

5/100

4

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 262/2002

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SECTION OFFICER (Judl.)

Barili  
28/11/17

FROM No. 4  
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 262 / 2002  
Misc Petition No. \_\_\_\_\_  
Contempt Petition No. \_\_\_\_\_  
Review Application No. \_\_\_\_\_

Applicants. CPWD

-Vs-

Respondant(s) Govt of Assam

Advocate for the Appellant(s) MR ADIL AHMED

Mr A. Deb Roy,

Advocate for the Respondant(s) Mr. C. G. S.

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

20.8.02

Heard Mr. A. Ahmed, learned  
counsel for the applicant.

Issue notice of motion. Return-  
able by four weeks.

List on 20.9.2002 for admission

K. Ushank  
Member

[Signature]  
Vice-Chairman

mb

20.9.02

List on 27.9.02 before Single  
Bench.

[Signature]  
Vice-Chairman

in  
27.9.02

List on 8.11.02 alongwith M.P.  
No.119 of 2002 for orders.

K. Ushank  
Member

in

Application is in  
but not in time  
Application Petition is  
not filed C.F.  
Rs. 50/ deposited  
IPO/No. 79.577388  
Dated 17.6.2002

[Signature]  
By Registrar.

Steps taken

19/8/02

Notices prepared and  
sent to D. Section for  
issuing of the same  
to the respondents through  
Regd. post  
Vide D.No. 2323/2327  
Dtd. 27.8.02.

26.8.02

7/10

8/11/2002

WLS on behalf of  
respondents NO 1-5  
belonged by Mr. A. Debroy,  
S.G.S.C. & kept in  
the file.  
A.K. Debroy  
8/11/02

8.11.2002

Heard Mr. A. Ahmed, learned  
counsel for the applicants and  
also Mr. A. Deb Roy, learned Sr.  
C.G.S.C. for the respondents and  
also perused the written  
statement submitted by the  
respondents.

The issue relates to  
recovery of Special Duty  
Allowance. In this application  
the applicants have assailed the  
order dated 17.7.2002 issued by  
the Deputy Director, Office of  
the Chief Engineer (NEZ), CPWD,  
Shillong. In view of the settled  
position the employees of the  
North Eastern Region are not  
entitled the Special Duty  
Allowance, unless they fulfill  
the conditions stipulated in the  
orders issued by the Ministry  
concerned. The Office memorandum  
in question dated 17.7.2002 has  
clarified the said position.  
However, direction of the  
authority to recover the SDA  
paid already is seemingly  
unsustainable. The persons  
concerned were already paid SDA  
by the authority and it will not  
be appropriate to recover the  
same retrospectively.  
Accordingly, respondents are  
directed not to recover the  
amount paid already as SDA to  
the concerned applicants.

8.11.02


Subject to the observation  
made above, the application is  
disposed of. No order as to  
costs.

3

14.11.002

Copy of the order  
has been sent to  
the DfEE. for  
issuing the same  
to the L/Advocates  
for the parties.  
sl

mb

  
Vice-Chairman

5

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,  
Mizoram & Arunachal Pradesh)

\_\_\_\_\_

Civil Rule

W. P. C.

No. 4772 of 2004

Union of India Cor:

Petitioner

*Versus*

CPND Stabb Association

Opposite Party

Appellant Mr. R. Sarma Adv. Opposite Party  
For Addl. C.G.S.C.  
Petitioner

Respondent  
For \_\_\_\_\_  
Opposite Party

No. S. Raut  
No. S. Choudhary

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP © No. 4777/04

B E F O R E

THE HON'BLE MR. JUSTICE AH SAIKIA  
THE HON'BLE MR. JUSTICE BD AGARWAL

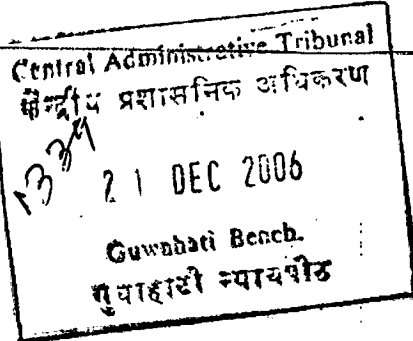
7.11.06

Heard Mr. H. Rahman, learned Asstt. Solicitor General of India appearing for the Union of India/petitioners. Also heard Mr. S. Dutta, learned counsel appearing for the respondent.

