India being aggrieved by the decision of the Hon'ble Tribunal for allowing the above application preferred Review Application against the order of this O.A. alongwith several other similar petitions.

6.9. That all the review applications were heard by the Cuttack Bench and after hearing both sides affirmed the judgment and order passed by the Hon'ble Tribunal and disposed of the review application accordingly.

6.10. That the Union of India being highly aggrieved by the decision of the Hon'ble Tribunal as well as the decision of the Cuttack Bench in review applications preferred Civil Appeal No.7000/2001 arising out of SLP(C) No.5455/99 before the Hon'ble Supreme Court.

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Bayer Ramesh

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6.11. That in the above Civil Appeal No.7000/2001 the Hon'ble Supreme Court was pleased to issue notices to the various Unions including the Postal and Telecom Department alongwith others and in response to which the Postal Department employees also filed affidavit before the Hon'ble Court in the above Civil Appeal.

Annexures-1 and 2 are the photocopies of the said Notices issued by the Hon'ble Supreme Court to the applicants.

6.12. That the Hon'ble Supreme Court after hearing all the parties concerned allowed the Civil Appeal No.7000/2001 vide judgement and order dated 5.10.2001.

Annexure-3 is the photocopy of the said judgement and order dated 5.10.2001 passed by the Hon'ble Supreme Court in Civil Appeal No.7000/2001.

Annexure-3(1) is the photocopy of the judgement & Order dated 22.12.2000 passed by the Hon'ble Tribunal in O.A. No.149/99.

Annexure-3(2) is the photocopy of the order dated 18.3.2002 passed by the Division Bench of the Hon'ble Gauhati High Court in W.P.(C) No.2923/2001.

6.13. That it may be mentioned in this connection that the Hon'ble Supreme Court in its judgement dated 5.10.2001 at Annexure-3 clearly stated as follows:-

Bayer Rahman

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"It is however, made clear that when this appeal came up for admission on 13.1.2000 the learned Solicitor General had given an undertaking that whatever amount has been paid to the respondents by way of special duty allowance will not, in any case or event, be recovered from them. It is on this assurance that delay was condoned. It is made clear that the Union of India shall not be entitled to recover any amount paid as special duty allowance in spite of the fact that this appeal has been allowed."

6.14. That the applicants beg to state that the Hon'ble Supreme Court has clearly stated though by their judgment allowed the Civil Appeal No.7000/2001 clearly stated that whatever amount has been made towards S.D.A. to the employees shall not be recovered.

6.15. That in spite of the Supreme Court judgment the Chief Postmaster General, Assam Circle, Guwahati and N.E. Circle, Shillong in violation of the Supreme Court judgment issued impugned orders dated 26.7.2002 to recover S.D.A. paid till June, 2002.

Annexure-4 is the photocopy of the order dated 26.7.2002 contained in No. EST/15-4/2002/Rlg/Pt.I issued by the Chief Postmaster General, Assam Circle, Guwahati-1. Annexure-4(1) is the photocopy of the order dated 26.7.2002 issued by the Asstt. Postmaster General office of the Chief Postmaster General, N.E. Circle, Shillong.

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Soyin Danner

6.16. That the applicants beg to state that they filed representation on 24.7.2002 to the Chief Post Master General, Assam Circle, Guwahati and Chief Postmaster General, N E. Circle, Shillong praying for stopping/waiving the recovery of the amount of SDA already paid to them till June, 2002 but the authority did not comply with their representations and hence this application has been filed for quashing the impugned orders dated 26.7.2002.

- Annexure-5 is the photocopy of the said representation submitted by the applicants on 24.7.2002 to the Chief Postmaster General, Assam Circle, Guwahati.

Annexure-5(1) is the photocopy of the representation submitted to the Chief Post Master, N.E. Circle, Shillong.

7. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:-

7.1. For that the Chief Post Master General Assam Circle and N.E. Circle have issued impugned orders dated 26.7.2002 in violation of the Hon'ble Supreme Court judgment dated 5.10.2001 and as such the impugned orders are liable to be quashed.

7.2. For that as per Supreme Court judgment the Chief Postmaster General, Assam Circle and N.E. Circle has no authority to issue these impugned orders in violation of the Hon'ble Supreme Court's judgment and as such the impugned orders issued by the both Chief Postmaster General, Assam Circle and N.E. Circle are liable to be quashed.

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Dy. J. R. R. R.

7.3. For that the concerned Officers working under the Chief Post Master General, Assam Circle and N.E. Circle, Shillong are pressing the employees of the Union to pay the amount recoverable from them with effect from the date of the Supreme Court's judgment dated 5.10.2001 which is illegal, improper and malafide and as such the same is liable to be quashed.

7.4. For that the Hon'ble Central Administrative Tribunal as well as the Hon'ble Gauhati High Court have allowed the payment of SDA to the employees of the applicants Union and as such there is nothing to be interfered with now after the judgement and order passed by the Hon'ble Supreme Court.

7.5. For that the Hon'ble Tribunal as well as the Hon'ble High Court have decided that the recovery of SDA should be perspective and not retrospective but in the instant case the impugned orders passed by the Chief Postmaster General, Assam Circle and N.E. Circle, Shillong with retrospective effect and hence the same is liable to quashed.

7.6. For that any rate the impugned orders passed by the Chief Postmaster General, Assam Circle and N.E. Circle are liable to be quashed.

8. DETAILS OF REMEDIES EXHAUSTED :-

The applicants filed Annexure-5 and 5(1) before the Chief Postmaster General, Assam Circle,

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Dy. Secy. Law

Guwahati and N.E. Circle, Shillong praying for stopping /waiving the SDA already paid to them till June, 2002 but the Chief Postmaster General, Assam Circle and N.E. Circle, Shillong did not comply with the request and issued the impugned orders dated 26.7.2002 for recovery of the S.D.A. already paid to the employees and hence this application before the Hon'ble Tribunal for quashing the impugned orders.

9. MATTERS NOT PREVIOUSLY PENDING BEFORE ANY COURT OR TRIBUNAL :-

The applicants further declare that no case in respect of the present matter is pending before any Tribunal or any Court of law.

10. RELIEF SOUGHT FOR :-

Under the facts and circumstances narrated above the applicants pray for the following reliefs:-

i) The applicants having paid SDA till June, 2002 the impugned orders dated 26.7.2002 and 25.7.2002 issued by the Chief Postmaster General, Assam Circle and N.E. Circle, Shillong be quashed.

ii) to grant any other relevant relief or reliefs entitled by the applicants;

iii) to grant cost of the case.

11. INTERIM RELIEF, IF ANY :-

The applicants in the interim pray that the operation of the impugned orders dated 26.7.2002 and 25.7.2002 at Annexure-4 and 4(1) issued by the Chief

Bye-lane 21

Postmaster General, Assam Circle, Guwahati and N.E.
Circle, Shillong directing to recover S.D.A. already
paid to them, may kindly be stayed till final disposal
of this application.

12. PARTICULARS OF THE IPO:-

- i) Date of issue :- 2.8.2002.
- ii) IPO No. 7 G.576589
- iii) Payable at Guwahati.
- iv) Name of Post Office: Gauhati Head Post Office.
- v) Value : Rs.50'00.

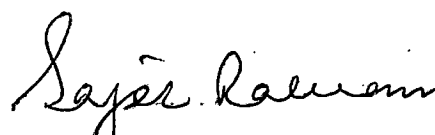
13. ENCLOSURES :-

As per Index.

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

I, Sri Sajer Rahman, at present working as Sorting Assistant in the Gauhati Railway Mail Service, Circle Secretary, National Federation of Postal Employees, NFPE (RMS), Assam Circle, Guwahati, do hereby solemnly affirm and verify the statements made in paragraphs 1, 2, 4, 5, 6, 6.4, 6.5, 6.6, 6.11, 8, 9 are true to my knowledge and those made in paragraphs 3, 6.1, 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.12, 6.13, 6.14, 6.15, 6.16 being matters of records are true to my information derived therefrom which I believe to be true and the rests are my humble submissions made before this Hon'ble Tribunal. And I have not suppressed any materials facts in this case.

And I sign this verification on this 5 th day of August, 2002 at Guwahati.


Signature.

SECTION XIA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. No. 1 (Application for condonation of delay in Filing SLP)

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 5455/1999

WITH

PRAYER FOR INTERIM RELIEF

U.O.I. & ORS

....Petitioner

Versus

NATIONAL U.O.F TELECOM ENGG. EMP. UNION & ORSRespondent

To

12/ Shri Sudhendu Shekar Sen.

ex/ late Sainja Charen Sen.

Circle Secretary, AIRMS and MMSEU.

Class III. N.F.T.E.

[representing the Postal Wing]

WHEREAS the Application for condonation of delay in filing Special Leave Petition and the Petition for Special Leave to Appeal with a Prayer for Interim Relief above mentioned (Copy enclosed) filed in the Registry by MR. ARVIND KUMAR SHARMA, Advocate on behalf of the Petitioner above named was listed for hearing before this Court on 01/04/1999 when the Court was pleased to pass the following order:

"Issue notice on the application seeking condonation of delay."

...2.


Attended by
Advocate
5/8/2002

24

NOW, THEREFORE, TAKE NOTICE that the above Application for condonation of delay and petition with prayer for interim relief will be posted for hearing before this Court in due course and you may enter appearance before this Court either in person or through an advocate-on-record of this Court duly appointed by you in that behalf within 30 days from the date of service of notice. You may thereafter show cause to the Court on the day that may subsequently be specified as to why delay in filing the Special Leave Petition be not condoned and Special Leave as prayed for be not granted and the resultant appeal be not allowed.

TAKE FURTHER NOTICE that if you fail to enter appearance as aforesaid, no further notice shall be given to you even after the grant of special leave for hearing of the resultant Appeal and the matter above mentioned

Dated this the 9th day of April, 1999.


ASSISTANT REGISTRAR.

*Filed by
D. J. Tiwari
18/2002*

SECTION VIA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 5455/1999

WITH

PRAYER FOR INTERIM RELIEF

U.O.I. & ORS

.....Petitioners

Versus

NATIONAL U.OF TELECOM ENGG. EMP. UNION & ORSRespondents

To

1. Shri Rabindra Kumar Bharali
Working as W.C. Gr. 1.
c/o the Executive Engineer
Telecom. Civil Division.
Chenikuti, Guwahati. (R.2)
2. Shri G.P. Das.
Head Clerk.
c/o the Executive Engineer
Telecom. Civil Division.
Chenikuti, Guwahati. (R.3)
3. Shri K.L. Yadav,
Vice President
National Union of Telecom
Engineering Employees Class-IV & Line Staff
Assam Circle, Guwahati. (R.5)
- ✓ 4. All India Postal Administrative
Employees Union,
Class-III & IV (Postal)
Assam Circle, Guwahati,
N.E. Circle, Shillong. (R.16)
5. Shri Sudhendu Shekar Sen,
S/o late Sailja Charan Sen,
Circle Secretary. AIRMS and MMSEU,
Class III, N.F.T.E.
(representing the Postal Wing) (R.17)
6. Shri Sailendra Nath Sarma
S/o late Durgeswar Sarma
Circle Secretary,
All India Telecom. Employees
Union Class - III (representing the
Telecom. Wing) N.F.T.E.
Panbazar C.T.O./Campus, Guwahati. (R.18)

Attested by
Kishan Chatterjee
Advocate
5/8/2002

7. National Union of Telecom,
Engineering Employees Line Staff
& Group 'D' Assam Circle, Guwahati. (R.20)

WHEREAS the Petition for Special Leave to Appeal with a Prayer for Interim Relief above mentioned (Copy already sent) filed in the Registry by MR. ARVIND KUMAR SHARMA Advocate on behalf of the Petitioner above named was listed for hearing before this Court on 01/04/1999 when the Court directed issue of notice and WHEREAS the matter above-mentioned was again listed before the Court after notice on 28/04/2000 when the Court was pleased to pass the following order:

"We have perused the Office Report. It appears service is not complete on all the respondent. Let fresh steps be taken to serve the unserved respondents. In the meanwhile, there will be stay of the impugned judgment in view of the decisions of this Court in Union of India Vs. S. Vijay Kumar & Ors. (1994 SUPL. (3) SCC 649) and Union of India & Anr. Vs. Executive Officer Assistant Group 'C' (1996 SUPPL. (1) SCC 757). List after service is complete."

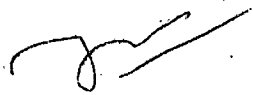
NOW, THEREFORE, TAKE NOTICE that the above petition will be posted for hearing before this Court on 28th august, 2000 at 10.30 O'Clock in the forenoon or so soon thereafter as may be convenient to the Court when you may appear before the Court either in person or through counsel and show cause to the Court to why the Special Leave as prayed for be not granted and the resultant appeal be not allowed.

Take Further Notice that the prayer for interim relief after notice will also be listed before the Court on the aforesaid returnable date.

*Admitted by
K. S. Chatterjee
Advocate
12/8/2002*

TAKE FURTHER NOTICE that if you fail to enter appearance as aforesaid, no further notice shall be given to you even after the grant of special leave for hearing of the resultant Appeal and the matter above mentioned shall be disposed of in your absence.

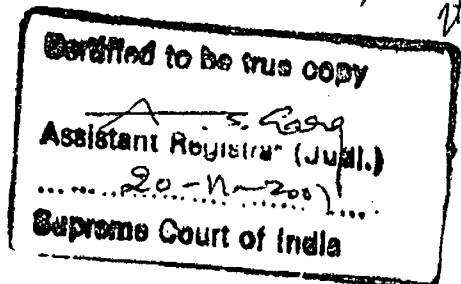
Dated this the 15TH day of May, 2000.


ASSISTANT REGISTRAR.

Copy to: 1. Mr. A.K. Sharma, Adv.
2. Mr. S.K. Nandy, Adv.
3. Mr. Sanjay Parekh, Adv.
4. Mr. Kailash Vasudev, Adv.

ASSISTANT REGISTRAR

*Attested by
Kishore Chatterjee
Advocate
5/8/2002*



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7000 OF 2001
(Arising out of S.L.P.(C) No. 5455 of 1999)

544783

Union of India & Anr.

... Appellants

versus

National Union of Telecom Engineering
Employees Union & Ors.

... Respondents

ORDER

Leave granted.

It is stated on behalf of the respondents that this appeal of the Union of India is covered by the judgment of this Court in the case of Union of India & Ors. Vs. S. Kilayakumar & Ors. reported as 1994 (Supp.3) SCC, 649 and followed in the case of Union of India & Ors. Vs. Executive Officers' Association Group 'C' 1995 (Supp. 1) SCC, 757. Therefore, this appeal is to be allowed in favour of the Union of India. It is ordered accordingly.