The order dated 8.11.02 passed by the Central Administrative Tribunal, Guwahati Bench in Original Application No. 262/02 has been challenged in this writ petition preferred by the Union of India/petitioners under Article 226 read with Article 227 of the Constitution of India.

The issue raised herein pertains to recovery of Special Duty Allowance ( for short, 'the SDA') from the members of the respondent/Association though admittedly they are not entitled to get such SDA.

It is stated at the bar that the question raised herein is squarely and uniformly covered by the decision of the Apex Court reported in 1994 Supp (3) SCC 649 ( Union of India and Others-Versus- S. Vijayakumar and others) as well as subsequent decisions of the Division Bench of this Court passed on 18.3.02 and 4.1.06 in WP © No. 2004/01 ( Union of India and Ors. -Vs- Sri Tashuddin Ahmed and Ors.) and WP © No. 5087/99 with other analogous writ petitions (The Regional Director, Employees State Insurance Corporation, N.E. Region, Bamunimaidan, Guwahati-21 and Ors - Vs- The Secretary, Employees State Insurance Corporation Employees Union, N.E. Region, Bamunimaidan, Guwahati 781021



URGENT

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
<p>and Ors.) respectively by which the Union of India and others were directed not to recover the amount already paid to the employees as SDA though they were not entitled to get such SDA for non fulfillment of the criteria laid down in Office Memorandums so floated by the Govt. of India from time to time and accordingly a request has been made to pass similar order in this case.</p> <p>Having regard to the Vijayakumar's case (Supra) including the decisions of this Court as referred to hereinabove as well as upon hearing the learned counsel for the parties, this writ petition stands closed with a direction that the ratio of the above cited cases shall be applicable in the case at hand and accordingly the impugned order dated 8.11.02 deserves no interference.</p> <p>This disposes of the writ petition.</p>			

Sd/- B.D. Agarwal.  
 JUDGE

Sd/- A.H. Saikia.  
 JUDGE

Memo No.HC.XXI. 8655-60

/R.M.Dtd. 6/12/06

Copy forwarded for information and necessary action to :-

1. The Union of India, represented by the Secretary to the Govt. of India, Ministry of Urban Development & Poverty Alleviation, New Delhi-110011.
2. The Director General (Works), Central Public Works Department, Nirman Bhawan, New Delhi-110011.
3. The Additional Director General (Works), Eastern Region, Central Public Works Department, Nizam ~~Bhawan~~ Palace, Kolkata-20.
4. The Chief Engineer (NEZ), Central Public Works Department, Dhankheti, Cleves Colony, Shillong-3.
5. The Senior Accounts Officer, Pay and Accounts Officer, North Eastern Zone, Central Public Works Department, Raja Villa, Malki Point, Shillong-1.
6. The Registrar, Central Administrative Tribunal, Guwahati Bench, Bhangagarh, Guwahati-5.

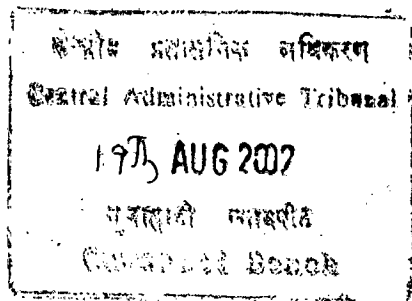
By order

Sd/-  
 NS  
 20.12.06

Mr. K.K. Somnath  
 NS  
 21.12.06

Asstt. Registrar (Judl.)  
 Gauhati High Court, Guwahati.

Chy.  
 5/12/06



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI..

(AN APPLICATION UNDER SECTION OF 19 OF THE  
CENTRAL ADMINISTRATIVE TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 262 OF 2002.

The Central Public Works

Department Staff Association, Guwahati  
Branch, Guwahati.

-Applicants.

-Versus-

The Union of India  
& Others

-Respondents

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4.	Annexure- B	20		
5.	Annexure- C	21 to 27		
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Filed by

Advocate

(Adv. AHMED)



Filed by  
U.D. Rao  
[Signature]  
(Adv. Ahmed)  
Advocate  
Shri  
through

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE  
CENTRAL ADMINISTRATIVE TRIBUNAL ACT 1985)

ORIGINAL APPLICATION NO. 262 OF 2002.

BETWEEN

1] The Central Public Works  
Department Staff Association,  
Guwahati Branch, Guwahati.

2] Sri U D Rao, Secretary,  
The Central Public Works  
Department, Staff Association,  
Guwahati Branch, Guwahati.

Applicants.

-AND-

1] The Union of India represented by  
the Secretary to the Government of  
India Ministry of Urban Affairs New  
Delhi-110011.

2] The Director General (Works) Central  
Public works Department, Nirman  
Bhawan, New Delhi- 110011.

Shri 12

- 3] The Additional Director General of Works, Eastern Region, C.P.W.D., Nizam Palace, Kolkata-20,
- 4] The Chief Engineer, North Eastern Zone, Central Public Works Department, Cleaves Colony, Shillong-3.
- 5] The Senior Accounts Officer, Pay and Accounts Office, N.E.Z., Central Public Works Department, Raja Villa, Malki Point, Shillong-1.

-Respondents.

#### DETAILS OF THE APPLICATION

- 1] PARTICULARS OF THE ORDER AGAINST WITH THE APPLICATION IS MADE:

This application is made against impugned order of recovery of payment of Special Duty Allowance, in Short, S.D.A. vide Office Order No. 71/2/2002-Admn dated 17-07-2002 issued by the Office of the Chief Engineer (NEZ) Shillong.

- 2] JURISDICTION OF THE TRIBUNAL

*Shillong*

The applicant declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3] LIMITATION

The applicant further declares that the subject matter of the instant application is within the limitation prescribed under section 21 of the Administrative Tribunal Act 1985.

4] FACTS OF THE CASE

Facts of the case in brief are given below:

4.1] That your humble applicants are citizens of India and as such, they are entitled to all rights and privileges guaranteed under the Constitution of India. The applicant No. 1 is a recognized Association named as the Central Public Works Department Staff Association, Guwahati Branch, Guwahati. The applicant No. 2 is authorized to file this application on behalf of the members of the Association.

A copy of list of the members of The Central Public Works Department Staff Association, Guwahati Branch, Guwahati is annexed hereto and the same is marked as Annexure-A.

*Spills 10*

4.2] That your applicants beg to state that as the grievances and relief prayed in this application are common, therefore, they pray for grant of permission under Section 4(5)(a) of the Central Administrative Tribunal (Procedure) rules, 1987 to move this application jointly.

4.3] That all the members of the Association including the applicant No. 2 are serving and posted in different offices under the Administrative Control of the Director General of Works, Central Public Works Department, New Delhi.

4.4] That the Government of India, Ministry of Finance, Department of Expenditure granted certain improvements and facilities to The Central Government Civilian Employees of the Central Government serving in the states and Union Territories of North Eastern Region vide Office Memorandum No. 20014/3/83-IV dated 14-12-1983. In Clause-II of the said office memorandum Special (Duty) Allowance was granted to Central Government Civilian Employees, who have all India Transfer Liability.

4.5] That after issuance of the aforesaid Office Memorandum dated 14-12-1983 the members of the aforesaid Association approached the local authorities for payment of Special (Duty)

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Allowance in terms of Office Memorandum Dated 14-12-1983 as the applicants, i.e., the members of the aforesaid Association fulfilled the criteria laid down in the Office Memo dated 14-12-1983. They demanded for payment of Special (Duty) Allowance and accordingly the authority had paid them.

That another Office Memorandum No. F. No. 11(2)/97-E II (B) dated 22-07-1998 was issued by the Ministry of Finance, Department of Expenditure, Government of India extended the Special (Duty) Allowance to the Central Government employees posted at Sikkim. In this circular payment of Special (Duty) Allowance at Ceiling of Rs. 1000/- has also been withdrawn.

4.6] That the present applicants beg to state that the members of the aforesaid Association are saddled with All India Transfer Liability in terms of their offer of appointment and with this said liabilities they have received the offer of appointment and joined the service of the respondents. Be it stated that, most of the members of the Association on numbers of occasions are being transferred outside of the North Eastern Region. Therefore, the applicants are in practice saddled with all India Transfer Liability and in terms of Office Memorandum dated 14-12-1983 they are legally entitled for grant of Special (Duty) Allowances.