It is, however, made clear that when this appeal came up for admission on 13.1.2000 the learned Solicitor General had given an undertaking that whatever amount has been paid to the respondents by way of special duty allowance will not, in any case or event, be recovered from them. It is on this assurance that delay was condoned. It is made clear

.....2/-

Attested by
Kishor Chandra
Advocate
5/8/2002

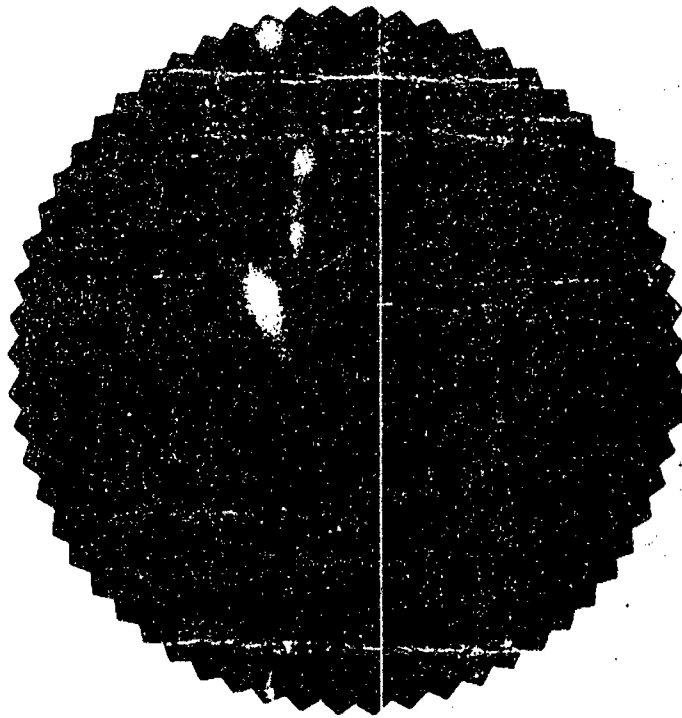
that the Union of India shall not be entitled to recover any amount paid as special duty allowance inspite of the fact that this appeal has been allowed.

.....J.
(N. SANTOSH HEGDE)

.....J.
(R.G. BALAKRISHNAN)

New Delhi,
October 05, 2001.

Attested by
Krishna Chellai
Advocate
5/8/2002



URGENT REC DS. 5/-

SUPREME COURT OF INDIA	
Case filed in:	
Matter No.	C.A. 1000/2001
	U.O.I. & Arre.
Brief Cause	29 -

National Union of T.P. & P. Employees Union & M.

*Assisted by
Karlsha Chatter
Advocate
18/2002*

No.	1-2523
including	2
location	121

FILED IN MY PRESENCE

Date of application for copy 25/11/2001

Date of issuing requisite stamp 25/11/2001

Date of delivery of requisite stamp 25/11/2001

Date of which the copy was 25/11/2001

Date of delivery to the copy 25/11/2001

Section 106
Supreme Court of India

20711

25/11/01

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 149 OF 1999.
(AND 17 OTHER ORIGINAL APPLICATIONS)

(O.As 217, 274, 297, 296, and 187 of 1998; 18, 21, 223, 23, 380 and 81 of 1999 AND 287, 200, 24, 21, 428 and 234 of 2000)

Date of decision - December, 22, 2000.

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

THE HON'BLE MR. M.P. SINGI, ADMINISTRATIVE MEMBER.

1. Ordinance Depot Civil Workers' Union, Masimpur, P.O. Arunachal, Dist Cachar, Assam.
2. Sri Badal Ch. Dey, President, Ordinance Depot Civil Workers' Union, Masimpur, P.O. Arunachal, Dist Cachar, Assam.
3. Sri Badal Chandra Dey, Son of Late Birendra Chandra Dey, Vill. Badarpur Part-II, P.O. Nij Jaynagar, (via Arunachal), Cachar, Pin 788025.
4. Sri Salim Uddin Barbhuyan, Son of Late Abdul Hakim Barbhuyan, Village-Uzam Gram, P.O. Nij Jaynagar, (Via Arunachal) Dist Cachar, Assam.

(Applicant Nos. 3 and 4 are effected members of the aforesaid Association working under No. 1 Det 57 Mountain Division, Ordinance Unit as Mazdoor).

- APPLICANTS

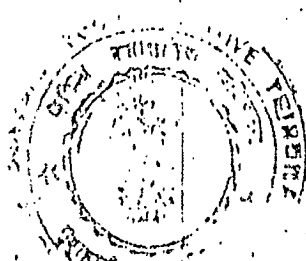
By Advocates Mr. J.L. Sarkar, Mr. M. Chanda, Mrs. S. Deka and Ms U. Dutta.

- Versus -

1. Union of India, Through the Secretary to the Govt of India, Ministry of Defence, New Delhi.

contd ...

Attested by
Rishu Chatterjee
Advocate
08/2002



2. Officer Commanding,
57 Mountain Division,
Ordinance Unit,
C/O 99 APO.

3. LAO (A),
Silchar, Masimpur Cantonment,
No.1 Det 57 Mountain Division,
C/O 99 APO.

- RESPONDENTS

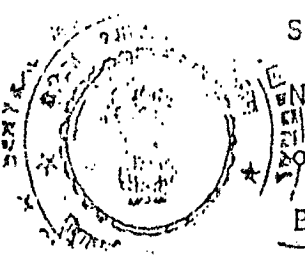
By Advocate Mr. B.C. Pathak, Addl. C.G.S.C.

J U D G M E N T

M. P. SINGH, MEMBER (ADMN.) -

By filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicants have challenged the impugned order dated 12th January, 1999 whereby the Special (Duty) Allowance granted in the light of the Office Memorandum No. 20014/3/83.E.IV dated 14th December, 1983 and Office Memorandum No. F.No. 20014/16/86/E.IV/E.II(B) dated 1st December, 1988 is now sought to be recovered by the respondents. The applicants have sought relief by praying that the Office Memorandum dated 12th January, 1996 (Annexure-4) and 12th January, 1999 (Annexure-5) be quashed and set aside and the respondents be directed to continue to pay S.D.A. to the members of the applicant association in terms of O.M. dated 14th December, 1983, 1st December, 1988 and 22nd July, 1998. The applicants have also sought direction to the respondents not to make any recovery of any part of S.D.A. already paid to the members of the applicant association.

2. The cause of action, the issues raised and relief sought for in this O.A. are same as raised in O.A. No.217/98 (All India Central Ground Water Board Employees Association, North Eastern Region Central Ground Water Board, Tarun Nagar, Guwahati-5 and others - Vs - Union of India and others), (2) O.A. No.274/98 (Sri Dulal Sarma and others) - Vs - Union of India and others), (3) O.A. No.18/99 (National Federation of Postal Employees Postmen and Gr.D - Vs - Union of India and others), (4) O.A. No.21/99 (Bakhon Ch. Das and others - Vs - Union of India and others), (5) O.A. No.282/2000 (Rabi Shankar Seal and others - Vs - Union of India and others), (6) O.A. No.223/99 (Shri K. Letso and others - Vs - Union of India and others), (7) O.A. No.208/2000 (Krishanlal Saha and others - Vs - Union of India and others), (8) O.A. No.23/99 (Ordinance Mazdoor Union and another - Vs - Union of India and others), (9) O.A. No.24/2000 (Ramani Bhattacharyya - Vs - Union of India and others), (10) O.A. No.21/2000 (Sri Louis Khyriem and others - Vs - Union of India and others), (11) O.A. No.428/2000 (Sri T. Ahmed and others - Vs - Union of India and others), (12) O.A. No.297/98 (Biswajit Choudhury and others - Vs - Union of India and others), (13) O.A. No.380/99 (Smt. Sanghamitra Choudhury and others - Vs - Union of India and others), (14) O.A. No.296/98 (Dwijendra Kumar Debnath and others - Vs - Union of India and others), (15) O.A. No.187/98 (All Assam M.E.S. Employees Union and another - Vs - Union of India and others), (16) O.A. No.234/2000 (Gautam Deb and others - Vs - Union of India and others), (17) O.A. No.81/99 (Sri Nitya Nanda Paul - Vs - Union of India and others) and (18) O.A. No.84/2000 (Subodh Ch Gupta and 56 others - Vs - Union of India and others). We, therefore, proceed to hear all the



*Assisted by
Biswajit Choudhury
Advocate
12/2002*

[Handwritten signature]

cases together. Among these O.As, O.A. No.149/99 is to be treated as a leading case and the orders passed in this O.A. shall be applicable to all other aforesaid O.As.

3. The brief facts as stated in O.A. No.149/1999 are that the applicant No.1 is an association of Group 'D' employees representing 155 persons working under the Officer Commanding No.1, Det, 57 Mountain Division, C/O 99 APO. The applicant No.2 is the President of the aforesaid association. Applicant No.3 and 4 are affected members of the said association. They are civilian Government employees working under the Officer Commanding of the aforesaid Mountain Division.

4. The Government of India granted certain facilities to the Central Government civilian employees serving in the States and Union Territories of North Eastern Region vide Office Memorandum dated 14th December, 1983. As per clause II of the said memorandum, Special (Duty) Allowance was granted to the Central Government civilian employees, who have all India transfer liability on posting to any station in the North Eastern Region. The respondents after being satisfied that all the members of the said Association who are civilian Central Government employees are saddled with all India transfer liability and are, therefore, entitled to S.D.A. in terms of the office memorandum dated 14th December, 1983 and office memorandum dated 1st December, 1988. The Special (Duty) Allowance was accordingly granted to the members of the applicant association. The Respondent No.3 issued the impugned order dated 12th January, 1999

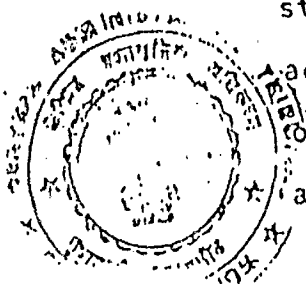
wherein ...

*Noted by
Sd/- Chellai
Chelmoole
5/8/2002*

[Signature]

10.14.99

wherein it is stated that in view of the Supreme Court judgment, the persons who belong to North Eastern Region would not be entitled to S.D.A. but the said allowance would be payable only to the employees posted to North Eastern Region from outside the region. All the industrial persons working also fall within the same category and it is further requested to submit a list of employees showing permanent residential address for verification for entitlement of S.D.A. It was ^{also} further instructed to start recovery in respect of the employees who belong to North Eastern Region with effect from 21.9.1994 in instalments. As such, the applicants apprehend that in view of the instructions issued through impugned letter dated 12.1.1999, the respondents may start recovery of S.D.A. from the Pay Bill of May, 1999. The action of the respondents to stop the S.D.A. to the members of the applicant association is without any show cause notice and without following the principles of natural justice.



5. On an enquiry made by the applicants, they came to know that the Government of India while issuing the office memorandum dated 12th January, 1996 clarified the position regarding the entitlement of S.D.A. In para 6 of the said office memorandum, it is stated that the Hon'ble Supreme Court in the judgment dated 20th September, 1993 (Civil Appeal No. 3281 of 1993) upheld the submission of the Government that government civilian employees, ^{who have} all India transfer liability are entitled to the grant of S.D.A. on being posted to any station in the North Eastern Region from outside the region and S.D.A. would not be payable merely because of

*Attended by
Kishor Chatterjee
Advocate
5/8/2002*

the clause ...

ml

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the clause in the appointment order relating to all India transfer liability. It is also stated that the Apex Court ² also added that the grant of this allowance only to the officers transferred from outside the 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 Supreme Court further 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. But a contradictory view has been taken in regard to recovery of the Special (Duty) Allowance from respondents vide para 7 of the office memorandum dated 12th January, 1996. The relevant para 7 of the office memorandum dated 12th January, ¹⁹⁹⁶ is as follows :-

"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 20.9.94 (which also includes those cases in respect of which the allowance was pertained to the period prior to 20.9.94; but payments were made after this date i.e. 20.9.94) will be recovered.

6. According to the applicants, the Hon'ble Supreme Court keeping in mind the possible hardship to the low paid employees directed not to make recovery of the S.D.A. which is already paid to the employees. After a lapse of

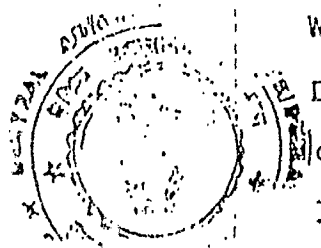
considerable ...

[Signature]

*Alotted by
Sd/- Mr. B. B. Bhatt
Sd/- Mr. B. B. Bhatt
5/8/2002*

considerable period, the respondents have now sought to recover the amount of S.D.A. paid to them after 20.9.1994. Aggrieved by this, they have filed this O.A. seeking relief as mentioned in Para-1 above.

6. The respondents have contested the case and stated in their reply that in order to retain the services of civilian employees from outside the North Eastern Region, who do not like to come to serve in the North Eastern Region being a difficult and inaccessible terrain, the Government of India brought out a scheme under the office memorandum dated 14th December, 1983 thereby extending certain monetary and other benefits including "Special (Duty) Allowance" (in short SDA). While the provisions of the office memorandum dated 14th December, 1983 were wrongly interpreted which raised some confusion relating to payment of S.D.A., the Government of India brought out a clarification to remove the ambiguity of the earlier office memorandum dated 14th December, 1983 by the office memorandum dated 20th April, 1987 and also extended the benefit to Andaman, Nicobar and Lakshdweep Islands. According to this clarification for the sanctioning of S.D.A., 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 the test 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 all India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of S.D.A.



*Submitted by
Bishu Chatterjee
Advocate
5/8/2002*

[Signature]

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7. Thereafter, a number of litigations came up challenging the non-payment/stoppage of payment of S.D.A. to certain classes of employees who were not coming within the zone of consideration as stated in the office memorandum dated 14th December, 1983 and 20th April, 1987. The Hon'ble Supreme Court in Civil Appeal No. 3251/93 vide judgment dated 20th September, 1994 held that the benefit under the office memorandum dated 14.12.1983 read with office memorandum dated 20.4.1987 are available to the non-residents of North Eastern Region and such discrimination denying the benefit to the residents civilian employees of the region is not violative of Article 14 and 16 of the Constitution of India. It has also been held that as per the office memorandum dated 20th April, 1987 the S.D.A. would not be payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India. According to another decision dated 7th September, 1995, the Hon'ble Supreme Court in Civil Appeal No. 8208-8213 held as follows :-

"It appears to us that although the employees of the Geological Survey of India were initially appointed with an All India Transfer Liability, subsequently, Government of India framed a policy that Class C and D employees should not be transferred outside the Region in which they are employed. Hence All India Transfer Liability no longer continues in respect of Group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having All India Transfer Liability is not to be paid to such group C and D employees of Geological Survey of India who are residents of the Region in which they are

*Noted by
Hon'ble Chetani
Admnstr
5/8/2002*

posted...

posted. We may also indicate that such question has been considered by this Court in Union of India and others - Vs - S. Vijaykumar and others (1994) 3 SCC 649."

8. This Tribunal in O.A. No.75/96 (Hari Ram and others - Vs - Union of India and others) vide judgment dated 4th January, 1999 held that the S.D.A. is not payable to those employees who are residents of the North Eastern Region. In pursuance of the Supreme Court judgment, the Government of India took a policy decision vide office memorandum No.11(3)/95-E-II(B) dated 12th January, 1996. According to the respondents, the applicants No.3 and 4 and those in Annexure-'I' are resident of North Eastern Region and are locally recruited in the region and they do not have all India transfer liability although the list does not indicate that these employees are either residents of North Eastern Region or they belong to some other region outside the North Eastern Region and posted from outside the region as per the office memorandum dated 14th December, 1983. In view of the instructions contained in the office memorandum dated 12th January, 1996, no S.D.A. has been paid after 31st January, 1999. It was proposed to recover the amount already paid after 20th September, 1994 to 31st January, 1999. No recovery has been effected by them so far. In view of the aforesaid legal position, the O.A. is misconceived and cannot sustain in law.



*Attested by
Prishna Chatterjee
Advocate
9/8/2002*

9. Heard both the learned counsel for rival contesting parties and perused the records.

[Signature]

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10. The question for consideration before us is as to whether the applicants are entitled for the payment of S.D.A. and if not, whether the recovery of the amount of S.D.A. already paid to them beyond 20.9.1994 is to be effected. The issue relating to the grant of S.D.A. has been considered and decided by the Hon'ble Supreme Court in Union of India and others - Vs - S.Vijayakumar and others, reported in 1994 Supp (3) SCC 649. The Hon'ble Supreme Court in that case has held as under :

"We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi 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 there by 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 ...

Directed by
Rishu Chatterjee
Solicitor
5/8/2002

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 Memorandum of 1983 the subject was mentioned as quoted above is not enough to concede to the submission of Dr. Ghosh."

The position has been further clarified by the Supreme Court vide their judgment in Union of India and others - Vs - Geological Survey of India Employees Association and others passed in Civil Appeal No. 8208-8213 (arising out of S.L.P. Nos. 12450-55/92) as stated in para 7 above.

11. In view of the criteria laid down by the Hon'ble Supreme Court in the aforesaid judgments, the applicants are not entitled to the payment of S.D.A. as they are resident of North Eastern Region and they have been locally recruited and they do not have all India Transfer Liability. As regards the recovery of the amount already paid to them by way of S.D.A., the Hon'ble Supreme Court in the aforesaid judgments has specifically directed that whatever amount has been paid to the employees, would not be recovered from them. The judgment of the Supreme Court was passed on 20.9.1994 but the respondents on their own had continued to make the payment of S.D.A. to the applicants till 31.1.1999. The orders have been passed by the respondents to stop payment of S.D.A. only on 12.1.1999. The order passed on 12.1.1999 can have only prospective effect and, therefore, the recovery of the SDA already paid to the applicants would have to be waived.

affected by
Biswanath Chatterjee
Associate
\$8/2002

12. For the reasons recorded above, the O.A. is partly allowed and the respondents are directed that no recovery would be made by them of the amount of S.D.A. already paid to the applicants upto 31.1.1999. In case any amount on account of payment of S.D.A. has been recovered/withheld from retiral dues, the same shall be refunded/released to the applicants immediately.

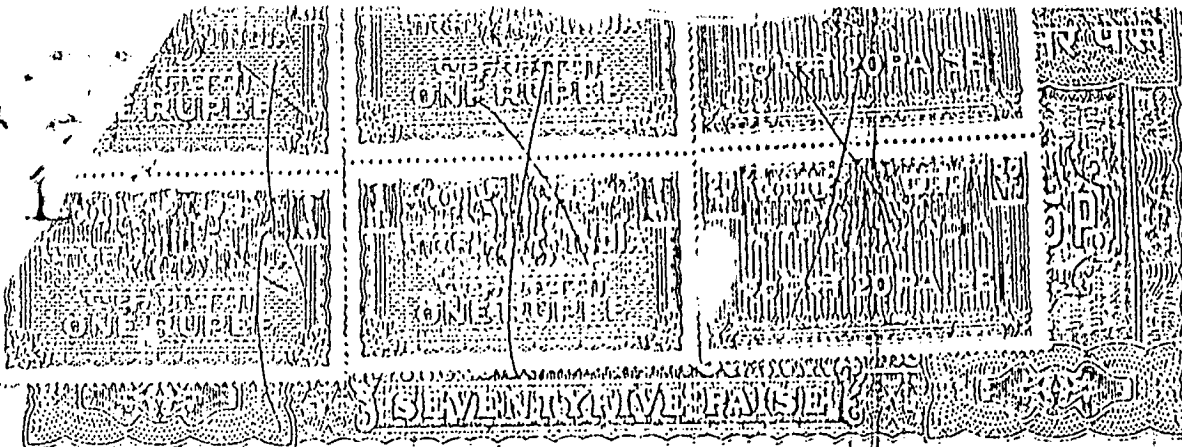
The O.A. is disposed of with the above direction.
No order as to costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)

checked by
Prakash Chatter
mk
Adm. Secy
5/8/2002

TRUE COPY
प्रतिप्र

11/3/11/2001
Deputy Registrar (O)
Central Administrative Tribunal
Gurgaon Branch
3/11/2001



3/ 42

प्रतिनिधि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या प्रतिग नम्बर की निम्नलिखित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जवनि देने के लिए प्रतिनिधि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिनिधि देने की तारीख Date of making over the copy to the applicant.
21/3/02	3/4/02	1/4/02	6/4/02	6/4/02

Annexure-3(2)

IN THE GAUHATI HIGH COURT.

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM: MANIPUR:
TRIPURA: MIZORAM AND ARUNACHAL PRADESH)

(CIVIL APPELLATE SIDE)

F.P.JC) No. 2323/2001.

Union of India,
Through Director General,
Department of Post,
represented by
Chief Post Master General,
Assam Circle

...

Petitioner.

-Versus-

1. National Federation of Postal Employees, Assam Circle, Panbazar, represented by Sri Bhri Guram Lahkar, Circle Secretary, Assam.
2. Sri Daljendra Kumar Debnath Sorting Assistant, Lower Selection Grade, Railway Mail Service, Guwahati.
3. Federation of National Postal Organisation, Assam Circle, Panbazar, Guwahati-1, Represented by Sri Daljendra Boro, Circle Secretary, ROR-III.

Contd:....2

Contd:....3

Submitted by
Pratima Chellur
Advocate
4/8/2002

4. Sri Pramod Das
Sorting Assistant
Higher Selection Grade,
Railway Mail Service,
Panbazar, Guwahati-1.

... Respondents.

P R E S E N T

THE HON'BLE MR. JUSTICE J. N. SARMA
THE HON'BLE MR. JUSTICE I. A. ANSARI

For the Petitioner : C.G.S.C.

For the Respondents : Mr. D.K. Sarma,
Mr. P.K. Tewari,
Mr. U.K. Goswami, Advocates.

Date
18-3-2002

O R D E R

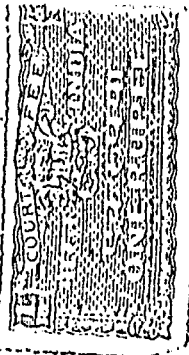
This writ application has been filed against the judgment of the Central Administrative Tribunal, Guwahati Bench. The date of judgment is December 22, 2000. The penultimate portion of the judgment is at paragraph 11. That is quoted below :

"In view of the criteria laid down by the Hon'ble Supreme Court in the aforesaid judgments, the applicants are not entitled to the payment of S.D.A., as they are resident of North eastern Region and they have been locally recruited and they do not have all India Transfer Liability. As regards the recovery of the amount already paid to them by way of S.D.A., the Hon'ble Supreme Court in the aforesaid, judgments.

*Assisted by
Kishore Chatterjee
Advocate
18/3/2002*

Contd....3

- 3 -



has specifically directed that whatever amount has been paid to the employees, would not be recovered from them. The judgment of the Supreme Court was passed on 20.9.1994 but the respondents on their own had continued to make the payment of S.D.A. to the applicants till 31.1.1999. The orders have been passed by the respondents to stop to payment of S.D.A. only on 12.1.1999. The order passed on 12.1.1999 can have only prospective effect and, therefore, the recovery of the SDA already paid to the applicants would have to be waived."

In view of the paragraph 11 of the judgment quoted above, there is no merit in this writ application and the same shall stand dismissed. It is needless to say that the Supreme Court has stayed the entitlement of the petitioner to receive the money but regarding recovery the prayer for stay has been rejected:

Sd/- I.A. Ansari,
Judge

Sd/- J.N. Sarma,
Judge

Registered No. of Petition.....	5340
Photostate by/Type by.....	W. L. E.
Read by.....	G. T.
Compared by.....	G. T.

CERTIFIED TO BE TRUE COPY	
Date.....	24/10/02
Superintendent (Copying Section)	
Gauhati High Court	
Authorized U/S 76, Act I, 1872	

Attended by
Kishor Chelvi
Advocate
5/8/2002

34
25/7/02
32/7
Annexure-4
✓

DEPARTMENT OF POSTS :: INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL :: ASSAM CIRCLE ::
GUWAHATI - 781 001

No. EST/ 15 - 4/ 2002 / Rlg / Pt I dated at Guwahati the 26.7.2002

To,

1. The Postmaster General, Dibrugarh Region, Dibrugarh
- 2-12. All Divisional Heads (Postal/RMS) in Assam Circle/
Dibrugarh Region.
13. The Manager, MMS Guwahati
14. The DDA(P), Nabagraha Road, Chenikuthi, Guwahati
- 15-16. The Supdt of PSD // NESD, Guwahati
17. The Executive Engineer, Postal Civil Division, Guwahati
18. The Asstt Engineer (Electrical), Meghdoot Bhavan, Guwahati
19. The Asstt Director (Accounts), Circle office, Guwahati
20. The IFA, CO, Guwahati.

Subject :- Regulation of payment of Special Duty Allowance (SDA) -
clarification issued vide Mof 11(5)/97-E II (B) dated 29.5.2002. ||

In continuation of this office letter of even No. Dated 3.7.2002 and
19.7.2002, I am directed to request you to kindly arrange recovery of
over-drawal of SDA money in 15 equal monthly installments from the
pay of concerned employees.

(P. NATH)
APMG (ESTT)
O/O THE CHIEF PMG
GUWAHATI - 1.

Attested by
Krishna Chatterji
Advocate
5/8/2002

Annexure - 4(1)

DEPARTMENT OF POSTS
OFFICE OF THE CHIEF POSTMASTER GENERAL, N.E. CIRCLE, SHILLONG

No. Vig/Misc/SDA/98/(PCH)

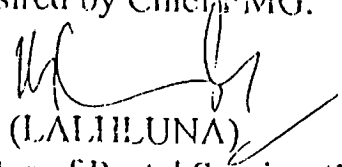
Dated Shillong, the 31-7-2002

To

- 1) The D.P.S., Agartala/Aizawl/Imphal/Itanagar/Kohima.
- 2) The Sr. Supdt. of Post Offices, Shillong.
- 3) The Supdt. of P.Os, Dharmanagar.
- 4) The Supdt., P.S.D., Silchar.
- 5) The E.E., PCD, Shillong.
- ✓ 6) The A.P.M.G. (A/Cs), C.O., Shillong.
- 7) The Sr. Postmaster, Shillong GPO.

Sub : Stoppage of SDA payment to ineligible staff and recovery of earlier payment w.e.f., 6-10-2001.

Directorate's letter conveying the Supreme Court's order for stoppage of SDA payment to ineligible staff and recovery as indicated above have already been circulated earlier. You are requested to intimate today by return FAX about the action taken by you and the recovery particulars as desired by Chief PMG.


(LALILUNA)

Director of Postal Services(Hq)

Attested by
Krishna Chellai
Advocate
5/8/2002.

**National Federation Of Postal Employees.
Federation of National Postal Organisations.**

To,
The Chief Postmaster General,
Assam Circle,
Guwahati-781001.

Date 24-7-

Sub: Recovery of SDA.

Ref: Circle Office letter No- EST/15-4/2002/Rlg/PT-1 dated 3/7/2002

Sir,

Under your office letter No cited above it has been ordered that the amount of SDA paid after 05/10/2002 which is the date of judgment of the Supreme Court will be recovered from this month (July 2002). As we understand in the judgment of the Supreme court dated 5/10/2001 it was clearly stated in the 2nd paragraph of the judgment that the SLP filed by the Govt. of India had been allowed when the learned Solicitor General had given an undertaking that whatever amount has been paid to the respondents by way of SDA will not, in any case or event, be recovered from the Employees(Respondents). But in the order the spirit of the Supreme Court Judgment has not been reflected at all.

In this connection your kind attention is also drawn to the judgment of the Honorable High Court, Guwahati dated 18/3/2002 in which it was amply clarified that no administrative order should be implemented retrospectively.

So also the same spirit was maintained in the judgment of the CAT Guwahati Bench dated 22/12/2000.

That the judgment of the Supreme Court was passed on 5/10/2001 whereas the Finance Ministry has ordered under memo No F No 11(5)/97-E-11(B) dated 29th May 2002 to implement the

Attested by
Rishu Chelbi
Advocate
5/8/2002

Supreme Court judgment i.e. after long period of 8 months. It is not known under which reason this inordinate delay was there consequently the innocent employees have been made victims of heavy recovery with stoppage of current payment and thereby the spirit of natural justice has been denied.

It is therefore requested that your honour would be kind and gracious enough to stop the recovery at this moment so that we may be able to take up the issue to the effect of recovery with highups for waiver. Your earliest action will highly be appreciated with a view to get the spirit of the Supreme Court judgment maintained with letter and spirit.

With regards.