Sd/-

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4.7 That your applicants further beg to state that the payment of Special (Duty) Allowance has been granted to the applicants by the Respondents after being satisfied with all the applicants. All the applicants are legally entitled and eligible for grant of Special (Duty) Allowance in terms of Office Memorandum dated 14-12-1983, 01-12-1988 and 22-07-1998 and accordingly payment of Special (Duty) Allowance has been continued and paid to the members of the aforesaid Association.

After that, the Office of the Respondent No. 4 issued the Office Memorandum No. 71/2/2002-Admn. dated 17-07-2002 to take necessary action for recovery of Special (Duty) Allowance from ineligible persons with effect from 06-10-2001.

Annexure-B is the photo copy of Office Memorandum dated 17-07-2002 issued by the Office of the Respondent No. 4.

4.8] That your applicants beg to state that the payment of Special Duty Allowance was made to the applicants with effect from 01-11-1983 or from the respective dates of their joining in this Department. The Payment of Special (Duty) Allowance is made to the applicants only after full satisfaction of the Respondents. Now the Respondents have issued the recovery order of

*S. K. Singh*

8

Special (Duty) Allowance. As such, the act of the respondents is arbitrary regarding recovery of payment of Special Duty Allowance. As such, the Hon'ble Tribunal may be pleased to direct the Respondents not to make any recovery of any amount of the Special (Duty) Allowance, which has been paid by the Respondents to the applicant.

4.9] That your applicant begs to state that in other similar cases filed before the Hon'ble Central Administrative Tribunal, Guwahati Bench and in the Hon'ble Gauhati High Court as well as in the Supreme Court of India the said Courts it was held that the Union of India is not entitled for recovery of any amount of Special Duty Allowance from the applicants. Moreover, the Hon'ble courts held that the recovery order can have only prospective effect so in the instant case the Respondents cannot recover the said Special Duty Allowance prior to their recovery order dated 17-07-2002.

Annexures-C, D, E, F and G are photocopies of some of judgments passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Hon'ble Gauhati High Court and also by the Hon'ble Supreme Court of India.

4.10] That your applicant begs to state that the Respondents have already made some recovery

Sd/-

from Guwahati Electrical Division No. II, Tezpur Central Electrical Division, Central Public Works Department. Hence, it is now necessary for the applicants to get an interim order from this Hon'ble Central Administrative Tribunal for protection of their rights.

4.11] That the applicant begs to state that under the facts and circumstances mentioned above, finding no other alternative, the applicant approached this Hon'ble Tribunal for protection of their rights and interest through this Original application. This Hon'ble Tribunal may be pleased to stay the impugned recovery order issued under Office Memorandum No.71/2/2002 -Admn. Dated 17-07-2002 as an interim measure and further be pleased to set aside and quash the Office Memorandum dated 17-07-2002 at Annexure-B.

4.12 That your applicants submit that they have got reason to believe that the Respondents are resorting the colorable exercise of power.

4.13 That your applicants submit that the action of the Respondents are mala fide, illegal and with a motive behind.

4.14] That your applicants submit that the action of the Respondents by which the applicants have been deprived of their legitimate rights is arbitrary. It is further stated that the

*Subal*



Respondents have acted with a mala-fide intention only to deprive the applicants from their legitimate rights.

4.15] That your applicants submit that the action of the Respondents is highly illegal, improper, whimsical and also against the policy adopted by the Government of India.

4.16] That in view of the facts and circumstances it is a fit case for interference by the Hon'ble Tribunal to protect the interest of the applicants.

4.17] That this application is filed bona fide and for the interest of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1] For that, due to the above reasons narrated in detail the action of the Respondents is in prima facie illegal, mala-fide, arbitrary and without jurisdiction.

5.2] For that, the applicants satisfied the criterion for grant of Special (Duty) Allowance laid down in Office Memorandum dated 14-12-1983 and 01-12-1988 and 22-07-2002 issued by the Government of India, Ministry of Finance, therefore, the recovery of the Special (Duty) Allowance in terms of impugned Office Memorandum

*Subul*

dated 17-07-2002 is violative of the provisions of law and is liable to be set aside and quashed.