Yours faithfully,

P. Boro
1. (Bongshidhar Boro)
Circle Secretary, P-III

Sajer Rahman
2. (S Rahman)
Circle Secy. R-III

B. Boro
3. (Balendra Boro)
Circle Secy. NUR-III
Union.

B. Ch Deka
4. (Babul Ch Deka)
Circle Secy Admin

Md. Diljan Ali
5. (Md. Diljan Ali)
Circle secy. P-IV

Abdul Rahman
6. (Abdul Rahman)
Circle Secy. R-IV

P. Ch Das
7. (Prafulla Ch Das)
Circle Secy. NUR-IV

Suresh Ch Sarmah
8. (Suresh Ch Sarmah)
Circle Secy. PED

Attested by
Kishor Ch. Boro
Advocate
5/8/2002

01-07-02 16:30

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10:00:00 0000

PAGE: 01

CTO SHILLONG

(7) 00

(P) Pl. look into this 31/7/02 ✓
 FAX MESSAGE
 Fax No. 3096077 (011)

To

Shri S.C. Dutta,
 Secretary (Posts)
 Dak Bhavan, Sansad Marg,
 New Delhi.

= No. AU/133/NEC/2002 AAA Chief PMG N.E. Circle, Shillong has failed to disburse the salary of staff for July, 2002 on 31-7-2002 causing great hardships to the staff AAA While Senior Postmaster, Shillong and RMS (SRO) shillong have disbursed the salary for July, 2002 for all staff under them on 31-7-2002 itself AAA There is great resentment among the staff and if the Disbursement of salary for July, 2002 is not made by 1st August, 2002, then this is bound to result in distribution of ~~disbursement~~ AAA Immediate intervention solicited -

CIRCLE SECRETARY
 Postal Administration,
 Union : Shillong.

(L. Nongbah)
 Circle Secretary,
 A. I. P. A. O. E. Union
 Group C & D
 Office of the Chief Postmaster General
 New Delhi-110001

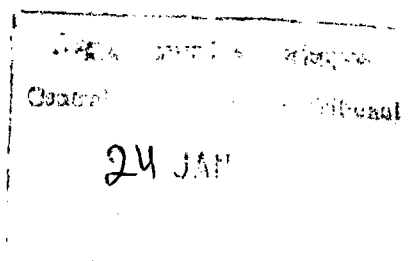
(By Post)

- 1) The Secretary General, NFPE, D-7, P&T Quarters, Samra Place, Mandir Marg, New Delhi-110001.
- 2) The General Secretary, CHQ, Postal Admn. Union, 30/ED P&T quarters, Kali bari Marg, New Delhi-110001.
 The Chief P.M.G., Shillong.

Attended by
 Krishna Chatterjee
 Advocate
 5/8/2002

Circle Secretary
 A. I. P. A. O. E. Union

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50
11/1/03
(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO. 249/2002

Bangshidhar Boro & Others

...Applicants

-versus-

Union of India & Others

...Respondents.

(WRITTEN STATEMENTS FILED BY THE RESPONDENT NO. 1 AND 3)

The written statements of the aforesaid respondents are as follow :

1. That a copy of the O.A.No.249/2002 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the answering respondents.
3. That before traversing the various paragraphs of the application, the respondents beg to state a brief resume to the facts and circumstances of the case and the basis for entitlement for payment of Special Duty Allowance (referred to as the "SDA") as under :
 - (a) That the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi, vide Office Memorandum No. 20014/3/83-E.IV dt.14.12.1983 brought out a scheme thereby extending certain facilities and allowances including the SDA for the civilian employees of the Central Govt. serving in the North-Eastern States and Union Territories etc. This was done to attract and retain the services of officers in the region due to

inaccessibility and difficult terrain. A bare reading of the provisions of the said O.M. it is clear that these facilities and allowances are made available only to those who are posted in the region from outside on transfer.

A copy of the said O.M.Dt.14.12.83 is annexed as ANNEXURE-R1.

(b) That after some time, some departments sought some clarifications about the applicability of the said O.M. dt.14.12.83. In response to the said clarification, the Govt. of India issued another Office Memo. Vide No.20014/3/83-E.IV dt. 20.4.1987. The relevant portion of the said O.M. is quoted below:

"2. Instances have been brought to the notice of this Ministry where Special (Duty) Allowance has been allowed to Central Govt. employees serving in the North East Region without the fulfillment of the condition of all India Transfer liability. This against the spirit of the orders on the subject. For the purpose of sanctioning special (duty)allowance, 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 the 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 common seniority for the service/cadre/posts as a whole. 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."

A copy of the said O.M. dt.20.4.87 is annexed as ANNEXURE-R2.

(c) That the Govt. of India again brought out another Office Memo. Vide F.No.20014/16/86/E.IV/E.II(B) dt. 1.12.88. By the said O.M. the special (duty) allowance was further continued to the central Govt. employees at the rate prescribed therein.

A copy of the said O.M. dt.1.12.88 is annexed as ANNEXURE-R3.

(d) That in the meantime, several cases were filed in the court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court. The Hon'ble Supreme Court in Union of India & others -vs- S.Vijoykumar & others (C.A. No.3251/93) upheld the provisions of the O.M. dt.20.4.87 and also made it clear that only those employees who were posted on transfer from outside to the N.E.Region were entitled to grant of SDA on fulfilling the criteria as in O.M.dt.20.4.87. Such SDA was not available to the local residents of the N.E.Region. The Hon'ble Supreme Court also went into the object and spirit of the O.M.dt.14.12.83 as a whole.

A copy of the said judgment dt.20.9.94 is annexed as ANNEXURE-R4.

(e) That the Hon'ble Supreme court in another judgment dt.7.9.95 passed in Union of India & others -vs- Geological Survey of India employees' Association & others (CA No. 8208-8213) held that the Group C and D employees who belong to the N.E.Region and whose transfer liability is restricted to their region only, they do not have all India transfer liability and consequently , they are not entitled to grant of SDA.

A copy of the judgment dt. 7.9.95 is annexed as ANNEXURE-R5.

(f) That after the judgment of the Hon'ble supreme court, the Govt. of India brought yet another Office Memo. Vide No. 11(3)/95-E.II(B) dt.12.1.96 and directed the departments to recover the amount paid to the ineligible employees after 20.9.94 as held by the Hon'ble Supreme Court.

A copy of the said O.M.dt.12.1.96 is annexed as ANNEXURE-R6.

(g) That in another case vide Writ petition No.794/1996 in Sadhan Kumar Goswami & others -vs- Union of India & others, the Hon'ble Supreme Court again put reliance on the earlier decision as in S. Vijoykumar case and held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D,- and there is no distinction. By the said judgment, the said Hon'ble court also held that the SDA paid to the ineligible employees after 20.9.94 be recovered.

A copy of the judgment dt. 25.10.96 is annexed as ANNEXURE-R7.

(h) That the Ministry of Finance further in connection with query made by the Directorate General of Security, New Delhi gave some clarification to the questions raised by some employees regarding eligibility of SDA. This was done vide I.D No.1204/E-II(B)/99 and which was duly approved by the Cabinet Secretariat U.O. No.20/12/99-EA.I-1798 dt.2.5.2000. According to that clarification, an employee belonging to the N.E.Region, posted in the N.E.Region having all India transfer liability as a condition of service, shall not be entitled to grant of SDA. But if such employee is transferred out of the N.E.Region and reposted to N.E.Region on transfer from outside, in that case such employee would be entitled to SDA. In the instant case, there is not a single such employee who had ever been transferred and

- 5 - 43- 54

reposted in the N.E.Region after 14.12.1983. Hence, the applicants in the instant case have no cause of action to agitate in this Tribunal.

A copy of the said clarification of Cab. Sectt. Dt. 2.5.2000 is annexed as ANNEXURE-R8.

(i) That in a recent decision dt. 5.10.2001, in Union of India & others - vs- National Union of Telecom Engineering Employees Union & others (CA No. 7000/2001) the Hon'ble Supreme court once again clinched on the vexed question of grant of SDA to the central govt. employees and by relying on the earlier decision of S.Vijoykumar held that the amount already paid to such ineligible employees should not be recovered.

The copy of the judgment dt. 5.10.2001 is annexed as ANNEXURE-R9.

(ii) That pursuant to the said judgment passed in CA No. 7000/2001. the Govt. of India, Ministry of Finance, Department of Expenditure, brought out another Office Memo. F.No.11(5)/97-E.II(B) dt.29.5.2002 and thereby directed all the departments to recover the amount of SDA already paid to such ineligible employees with effect from 6.10.2001 onwards and to waive the amount upto 5.10.2001 i.e. the date of the said judgment.

The copy of the O.M. dt. 29.5.2002 is annexed as ANNEXURE-R10.

Now, from the above facts and circumstances of the matter and the clarifications made in the matter, it very much clear that only those employees irrespective of their group in A,B,C or D, shall be entitled to grant of SDA if they fulfil the criteria as underlined in O.M. dt. 20.4.87 and the amount paid to the ineligible employees upto 5.10.2001 would be

waived. However, the amount paid after 5.10.2001 should be recovered. This aspect of the matter is clear as indicated by the Hon'ble Supreme Court in its all earlier decisions also.

4. That with regard to the statements made in para 3 of the application, the respondents state that in view of the above clarification made in this written statements hereinabove, there is no illegality or any infirmity in the alleged impugned order dt.26.7.2002 or 25.7.2002 issued by the respondents. Hence, the application is liable to be dismissed as devoid of any merit and /or for lack of any cause of action.

5. That with regard to the statements made in para 4 and 5 , the respondents have no comment to offer.

6. That with regard to the statements made in para 6.1 to 6.9, the respondents state that these being matter of records, nothing is admitted beyond such records or which are not supported by such records. In this connection, however, it is stated here that there had been a situation when the departments were confused with the various Office Memoranda issued from time to time regarding the grant of SDA and such matter went to the court. The instant petition is also an off-shoot of such cases only. However, from the above clarification and present provisions of law, the applicants do have any valid cause of action in the case for which the application is liable to be dismissed with cost.

7. That with regard to the statements made in para 6.10 to 6.14, the respondents state that these are matter of records, therefore these are limited to such records only. The respondents have already clarified the position of the entitlement of the SDA to such employees within the parameter of law. The applicants being a party to the CA No.7000/2001 before the Hon'ble Supreme court they are very much bound by the said

decision. A bare reading of the judgment would make it clear that the Hon'ble Apex Court directed the respondents not to recover any amount so far paid upto 13.1.2001 and also upto the date of judgment i.e. 5.10.2001. But the judgment can not be interpreted in any view as a flood gate open for any future to come after 5.10.2001 and not to recover any such amount of SDA if so paid erroneously ever after 5.10.2001 due to communication gap or otherwise. In this connection, the respondents respectfully submit that if this order passed in CA No.7000/01 is read with the judgment passed in other similar cases as stated in this written statements, it would be amply clear that the order not to recover the amount is operative upto only 5.10.2001 only and it does not operate indefinitely. Therefore, the instant application being filed by mis-conception of fact and mis-interpretation of law is liable to be dismissed with cost. It is very much clear from the judgment of the Hon'ble Gauhati High Court (copy annexed to the application) that the impugned order thereto was dated 12.1.1999 and according to the said High court there was no illegality at-least in giving effect to the said impugned order prospectively. Against the said judgment only, the Hon'ble Supreme court passed the judgment on 5.10.2001, which is the crux of the present application. In this connection, the respondents also state that the SDA was paid to the applicants wrongly and without the provisions of law and this aspects of the case is very much upheld by the Hon'ble Supreme court. Now the only question is as to whether an illegal or wrongful action of some officers could be legitimized in a legal proceeding by the court or not. The Hon'ble Supreme court in some cases has held that the court shall not legitimize illegal acts of officers. The Hon'ble Apex court has also held that no direction could be issued to direct the Govt. to refrain from enforcing law or to do something contrary to law (AIR 1997(2) SC 2129 - State of Haryana-vs- Surinder Kumar & others, 1997(3) SCC 633 and AIR 1996(2) SC 2173/1996(9) SCC 309).

8. That with regard to the statements made in para 6.15 of the application, the respondents state that the allegation of violation of Hon'ble Supreme Court's order in issuing the impugned orders is not based on any fact or law; but it is the mis-conception and mis-interpretation of fact and law by the applicants. Hence the application is liable to be dismissed with cost. In this connection, the respondents also submit that if according to the applicants the respondents have violated the order of the Hon'ble Supreme court, they could have filed a contempt petition before the Hon'ble Supreme court. But in stead of doing that they have filed the instant petition only to multiply the unnecessary litigation and to delay the process of recovery of the amount to which they have no right to retain. The applicant hold up public money in that way and for this the applicant is liable to be dismissed as early as possible.

9. That with regard to the statements made in para 6.16, the respondents state that the respondents are to act in accordance with law and they can not do anything or can not exercise any discretion with regard to matter pertaining and involving expenditure. The law is to be construed strictly where matter relates to involvement of unauthorized expenditure or payment made without the sanction of law. Hence, the application is liable to be dismissed with cost.

10. That with regard to the statements made in para 7.1 to 7.6 of the application, the answering respondents state that in view of the above facts and circumstances of the case, the grounds shown by the applicants can be good grounds in any view and hence the application is liable to be dismissed with cost as devoid any cause of action.

11. That with regard to the statements made in para 8 and 9 of the application, the respondents have no comment to offer.

- 9 - - 42 - 48

12. That with regard to the statements made in the prayer portion in para 10(i) to 10(iii) and 11 of the application, the respondents state that in view of the facts and circumstances of the case, provisions of law, the applicants are not entitled to any relief whatsoever as prayed for and the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application as devoid of any merit.

VERIFICATION

I, Shri J.M. Datta, at present working as Assistant Director (A& V), in the office of the Chief Postmaster General, N.E.Circle, Shillong, who is taking steps in court cases including this case, being competent and duly authorized to sign this affidavit, do hereby solemnly affirm and state that the statements made in para 1, 2, 4 to 11 and 12 —

of the written statements are true to my knowledge and belief, those made in para 3, a, 3, b, 3, c, 3, d, 3, e, 3, f, 3, g, 3, h, 3, i being matter of records are true to my information derived therefrom and the rest are my humble submission on legal advice made before this Hon'ble Court.

And I sign this verification on this 11th day of ^{January, 2003} ~~December, 2002~~ at Guwahati.

Jyoti May Datta
Deponent.

-107-
~~ANNEXURE II~~

No. 20014/3/83-E.IV
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 14th December, 1983.

OFFICE MEMORANDUM

ANNEXURE I R

Subject: 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 Tripura and the Union Territories of Arunachal Pradesh 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 & 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:

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training abroad and special mention in Confidential Records.

Satisfactory performance of duties for the

....2/....

attested

Secy. Dir. (V)
4/11/83
R.P.M.
Konyakabai

49

- 11 -

prescribed tenure in the North East shall be given due recognition in the case of eligible officers in the matter of -

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North East.

A specific entry shall be made in the C.R. of all employees who rendered a full tenure of service in the North Eastern Region to that effect.

(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 per cent 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 exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance

1. Assam and Meghalaya

The rate of the allowance will be 5% of basic pay subject to a maximum of Rs. 50/- p.m. admissible to all employees without any pay limit. The above allowance will be admissible with effect from 1.7.1982 in the case of Assam.

2. Manipur

The rate of allowance will be as follows for the whole of Manipur :-

Pay upto Rs. 260/-

Rs. 40/- p.m.

Pay above Rs. 260/-

15% of basic pay subject to

a maximum of Rs. 150/- p.m.

.....3.....

3. Tripura

The rates of the allowance will be as follows:-

(a) Difficult Areas

25% of pay subject to a minimum of Rs.50/- and a maximum of Rs.150/- p.m.

(b) Other Areas

Pay upto Rs.260/- Rs.40/- p.m.

Pay above Rs.260/- 15% of basic pay subject to a maximum of Rs.150/- p.m.

There will be no change in the existing rates of Special Compensatory Allowances admissible in Arunachal Pradesh, Nagaland and Mizoram and the existing rate of Disturbance allowance admissible in specified areas of Mizoram.

(v) Travelling Allowance on first appointment :

In relaxation of the present rules (S.R.105) that travelling allowance is not admissible for journeys undertaken in connection with the initial appointment, in case of journeys for taking up initial appointment to a post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 400 kms. for the Government servant himself and his family will be admissible.

(vi) Travelling Allowance for journey on transfer :

In relaxation of orders below S.R.116, if on transfer to a station in the North-Eastern region, the family of the Government servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. In case the family accompanies the Government servant on transfer, the Government servant will be entitled to the existing admissible travelling allowance including the cost of transportation of the admissible weight of personal effects according to the grade to which the officer belongs, irrespective of the weight of the baggage actually carried. The above provisions will also apply for the return journey on transfer back from the North Eastern Region.

Contd....4.....

(vii) Road mileage for transportation of personal effects on transfer:

In relaxation of orders below S.R. 116, for transportation of personal effects on transfer between two different stations in the North-Eastern region, higher rate of allowance admissible for transportation in 'A' class cities subject to the actual expenditure incurred by the Government servant will be admissible.

(viii) Joining Time with leave:

In case of Government servants proceeding on leave from a place of posting in North-Eastern Region, the period of travel in excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) Leave Travel Concession:

A Government servant who leaves his family behind at the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North East to his home town or place where the family is residing and in addition the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North Eastern Region. In cases the option is for the latter alternative, the cost of travel for the initial distance (400 Kms./160 Kms.) will not be borne by the officers.

Officers drawing pay of Rs.2250/- or above, and their families, i.e., spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air-travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance / Hostel Subsidy:

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto class XII will be admissible in respect of children studying at the last station of posting of the employees concerned or any other station where the children reside, without any restriction of pay drawn by the Government servant. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

-14-

- 14 - 52

- 15 :-

2. The above orders except in sub-para (iv) will also mutatis mutandis apply to Central Government employees posted to Andaman and Nicobar Islands.

3. These orders will take effect from 1st November, 1983 and will remain in force for a period of three years upto 31st October, 1986.

4. All existing special allowances, facilities and concessions extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North-Eastern region will be withdrawn from the date of effect of the orders contained in this Office Memorandum.

5. Separate orders will be issued in respect of other recommendations of the Committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

6. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

sd/-

(S.C. MAHALIK)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

To,

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

Copy. (with spare copies) to C. & A.G., U.P.S.C. etc.

15-
Annexure F

(53)

ANNEXURE - F

4

No. 20014/3/83-E.IV
Government of India
Ministry of Finance
Department of Expenditure
.....

ANNEXURE: R2

New Delhi, the 20th April, 1987.

OFFICE MEMORANDUM

Subject: Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region and A. & N. Islands and Lakshadweep - improvement thereof.

The undersigned is directed to refer to para 1(iii) of Ministry of Finance, Department of Expenditure O.M. No. 20014/3/83-E.IV dated 14th December 1983 as amended vide Office Memorandum of even number dated 29.10.1986 on the above subject, which is reproduced below:-

1(iii) "Special (Duty) Allowance".

"Central Government civilian employees who have all-India transfer liability will be granted a special (Duty) allowance at the rate of 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such 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".

2. Instances have been brought to the notice of this Ministry where special (Duty) Allowance has been allowed to Central Government employees serving in North East Region without the fulfilment of the condition of all India transfer liability. This is against the spirit of orders on the subject. For the purpose of sanctioning special (Duty) allowance, 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 common seniority for the service/cadre/posts as a whole. 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.

Contd... 2/-

Attended

20-4-1987

Asst. Director (MIS)

W/o Mr. L. P. M. L.

Annexure

16- 54
-2-
3. Financial Advisers of the administrative Ministries/ Departments are requested to review all such cases where special (duty) allowance has been sanctioned to the Central Government employees serving in the various offices including those of autonomous organisations located in the North East Region which are under administrative control of their Ministries/Departments.

A.N. Sinha
(A.N. SINHA)
DIRECTOR (EG)
TELE: 3011819

To

Financial Advisers of all Ministries/Departments.

J.K.

-17- ~~R-3~~ (59) Annexure
6
F.No. 20014/16/UG/E.IV/E.II(D)
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE : R 3

New Delhi, the 1 December, 1988

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/UG-E.IV dt. 14th December, 1983 and 30th March, 1984 on the subject mentioned above and to say that the question of making suitable improvements in the allowances and facilities to Central Govt. employees posted in North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been engaging the attention of the Govt. Accordingly the President is now pleased to decide as follows:-

(1) Tenure of posting/deputation

The existing provisions as contained in this Ministry's P.M. dated 14.12.83 will continue.

(ii) Weightage for Central deputation and training abroad
Special mention in confidential records:-

The existing provisions as contained in this Ministry's P.M. dated 14.12.83 will continue. Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion in the cadre lists, deputation to Central tenure post and courses of training abroad.

(iii) Special (Duty) Allowance

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

....2/3

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(56) 67

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

(iv) Special Compensatory Allowance:-

The recommendations of the 4th Pay Commission have been accepted by the Govt. and Special Compensatory Allowance at the revised rates have been made effective from 1.10.86.

(v) Travelling Allowance on First appointment:-

The present concessions as contained in this Ministry's O.M. dt. 14.12.83 will continue with the liberalisation that on first appointment T.A. should be admissible for the total distance, instead of for the distance in excess of first 400 Kms. only.

(vi) Travelling Allowance for journey on transfer:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue.

(vii) Home Allowance for transportation of personal effect on transfer:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue.

(viii) Joining time with leave:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue.

(ix) Leave Travel Concession:-

The existing concession as contained in this Ministry's O.M. dated 14.12.83 will continue.

Officers drawing pay of Rs 5100/- or above, and their families i.e. spouse and the dependant children (upto 18 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartala/Aizawl/Mizoram and Calcutta and vice-versa; between Port Blair and Calcutta/Madras and vice-versa in case of postings in A & N Islands; and between Kavaratti and Cochin and vice-versa in case of postings in Lakshadweep.

(x) Children Education Allowance/Montel subsidy

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto class XII will be admissible in respect of children studying at the last station of posting of the employee concerned or any other station where the children reside, if children studying in schools are not in honours at the last station of posting or any other station, the Government servant concerned will be given honours without other restrictions.

...3/-

-18-

The rates of Children Education Allowance/Hostel subsidy will be as in the DOP&F, O.M. 10011/1/07-Estt. (Allowances) dt. 31.12.67, as amended from time to time.

(xi) Concession regarding grant of House Rent Allowance to officers posted in the States of North Eastern Region, Andaman & Nicobar Island and Lakshadweep Islands.

The present concession as contained in this Ministry's O.M. No. 11016/1/E, II(B)/04 dt. 29.3.64 as amended from time to time will continue to be applicable.

(xii) Telephone facilities

The officers who are eligible to have residential telephone may be allowed to retain their telephone at their residences in their last place of the posting subject to the condition that the rental and all other charges are paid by such officers.

2. The above orders will also apply ~~mutatis mutandis~~ to the Central Govt. employees posted in Andaman & Nicobar Islands and Lakshadweep Island. These orders will also apply ~~mutatis mutandis~~ to officers posted to N.E. Council, when they are stationed in the N.E. Region.

3. These orders will take effect from the date of issue.

4. In so far as the persons serving the Indian Audit & Accounts Deptt. are concerned these orders issue after consultation with the Comptroller & Auditor General of India.

5. Final version of this Memorandum is attached.

A. JAYARAMAN
(A. JAYARAMAN)

JOINT SECRETARY TO THE GOVT. OF INDIA.

To

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

Copy (with usual number of spare copies) forwarded to C.S.A.O., U.P.S.O., etc, etc, as per standard endorsement list.

....

IN THE SUPREME COURT OF INDIA

ANNEXURE: R₄

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3221 OF 1993

Union of India and others

.... Appellants

Versus

S. Vijayakumar and others

... Respondents

[with Civil Appeal Nos. 6163-81

SLF(C)

Nos.

16794/91;

10070-79/93;

10071-93/93;

10461/93; 9240/93.]

JUDGMENT

HANSARIA, J.

The point for determination in this appeal
and in the special leave petitions (which have our leave)

is whether the respondents are entitled to special duty allowance (hereinafter referred to as 'the allowance'), even though they are residents of North-Eastern Region merely because of the posts to which they were appointed were of "All India Transfer Liability". The Tribunal has answered the question in affirmative. These appeals have been preferred by the Union of India.

2. The Tribunal took the aforesaid view because the office memorandum dated 14.12.1965 which is on the subject of "Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of the North-Eastern Region-improvement thereof" had stated that allowance shall be payable if the posts be those which have "All India Transfer Liability". The stand of the Union of India, however, is that this office memorandum, if it is read along with what was stated subsequently in office memorandum dated 20.4.1967, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the aforesaid service condition and not to those who were residents of this region. The office memorandum of 1967 has clearly stated that the allowance

because of inaccessibility and difficult terrain have said so because even the 1983 memorandum states saying that the need for the allowance was felt for "acquiring 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 there by 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 year 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 a 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 the submission of Dr. Ghosh.

would not become payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India.

3. Dr. Ghosh appearing for the Government contends that the office memorandum of 1983 having not stated what is contained in the memorandum of 1987, a rider cannot be added to the former that the allowance could be payable only to those who had been given posting in the North-Eastern Region, and not to those who were residents of this Region. It is also contended that denial of the allowance to the residents, while permitting the same to the non-residents, would be violative of doctrine of equal pay for equal work and as such of Articles 14 and 16 of the Constitution.

4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 25.10.1986 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.

5. 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 Reserve Bank of India vs. Reserve Bank of India Staff Officers Association and others, 1991 (4) SCC 132 to which an 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.

6. In view of the above, we hold that the respondents were not entitled to the allowance and the impugned judgments of the Tribunal are, therefore, set aside. Even so, in view of the fair stand taken by the Additional Solicitor General we state that whatever amount has been paid to the respondents, or for that matter to other similarly situated employes, would not be recovered from them in so far as the allowance is concerned.

Document - 6
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R - 5
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8208 - 8213

(Arising out of SLP Nos.12450 - 55/92)

Union of India & Others

- Appellants

- versus -

Geological Survey of India
Employees' Association & Others.

- Respondants

ORDER

Delay condoned

Leave granted

Mr. P. K. Goswami, Learned Senior Counsel appears for Geological Survey of India Employees' Association and Mr. S. K. Nandy, Advocate, appears for the other respondents in all the matters.

Heard learned counsels for the parties. It appears to us that although the employees of the Geological Survey of India were initially appointed with an All India Transfer liability, subsequently Government of India framed a policy that Class C and D employees should not be transferred outside the Region in which they are employed. Hence, All India Transfer liability no longer continues in respect of Group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having All India Transfer liability is not to be paid to such Group C and Group D employees of Geological Survey of India who are residents of the region in which they are posted. We may also indicate that such question has been considered by this Court in Union of India & others Vs. S. Vijay Kumar & others (1994) (3) SCC 649.

Accordingly, the impugned order is set aside. We however direct that the appellant will not be entitled to recover any part of payment of Special Duty Allowance already made to the concerned employees. Appeals are accordingly disposed of.

New Delhi
September 7, 1995.

Sd/- G.N.Ray,
Sd/- S.B.Majumdar

ANNEXURE : R 5
(13) 162 24

No. 11(31)/95-E.II(B)

Government of India

Ministry of Finance

Department of Expenditure

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

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

2. The Government of India vide the abovementioned OM dt. 14.12.83 granted certain incentives to the Central Government civilian employees posted to the NE Region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have "All India Transfer Liability".

3. It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

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

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.

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.

(C. Balachandran)

Under Secy to the Govt of India

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

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

57551 CS/96
9/12

All communications should be
addressed to the Registrar,
Supreme Court, by designation.
NOT by name
Telegraphic address:—
"SUPREMECO"

APPEAL/SSC/96
18/12

L. No. 3366/96/X

~~APPENDIX-7~~
~~Appendix (R-7)~~
**SUPREME COURT
INDIA**

Dated New Delhi, the 28th November, 1996

FROM: ASSISTANT REGISTRAR (JUDL)

ANNEXURE : R 7

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

WRIT PETITION NO. 724 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)

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Verified to be true
N.2.104
Assistant Registrar
.....
Supreme Court
REPORTABLE-1278/95

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
PETITION NO. 794 OF 1995
(Under Article 32 of the Constitution of India)

133724

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 Amlan Ghosh, Adv. with him for
the petitioners.

O R D E R

The following Order of the Court was delivered:

-30- 68 96 67 65

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION NO. 793 OF 1996

Sub-Inspector Sadhan Kumar Goswami & Petitioners
Ors.

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. Vilay 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

-31-

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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 29.10.1966 which has been quoted in the memorandum of 20.4.1967, 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 1963 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 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1966 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 1967 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 1963 the subject was mentioned as quoted above is not be enough to concede to the submission of Dr. Ghosh.

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

-32-

Reserve Bank of India vs. Reserve Bank of India Staff Officers Association 2 Ors. [(1991) 4 SCC 132] to which an 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

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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 ^{is not correct} 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.

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

17.1.96

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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.

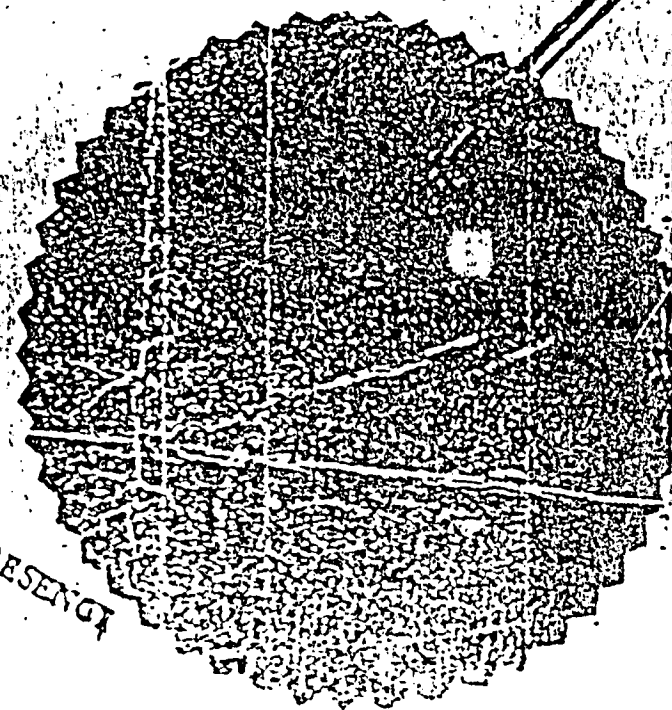
Under those circumstances, we do not think that there will be any justification to direct the respondents not to recover the amount from the petitioner after the date of the judgment of this Court.

The writ petition is accordingly dismissed.

.....
(K. RAMASHAY)

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

NEW DELHI;
OCTOBER 25, 1936.



SEALED IN MY PRESENCE
✓ 2/11/36

Document - 9
644
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-36-
No.ARC/Coord/4/99- 452
Directorate General of Security
(Cabinet Secretariat)
O/o The Director, ARC
East Block-V, R K Puram
New Delhi - 110 066.

Dated, the 05/5/2000

MEMORANDUM

ANNEXURE : R 8

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

A copy of Cabinet Secretariat U.O. No.20/12/99-EA.I-1798, dated 02.5.2000 on the above subject is sent herewith for information and necessary action.

Encl : as above.

(V DORAI SWAMY)
ASSTT DIRECTOR(NGO)

To

- (1) A.D.(A)/AD(B)/AD(C)/AD(D) of ARC Hqrs.
- (2) The A.O., ARC Hqrs.
- (3) The A.D.(A), ARC, Charbatia/Doom Dooma/Sarsawa.
- (4) File copy.

No. ESTT/DDM/SDA/99-II- 6571
ARC, Doom Dooma

Dated the, 01/6/2000

1. Copy forwarded to the Accounts Officer, ARC, Doom Dooma for information and necessary action.
2. All Unit Heads.

(ed, ccc, Anco, NDC) Don't know.
At(c), one with the (NDC)

(R.N. CHAKRABORTY)
SECTION OFFICER

1389
05/8/2000

COURT CASE
MOST IMMEDIATE

-37-
Cabinet Secretariat
(E.A.I Section)

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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/A1/99(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/A1/99(18)5282 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Deptt. 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

NO

NO

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25(3)

20.4.87 read with OM 20014/16/86 E.II(B) dated 1.12.88) but subsequently the post/cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the NE Region though they can be transferred out to any place 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.
- 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.
- v) The MoF, Deptt. of Expr. vide their UO No.11(3)/95-E.II(B) dt.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 S.D.A. 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 SSP/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.

YES

YES

In case the employee hailing from NE Region 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 (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.

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 91 whichever is later.



-4-

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) I.D. No. 1200/E-11(1)/99 dated 30.3.2000.

(. 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 dated 02.5.2000
1798
2 MAY 2000

DD(B)

AD (Genl)

Soc)

Dr. J.S.

05/5/2000

4/5 - psc put up for regulation
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ANNEXURE-87

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Certified to be true copy

Assistant Registrar (Judl.)

Supreme Court of India

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7000 OF 2001

(Arising out of S.L.P.(C) No. 6465 of 1999)

ANNEXURE : R9

544783

Union of India & Anr.

Appellants

versus

National Union of Telecom Engineering
Employees Union & Ors.

Respondents

O R D E R

Leave granted.

It is stated on behalf of the respondents that this appeal of the Union of India is covered by the judgment of this Court in the case of Union of India & Ors. Vs. S. V. Jayakumar & Ors. reported as 1994 (Supp.3) SCC, 649 and followed in the case of Union of India & Ors. Vs. Executive Officers' Association Group 'C' 1995 (Supp. 1) SCC, 757.

Therefore, this appeal is to be allowed in favour of the Union of India. It is ordered accordingly.

It is, however, made clear that when this appeal came up for admission on 13.1.2000, the learned Solicitor General had given an undertaking that whatever amount has been paid to the respondents by way of special duty allowance will not, in any case or event, be recovered from them. It is on this assurance that delay was condoned. It is made clear

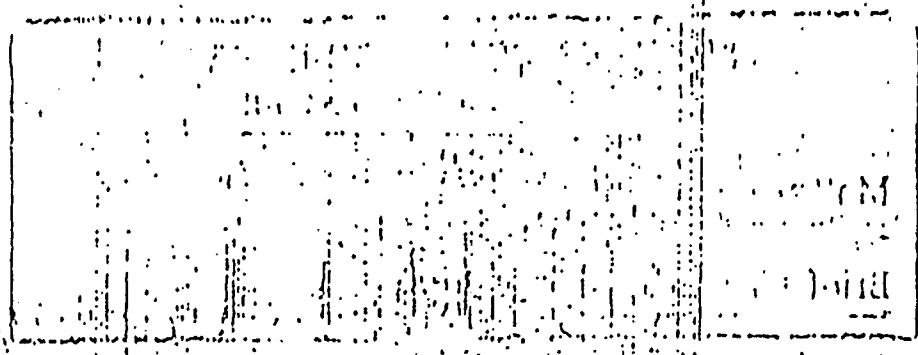
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that the Union of India shall not be entitled to recover any amount paid as special duty allowance inspite of the fact that this appeal has been allowed.

(N. SANTOSH HEGDE)

(K.G. BALAKRISHNAN)

New Delhi,
October 05, 2001



~~ANNEXURE~~

-431

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

(81) 91(1)
ANNEXURE : R10

New Delhi, dated the 29th May, 2002.

OFFICE 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 CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgement delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993 in the case of UOI and Ors V/s 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' 1995

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(Supp.1) SCC, 757. Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SIDA will not, in any event, be recovered from them inspite 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:- 93

"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. 11

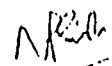
6. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance. Further, as per direction of Hon'ble Supreme Court, it has also been decided that -

(i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.2001, which is the date of judgement of the Supreme Court, will be waived. However, recoveries, if any, already made need not be refunded.

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

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


(N.P. Singh)

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.

24 FEB 2002
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO. 249/2002

Bangshidhar Boro & Others

...Applicants

-versus-

Union of India & Others

...Respondents.

(WRITTEN STATEMENTS FILED BY THE RESPONDENT NO.1 AND 2)

The written statements of the aforesaid respondents are as follow :

1. That a copy of the O.A.No.249/2002 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the answering respondents.
3. That before traversing the various paragraphs of the application, the respondents beg to state a brief resume to the facts and circumstances of the case and the basis for entitlement for payment of Special Duty Allowance (referred to as the "SDA") as under :
 - (a) That the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi, vide Office Memorandum No. 20014/3/83-E.IV dt.14.12.1983 brought out a scheme thereby extending certain facilities and allowances including the SDA for the civilian employees of the Central Govt. serving in the North-Eastern States and Union Territories etc. This was done to attract and retain the services of officers in the region due to

inaccessibility and difficult terrain. A bare reading of the provisions of the said O.M. it is clear that these facilities and allowances are made available only to those who are posted in the region from outside on transfer.

A copy of the said O.M.Dt.14.12.83 is annexed as ANNEXURE-R1.

(b) That after some time, some departments sought some clarifications about the applicability of the said O.M. dt.14.12.83. In response to the said clarification, the Govt. of India issued another Office Memo. Vide No.20014/3/83-E.IV dt. 20.4.1987. The relevant portion of the said O.M. is quoted below:

"2. Instances have been brought to the notice of this Ministry where Special (Duty) Allowance has been allowed to Central Govt. employees serving in the North East Region without the fulfillment of the condition of all India Transfer liability. This ^{is} against the spirit of the orders on the subject. For the purpose of sanctioning special (duty) allowance, 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 the 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 common seniority for the service/cadre/posts as a whole. 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."

A copy of the said O.M. dt.20.4.87 is annexed as ANNEXURE-R2.

(c) That the Govt. of India again brought out another Office Memo. F.No.20014/16/86/E.IV/E.II(B) dt. 1.12.88. By the said O.M. the special (duty) allowance was further continued to the central Govt. employees at the rate prescribed therein.

A copy of the said O.M. dt.1.12.88 is annexed as ANNEXURE-R3.

(d) That in the meantime, several cases were filed in the court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court. The Hon'ble Supreme Court in Union of India & others -vs- S.Vijoykumar & others (C.A. No.3251/93) upheld the provisions of the O.M. dt.20.4.87 and also made it clear that only those employees who were posted on transfer from outside to the N.E.Region were entitled to grant of SDA on fulfilling the criteria as in O.M.dt.20.4.87. Such SDA was not available to the local residents of the N.E.Region. The Hon'ble Supreme Court also went into the object and spirit of the O.M.dt.14.12.83 as a whole.

A copy of the said judgment dt.20.9.94 is annexed as ANNEXURE-R4.

(e) That the Hon'ble Supreme court in another judgment dt.7.9.95 passed in Union of India & others -vs- Geological Survey of India employees' Association & others (CA No. 8208-8213) held that the Group C and D employees who belong to the N.E.Region and whose transfer liability is restricted to their region only, they do not have all India transfer liability and consequently , they are not entitled to grant of SDA.

A copy of the judgment dt. 7.9.95 is annexed as ANNEXURE-R5.

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(f) That after the judgment of the Hon'ble supreme court, the Govt. of India brought yet another Office Memo. Vide No. 11(3)/95-E.II(B) dt.12.1.96 and directed the departments to recover the amount paid to the ineligible employees after 20.9.94 as held by the Hon'ble Supreme Court.

A copy of the said O.M.dt.12.1.96 is annexed as ANNEXURE-R6.

(g) That in another case vide Writ petition No.794/1996 in Sadhan Kumar Goswami & others -vs- Union of India & others, the Hon'ble Supreme Court again put reliance on the earlier decision as in S. Vijoykumar case and held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D,- and there is no distinction. By the said judgment, the said Hon'ble court also held that the SDA paid to the ineligible employees after 20.9.94 be recovered.

A copy of the judgment dt. 25.10.96 is annexed as ANNEXURE-R7.

(h) That the Ministry of Finance further in connection with query made by the Directorate General of Security, New Delhi gave some clarification to the questions raised by some employees regarding eligibility of SDA. This was done vide I.D No.1204/E-II(B)/99 and which was duly approved by the Cabinet Secretariat U.O. No.20/12/99-EA.I-1798 dt.2.5.2000. According to that clarification, an employee belonging to the N.E.Region, posted in the N.E.Region having all India transfer liability as a condition of service, shall not be entitled to grant of SDA. But if such employee is transferred out of the N.E.Region and reposted to N.E.Region on transfer from outside, in that case such employee would be entitled to SDA. In the instant case, there is not a single such employee who had ever been transferred and

reposted in the N.E.Region after 14.12.1983. Hence, the applicants in the instant case have no cause of action to agitate in this Tribunal.

A copy of the said clarification of Cab. Sectt. Dt. 2.5.2000 is annexed as ANNEXURE-R8.

(ii) That in a recent decision dt. 5.10.2001, in Union of India & others - vs- National Union of Telecom Engineering Employees Union & others (CA No. 7000/2001) the Hon'ble Supreme court once again clinched on the vexed question of grant of SDA to the central govt. employees and by relying on the earlier decision of S.Vijoykumar held that the amount already paid to such ineligible employees should not be recovered.

The copy of the judgment dt. 5.10.2001 is annexed as ANNEXURE-R9.

(iii) That pursuant to the said judgment passed in CA No. 7000/2001. the Govt. of India, Ministry of Finance, Department of Expenditure, brought out another Office Memo. F.No.11(5)/97-E.II(B) dt.29.5.2002 and thereby directed all the departments to recover the amount of SDA already paid to such ineligible employees with effect from 6.10.2001 onwards and to waive the amount upto 5.10.2001 i.e. the date of the said judgment.

The copy of the O.M. dt. 29.5.2002 is annexed as ANNEXURE-R10.

Now, from the above facts and circumstances of the matter and the clarifications made in the matter, it very much clear that only those employees irrespective of their group in A,B,C or D, shall be entitled to grant of SDA if they fulfil the criteria as underlined in O.M. dt. 20.4.87 and the amount paid to the ineligible employees upto 5.10.2001 would be

waived. However, the amount paid after 5.10.2001 should be recovered. This aspect of the matter is clear as indicated by the Hon'ble Supreme Court in its all earlier decisions also.

4. That with regard to the statements made in para 3 of the application, the respondents state that in view of the above clarification made in this written statements hereinabove, there is no illegality or any infirmity in the alleged impugned order dt.26.7.2002 or 25.7.2002 issued by the respondents. Hence, the application is liable to be dismissed as devoid of any merit and /or for lack of any cause of action.

5. That with regard to the statements made in para 4 and 5 , the respondents have no comment to offer.

6. That with regard to the statements made in para 6.1 to 6.9, the respondents state that these being matter of records, nothing is admitted beyond such records or which are not supported by such records. In this connection, however, it is stated here that there had been a situation when the departments were confused with the various Office Memoranda issued from time to time regarding the grant of SDA and such matter went to the court. The instant petition is also an off-shoot of such cases only. However, from the above clarification and present provisions of law, the applicants do *not* have any valid cause of action in the case for which the application is liable to be dismissed with cost.

7. That with regard to the statements made in para 6.10 to 6.14, the respondents state that these are matter of records, therefore these are limited to such records only. The respondents have already clarified the position of the entitlement of the SDA to such employees within the parameter of law. The applicants being a party to the CA No.7000/2001 before the Hon'ble Supreme court they are very much bound by the said

decision. A bare reading of the judgment would make it clear that the Hon'ble Apex Court directed the respondents not to recover any amount so far paid upto 13.1.2001 and also upto the date of judgment i.e. 5.10.2001. But the judgment can not be interpreted in any view as a flood gate open for any future to come after 5.10.2001 and not to recover any such amount of SDA if so paid erroneously ever after 5.10.2001 due to communication gap or otherwise. In this connection, the respondents respectfully submit that if this order passed in CA No.7000/01 is read with the judgment passed in other similar cases as stated in this written statements, it would be amply clear that the order not to recover the amount is operative upto only 5.10.2001 ~~only~~ and it does not operate indefinitely. Therefore, the instant application being filed by mis-conception of fact and mis-interpretation of law is liable to be dismissed with cost. It is very much clear from the judgment of the Hon'ble Gauhati High Court (copy annexed to the application) that the impugned order thereto was dated 12.1.1999 and according to the said High court there was no illegality at least in giving effect to the said impugned order prospectively. Against the said judgment only, the Hon'ble Supreme court passed the judgment on 5.10.2001, which is the crux of the present application. In this connection, the respondents also state that the SDA was paid to the applicants wrongly and without the provisions of law and this aspects of the case is very much upheld by the Hon'ble Supreme court. Now the only question is as to whether an illegal or wrongful action of some officers could be legitimized in a legal proceeding by the court or not. The Hon'ble Supreme court in some cases has held that the court shall not legitimize illegal acts of officers. The Hon'ble Apex court has also held that no direction could be issued to direct the Govt. to refrain from enforcing law or to do something contrary to law (AIR 1997(2) SC 2129 - State of Haryana-vs- Surinder Kumar & others, 1997(3) SCC 633 and AIR 1996(2) SC 2173/1996(9) SCC 309).

8. That with regard to the statements made in para 6.15 of the application, the respondents state that the allegation of violation of Hon'ble Supreme Court's order in issuing the impugned orders is not based on any fact or law; but it is the mis-conception and mis-interpretation of fact and law by the applicants. Hence the application is liable to be dismissed with cost. In this connection, the respondents also submit that if according to the applicants the respondents have violated the order of the Hon'ble Supreme court, they could have filed a contempt petition before the Hon'ble Supreme court. But in stead of doing that they have filed the instant petition only to multiply the unnecessary litigation and to delay the process of recovery of the amount to which they have no right to retain. The applicant hold up public money in that way and for this the applicant^{is} is liable to be dismissed as early as possible.

9. That with regard to the statements made in para 6.16, the respondents state that the respondents are to act in accordance with law and they can not do anything or can not exercise any discretion with regard to matter pertaining and involving expenditure. The law is to be construed strictly where matter relates to involvement of unauthorized expenditure or payment made without the sanction of law. Hence, the application is liable to be dismissed with cost.

10. That with regard to the statements made in para 7.1 to 7.6 of the application, the answering respondents state that in view of the above facts and circumstances of the case, the grounds shown by the applicants can^{not} be good grounds in any view and hence the application is liable to be dismissed with cost as devoid any cause of action.

11. That with regard to the statements made in para 8 and 9 of the application, the respondents have no comment to offer.

12. That with regard to the statements made in the prayer portion in para 10(i) to 10(iii) and 11 of the application, the respondents state that in view of the facts and circumstances of the case, provisions of law, the applicants are not entitled to any relief whatsoever as prayed for and the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall also be pleased to dismiss the application as devoid of any merit.

VERIFICATION

I, Shri Samarendra Shyam at present working as Assd. Postmaster General (Vig) in the office of the Chief Postmaster General, Assam Circle, Guwahati, who is taking steps in court cases including this case, being competent and duly authorized to sign this affidavit, do hereby solemnly affirm and state that the statements made in para 1, 2, 4 to 11 and 12 —

of the written statements are true to my knowledge and belief, those made in para 3a to 3h and 3i — being matter of records are true to my information derived therefrom and the rest are my humble submission on legal advice made before this Hon'ble Court.

And I sign this verification on this 11 th day of December, 2002 at Guwahati.

Samarendra Shyam
Deponent.
Assd. Postmaster General (Vig)
Assam Circle, Guwahati-781001

10
ANNEXURE-I

No. 20014/3/83-E.IV
Government of India
Ministry of Finance
Department of Expenditure

10
ANNEXURE
- OCT 1991
MAM WITH CM, 14/10/91
Assam Circle, Guwahati-781001

New Delhi, the 14th Dec 1983

OFFICE MEMORANDUM

Subject: Allowances and facilities for civilian employees of
the Central Government serving in the States and
Union Territories of North-Eastern Region - improve-
ments 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 Tripura and the Union Territories of Arunachal Pradesh 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 & 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:

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training abroad and special mention in Confidential Records.

Satisfactory performance of duties for the

....2/-....

Collected
Date

4/11/91
Secy. Dir. (Vig)
O/S Mr. R. P. M. G.
Kozhikode

— 11 —

prescribed tenure in the North East shall be given due recognition in the case of eligible officers in the matter of —

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- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North East.

A specific entry shall be made in the C.R. of all employees who rendered a full tenure of service in the North Eastern Region to that effect.

(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 per cent 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 exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs.400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance

1. Assam and Meghalaya

The rate of the allowance will be 5% of basic pay subject to a maximum of Rs.50/- p.m. admissible to all employees without any pay limit. The above allowance will be admissible with effect from 1.7.1982 in the case of Assam.

2. Manipur

The rate of allowance will be as follows for the whole of Manipur :-

Pay upto Rs.260/-	Rs.48/- p.m.
Pay above Rs.260/-	15% of basic pay subject to a maximum of Rs.150/- p.m.

.....3.....

3. Tripora

The rates of the allowance will be as follows:-

(a) Difficult Areas 25% of pay subject to a minimum of Rs.50/- and a maximum of Rs.150/- p.m.

(b) Other Areas

Pay upto Rs.260/- Rs.40/- p.m.

Pay above Rs.260/- 15% of basic pay subject to a maximum of Rs.150/- p.m.

There will be no change in the existing rates of Special Compensatory Allowances admissible in Arunachal Pradesh, Nagaland and Mizoram and the existing rate of Disturbance allowance admissible in specified areas of Mizoram.

(v) Travelling Allowance on first appointment:

In relaxation of the present rules (S.R.105) that travelling allowance is not admissible for journeys undertaken in connection with the initial appointment, in case of journeys for taking up initial appointment to a post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 400 kms. for the Government servant himself and his family will be admissible.

(vi) Travelling Allowance for journey on transfer:

In relaxation of orders below S.R.116, if on transfer to a station in the North-Eastern region, the family of the Government servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. In case the family accompanies the Government servant on transfer, the Government servant will be entitled to the existing admissible travelling allowance including the cost of transportation of the admissible weight of personal effects according to the grade to which the officer belongs, irrespective of the weight of the baggage actually carried. The above provisions will also apply for the return journey on transfer back from the North Eastern Region.

Contd....4.....

(vii) Readmission for transportation of personal effects on transfer:

In relaxation of orders below S.R. 116, for transportation of personal effects on transfer between two different stations in the North-Eastern region, higher rate of allowance admissible for transportation in 'A' class cities subject to the actual expenditure incurred by the Government servant will be admissible.

(viii) Joining Time with leave:

In case of Government servants proceeding on leave from a place of posting in North-Eastern Region, the period of travel in excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) Leave Travel Concession:

A Government servant who leaves his family behind at the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year, from the station of posting in the North East to his home town or place where the family is residing and in addition the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North Eastern Region. In cases the option is for the latter alternative, the cost of travel for the initial distance (400 Kms./160 Kms.) will not be borne by the officer.

Officers drawing pay of Rs. 2250/- or above, and their families, i.e., spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air-travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance / Hostel Subsidy:

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto class XII will be admissible in respect of children studying at the last station of posting of the employees concerned or any other station where the children reside, without any restriction of pay drawn by the Government servant. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

2. The above orders except in sub-para (iv) will also mutatis mutandis apply to Central Government employees posted to Andaman and Nicobar Islands.

3. These orders will take effect from 1st November, 1983 and will remain in force for a period of three years upto 31st October, 1986.

4. All existing special allowances, facilities and concessions extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North-Eastern region will be withdrawn from the date of effect of the orders contained in this Office Memorandum.

5. Separate orders will be issued in respect of other recommendations of the Committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

6. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

sd/-

(S.C. MAHALIK)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

To,

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

Copy (with spare copies) to C. & A.G., U.P.S.C. etc.

- 15 -
Annexure - I

CF Annexure - II

No. 20014/3/83-E.IV
Government of India
Ministry of Finance
Department of Expenditure
.....

Annexure - I

R2 108

New Delhi, the 20th April, 1987.

OFFICE MEMORANDUM

Subject: - Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region and A. & N. Islands and Lakshadweep - improvement thereof.

The undersigned is directed to refer to para 1(iii) of Ministry of Finance, Department of Expenditure O.M. No. 20014/3/83-E.IV dated 14th December 1983 as amended vide Office Memorandum of even number dated 29.10.1986 on the above subject, which is reproduced below:-

1(iii) "Special (Duty) Allowance".

"Central Government civilian employees who have all-India transfer liability will be granted a special (duty) allowance at the rate of 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such 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".

2. Instances have been brought to the notice of this Ministry where special (Duty) Allowance has been allowed to Central Government employees serving in North East Region without the fulfilment of the condition of all India transfer liability. This is against the spirit of orders on the subject. For the purpose of sanctioning special (Duty) allowance, 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 common seniority for the service/cadre/posts as a whole. 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.

Contd... 2/-

Attended

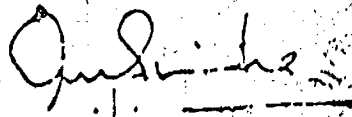
20/4/87

Asstt. Dir. (M)

20/4/87 L. S. H. L.

Annexure

16-
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-2-
3. Financial Advisers of the administrative Ministries/Departments are requested to review all such cases where special (duty) allowance has been sanctioned to the Central Government employees serving in the various offices including those of autonomous organisations located in the North East Region which are under administrative control of their Ministries/Departments.


(A.N. SINHA)
DIRECTOR (EG)
TELE: 3011819

To

Financial Advisers of all Ministries/Departments.

J.K.

17

(99)
Annexure-1

R 3
110

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F.No.20014/16/U6/E.IV/E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE: R 3
110

1983

New Delhi, the 1 December,

OFFICE MEMORANDUM

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

O.M. No. 20014/3/83-E.IV dt. 14th December, 1983 and 30th March, 1984 on the subject mentioned above and to say that the question of making suitable improvements in the allowances and facilities to Central Govt. employees posted in North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been bringing the attention of the Govt. Accordingly the President is now planned to decide as follows:-

(1) Tenure of posting/deputation

The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue.

(ii) Weightage for Central deputation and training abroad
Special sanction in confidential records:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue. Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion in the cadre posts, deputation to Central tenure post and courses of training abroad.

(iii) Special (Duty) Allowance:-

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

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

(iv) Special Compensatory Allowance:-

The recommendations of the 4th Pay Commission have been accepted by the Govt. and Special Compensatory Allowance at the revised rates have been made effective from 1.10.66.

(v) Travelling Allowance on First appointment:-

The present concessions as contained in this Ministry's O.M. dt. 14.12.63 will continue with the liberalisation that on first appointment T.A. should be admissible for the total distance instead of for the distance in excess of first 400 Kms. only.

(vi) Travelling Allowance for Journey on transfer:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.63 will continue.

(vii) Board Allowance for transportation of personal effect on transfer:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.63 will continue.

(viii) Joining time with leave:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.63 will continue.

(ix) Leave Travel Concession:-

The existing concession as contained in this Ministry's O.M. dated 14.12.63 will continue.

Officers drawing pay of Rs 5100/- or above, and their families i.e. spouse and the dependant children (upto 8 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartala/Aizawl/Dibrugarh and Calcutta and vice-versa; between Port Blair and Calcutta/Madras and vice-versa in case of postings in A & N Islands; and between Kavaratti and Cochin and vice-versa in case of postings in Lakshadweep.

(x) Children Education Allowance/Hostel subsidy

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto class XII will be admissible in respect of children studying at the last station of posting of the employees concerned or any other station where the children reside. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

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The rates of Children Education Allowance/Hotel subsidy will be as in the DOP&F, O.M. 10011/1/87-Extt. (Allowances) dt. 31.12.87. as amended from time to time.

(xi) Concession regarding grant of House Rent Allowance to officers posted in the States of North Eastern Region, Andaman & Nicobar Island and Lakshadweep Islands.

The present concession as contained in this Ministry's O.M. No. 11016/1/E, II(B)/84 dt. 29.3.84 as amended from time to time will continue to be applicable.

(xi1) Telephone facilities:-

The officers who are eligible to have residential telephone may be allowed to retain their telephone at their residences in their last place of the posting subject to the condition that the rental and all other charges are paid by such officers.

2. The above orders will also apply ~~mutatis mutandis~~ to the Central Govt. employees posted in Andaman & Nicobar Islands and Lakshadweep Island. These orders will also apply ~~mutatis mutandis~~ to officers posted to N.E. Council, when they are stationed in the N.E. Region.

3. These orders will take effect from the date of issue.

4. In so far as the persons serving the Indian Audit & Accounts Dept. are concerned these orders issue after consultation with the Comptroller & Auditor General of India.

5. Hindi version of this Memorandum is attached.

(A. JAYARAMAN)

JOINT SECRETARY TO THE GOVT. OF INDIA.

To

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

Copy (with usual number of spare copies) forwarded to C.S.A.O., U.P.S.O., etc., etc., as per standard endorsement list.

IN THE SUPREME COURT OF INDIA

ANNEXURE: R₄
113

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3231 OF 1974

Union of India and others

.... Appellants

Versus

S. Vijayakumar and others

... Respondents

[with Civil Appeal Nos. 6163-81
SLP(C) Nos. 16794/91, 10070-79/93, 16791-93/93,
10461/93, 9240/93].

JUDGMENT

HANSARIA, J.

The point for determination in this appeal
and in the special leave petitions (which have our leave)

-21-

1/4
is whether the respondents are entitled to special duty allowance (hereinafter referred to as 'the allowance'), even though they are residents of North-Eastern Region merely because of the posts to which they were appointed were of "All India Transfer Liability". The Tribunal has answered the question in affirmative. These appeals have been preferred by the Union of India.

2. The Tribunal took the aforesaid view because the Office Memorandum dated 14.12.1965 which is on the subject of "Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of the North-Eastern Region-improvement thereof" had stated that allowance shall be payable if the posts be those which have "All India Transfer Liability". The stand of the Union of India, however, is that this office memorandum, if it is read along with what was stated subsequently in office memorandum dated 20.4.1967, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the aforesaid service condition and not to those who were residents of this region. The office memorandum of 1967 has clearly stated that the allowance

because of inaccessibility and difficult terrain have said so because even the 1983 memorandum states saying that the need for the allowance was felt for "acquiring 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 there by 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 year to claim the allowance depending upon the period of service of the incumbent. The 1983 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 an station to the North Eastern Region". This aspect 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 be enough to concede the submission of Dr. Ghosh.

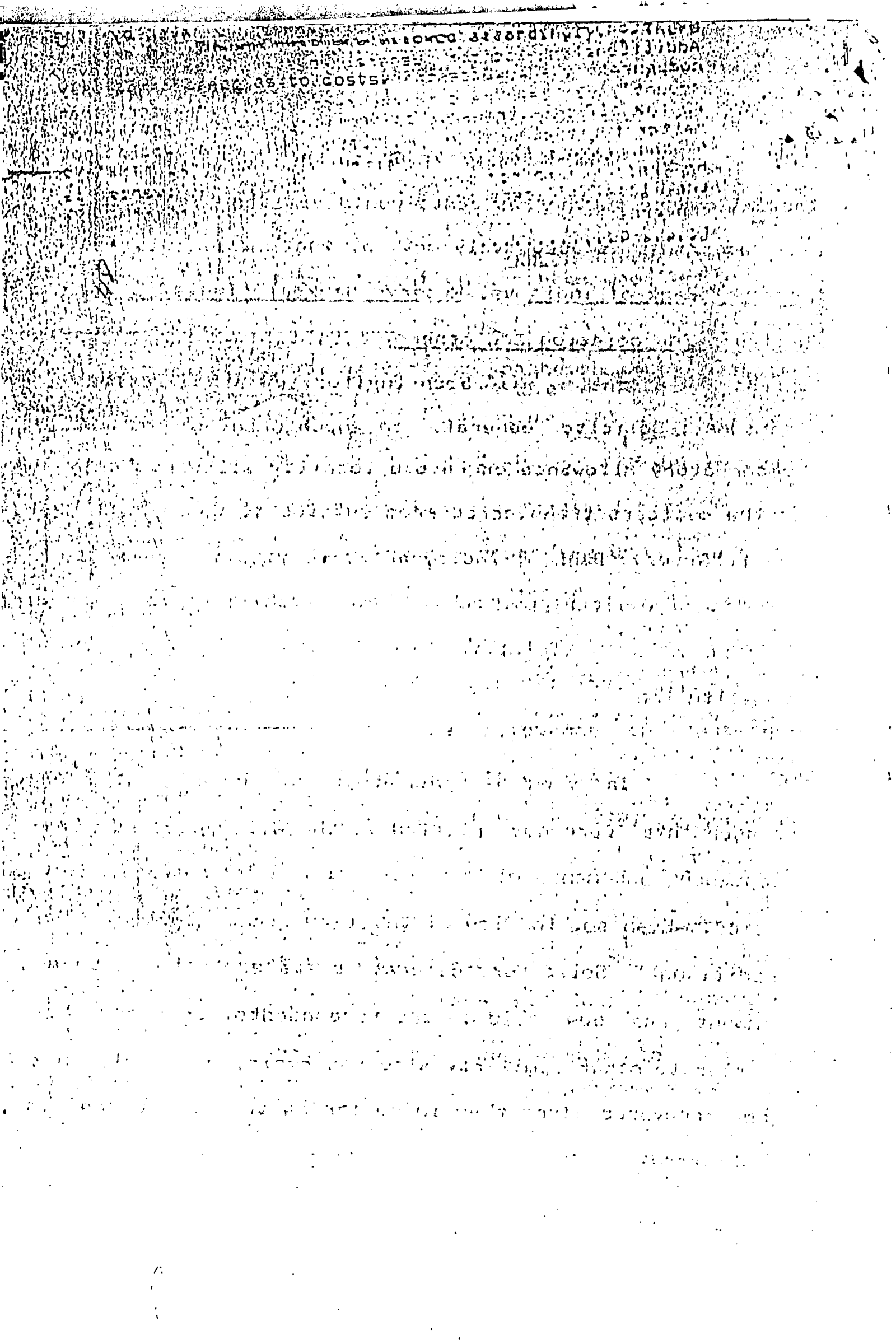
would not become payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India.

3. Dr. Ghosh appearing for the Government contends that the office memorandum of 1983 having not stated what is contained in the memorandum of 1987, a rider cannot be added to the former that the allowance could be payable only to those who had been given posting in the North-Eastern Region, and not to those who were residents of this Region. It is also contended that denial of the allowance to the residents, while permitting the same to the non-residents, would be violative of doctrine of equal pay for equal work and as such of Articles 14 and 16 of the Constitution.

4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the 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 25.10.1985 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.

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5. 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 Reserve Bank of India vs. Reserve Bank of India Staff Officers Association and others, 1991 (4) SCC 132, to which an 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.

6. In view of the above, we hold that the respondents were not entitled to the allowance and the impugned judgments of the Tribunal are, therefore, set aside. Even so, in view of the fair stand taken by the Additional Solicitor General we state that whatever amount has been paid to the respondents, or for that matter to other similarly situated employees, would not be recovered from them in so far as the allowance is



13 104
ANNEXURE : R 5

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R - 5

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8208 - 8213

(Arising out of SLP Nos. 12450 - 55/92)

Union of India & Others

- Appellants

- versus -

Geological Survey of India
Employees' Association & Others.

- Respondants

ORDER

Delay condoned

Leave granted

Mr. P. K. Goswami, Learned Senior Counsel appears for Geological Survey of India Employees' Association and Mr. S. K. Nandy, Advocate, appears for the other respondents in all the matters.

Heard learned counsels for the parties. It appears to us that although the employees of the Geological Survey of India were initially appointed with an All India Transfer liability, subsequently Government of India framed a policy that Class C and D employees should not be transferred outside the Region in which they are employed. Hence, All India Transfer liability no longer continues in respect of Group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having All India Transfer liability is not to be paid to such Group C and Group D employees of Geological Survey of India who are residents of the region in which they are posted. We may also indicate that such question has been considered by this Court in Union of India & others Vs. S. Vijay Kumar & others (1994) (3) SCC 649.

Accordingly, the impugned order is set aside. We however direct that the appellant will not be entitled to recover any part of payment of Special Duty Allowance already made to the concerned employees. Appeals are accordingly disposed of.

New Delhi
September 7, 1995.

Sd/- G.N. Ray,
Sd/- S.B. Majumdar

No. 11(3)/95-E.II(B)

Government of India

Ministry of Finance

Department of Expenditure

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

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

The Government of India vide the abovementioned OM dt. 14.12.83 granted certain incentives to the Central Government civilian employees posted to the NE Region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have "All India Transfer Liability".

It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

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

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.

Smt. Hazam

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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.

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.

(C. Balachandran)
Under Secy to the Govt of India

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

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

575-1 CS/96
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All communications should be
addressed to the Registrar,
Supreme Court, by designation.
NOT by name
Telegraphic address:-
"SUPREMECO"

APPENDIX (R-7)
D. No. 3366/96/X

**SUPREME COURT
INDIA**

Dated New Delhi, the 28th November, 1996

FROM: ASSISTANT REGISTRAR (JUDL)

ANNEXURE 1

- TO :
1. The Union of India,
Represented by the Cabinet Secretary,
Government of India, North Block,
New Delhi.
 2. The Director, SSU,
Office of the Director, SSU,
East Block- V, P.K. Pura,
New Delhi - 110 066
 3. The Divisional Officer,
SSU Shillong Division,
A.P. Secretariat building,
Shillong, Meghalaya.
 4. Commandant, Group Centre, SSU,
Tripura, Salbagan, Gartala,
Tripura West.

WRIT PETITION NO. 724 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)

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Admitted to be true
Nizhuvu
Assistant Registrar (Judicial)
D.S. 11/9/96
Supreme Court of India
REPORTABLE-1278/95

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
PETITION NO. 794 OF 1995
(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 Amlan 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
WRT PETITION NO. 793 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. 3253 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

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 29.10.1966 which has been quoted in the memorandum of 20.4.1967, 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 1966 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 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1966 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 1967 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 1963 the subject was mentioned as quoted above is not be enough to concede to the submission of Dr. Ghosh.

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 2 Ors. [(1991) 4 SCC 132] to which an 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

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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 ^{is not correct} 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 should 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.

It is next contended that the Government is recovering as per Memorandum dated January 17, 1990 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.

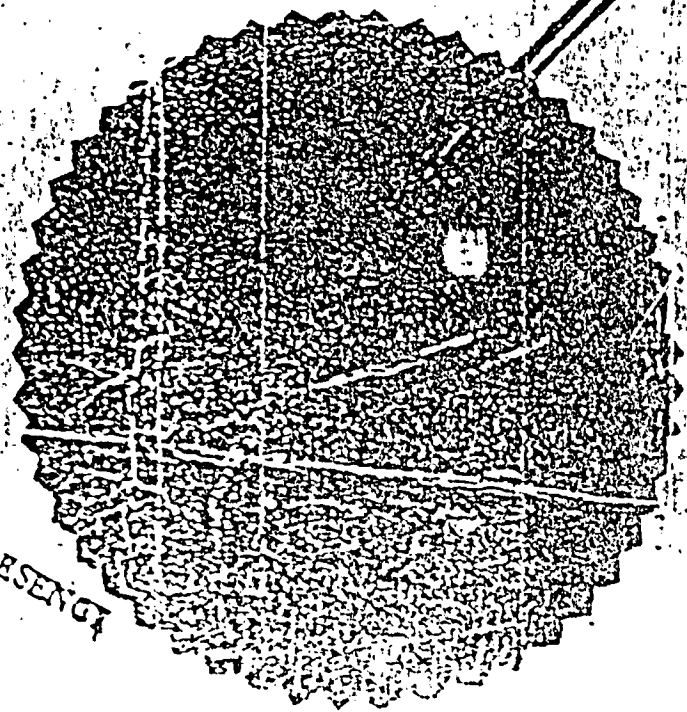
Under those circumstances, we do not think that there will be any justification to direct the respondents not to recover the amount from the petitioner after the date of the judgment of this Court.

The writ petition is accordingly dismissed.

.....J.
(K. RAMASHAY)

NEW DELHI;
OCTOBER 25, 1936.

.....J.
(S. P. KURUMKAR)



SEALED IN MY PRESENCE
12/11/36

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DD (B)

20.4.87 read with OM 20014/16/86 E.II(B) dated 1.12.88, but subsequently the post/cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the NE Region though they can be transferred out to any place 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 Expend. vide their UO No.11(3)/95-E.II(B) dt.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 S.D.A. 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 SSP/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 (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.

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 91 whichever is later.



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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.

(. P.N. Thakur)
Director(SR)

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|---------------------------|-----------------------|------------|
| 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 - 1798 dated 02-5.2000
- 2 MAY 2000

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Dr. J.S.
05/5/2000

ANNEXURE 87

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7000 OF 2001

(Arising out of S.L.P.(C) No. 5485 of 1999)

Certified to be true copy
Assistant Registrar (Jr. II.)
20-11-2001
Supreme Court of India

ANNEXURE : R9

544783

Union of India & Anr.

Appellants

versus

National Union of Telecom Engineering
Employees Union & Ors.

Respondents

O R D E R

Leave granted.

It is stated on behalf of the respondents that this appeal of the Union of India is covered by the judgment of this Court in the case of Union of India & Ors. Vs. S. Vijayakumar & Ors. reported as 1994 (Supp. 3) SCC, 649 and followed in the case of Union of India & Ors. Vs. Executive Officers' Association Group 'C' 1995 (Supp. 1) SCC, 757.

Therefore, this appeal is to be allowed in favour of the Union of India. It is ordered accordingly.

It is, however, made clear that when this appeal came up for admission on 13.1.2000 the learned Solicitor General had given an undertaking that whatever amount has been paid to the respondents by way of special duty allowance will not, in any case or event, be recovered from them. It is on this assurance that delay was condoned. It is made clear

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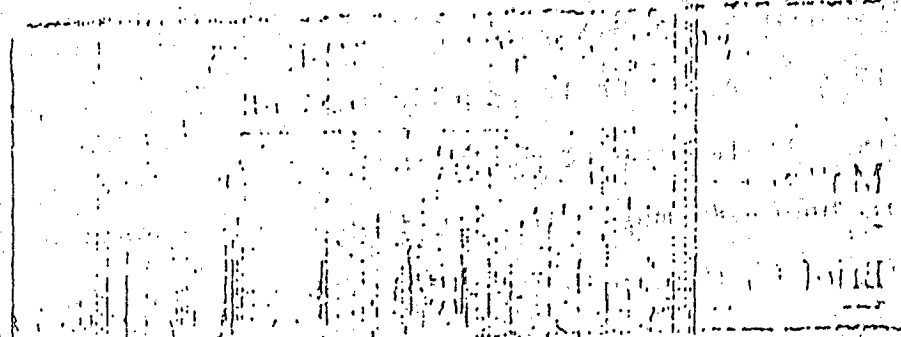
- 42 -

that the Union of India shall not be entitled to recover any amount paid as special duty allowance inspite of the fact that this appeal has been allowed.

(N. SANTOSH HEGDE)

(R.G. BALAKRISHNAN)

New Delhi,
October 05, 2001.



~~ANNEXURE~~ - 42 -

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

(120) 91(1)
ANNEXURE : R10

New Delhi, dated the 29th May, 2002.

OFFICE 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. 136

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 CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgement delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993 in the case of UOI and Ors V/s 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' 1995

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(Supp.1) SCC, 757. Therefore, this appeal is to be allowed in favour of the UOI. 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.

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."

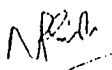
All cases for grant of Special Duty Allowance including those of All India Service Officers may be regulated strictly in accordance with the above mentioned criteria.

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 the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.2001, which is the date of judgement of the Supreme Court, will be waived. However, recoveries, if any, already made need not be refunded.
- (ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5.10.2001 will be recovered.

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


(N.P. Singh)

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.