5.3] For that the impugned office Memo dated 17-07-2002 is contrary to the decision of the Hon'ble Supreme Court of India as well as the decision rendered by the Hon'ble Gauhati High Court and the Hon'ble Central Administrative Tribunal.

5.4 For that, the payment of Special (Duty) Allowance was not obtained by the applicants by any fraudulent means but the Respondents after finding them eligible, paid the Special (Duty) Allowance to the applicants.

5.5 For that the order issued in terms of impugned Office Memorandum dated 17-17-2002 is without following any established procedure of principle of natural justice.

5.6] For that, the Respondents have violated the Article 14, 16 and 21 of the Constitution of India.

5.7] For that, the action of the respondents is arbitrary, mala-fide and discriminatory with an ill motive.

*Signature*

5.8] For that, in any view of the matter the action of the respondents are not sustainable in the eye of law and as well as fact.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6. DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

7. MATTERS NOT PREVIOUSLY FILED OR  
PENDING IN ANY OTHER COURT:

That the applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, authority, nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicants most respectfully prayed that your Lordship may be pleased to admit this.

*Subul M*

application, call for the records of the case, issue notices to the Respondents as to why the relief and relives sought for by the applicant may not be granted and after hearing the parties and the cause, or causes that may be shown your Lordships may be pleased to direct the Respondents to give the following relief:

- 8.1 That the Hon'ble Tribunal may be pleased to set aside and quash the impugned Office Memorandum No. 71/2/2002-Admn. Dated 17-07-2992 issued by the Respondent No. 4.
- 8.2 To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.
- 8.3 Cost of the Case.

9] INTERIM ORDER PRAYED FOR:

The applicant most respectfully prays for interim order from this Hon'ble Tribunal that the Hon'ble Tribunal may be pleased to stay the Impugned Office Order No. 71/2/2002-Admn. dated 17-07-2002 at Annexure-B.

*Sub 10*

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10] Application Is Filed Through  
Advocate.

11] Particulars of I.P.O.:

I.P.O. NO. 765777388

Date Of Issue 9.8.2002

Issued from Guwahati C.P.O.

Payable at Guwahati

12] LIST OF ENCLOSURES:

As stated above.

-Verification.

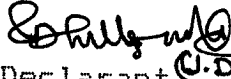
80/11/10

## VERIFICATION

I, Shri U D Rao, Secretary, The Central Public Works Department Staff Association, Guwahati Branch, Guwahati applicant No. 2 of this application and also authorized to sign this verification on behalf of other applicants /members of the Association/Union and verify the statements made in the accompanying application and in paragraphs 4.2 to 4.6, 4.8, 4.10, 4.11


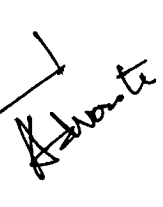
are true to my knowledge, and those made in paragraphs 4.1, 4.7, 4.9 are being matters of records are true to information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and rest are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification today on this the 19<sup>th</sup> day of August 2002 at Guwahati.

  
Declarant (U.D. RAO)  
ZONAL SECRETARY (NEZ),  
C.P.W.D. Staff Association (EZ)  
(C.P.W.D. Complex)  
Samunimaidam, Guwahati-21

## LIST OF MEMBERS

1. G.C. DORAH, HEAD CLERK
2. D.C. PAUL, U.D.C
3. U.D. RAO, HEAD CLERK
4. B.M. DAS, LDC
5. T.K. DAS, LDC
6. MD. K. ALI, LDC
7. SAMIRAN SARKAR, LDC
8. SUBHAS SARKAR, LDC
9. M.C. MEDHI, LDC
10. P.C. NEOG, LDC
11. S. BORDOLOI, UDC
12. SMTI. ITI HAZARIKA DAS, LDC
13. SMTI. CHANDRAKALA DUTTA, UDC
14. SMTI. BIBHA SEN, LDC
15. SMTI. SWAPNA CHAKROBARTY, LDC
16. SMTI. BANANI CHAKROBARTY, STENO(OG)
17. P.K. RAMCHARY, LDC
18. AJIT KUMAR DAS, LDC
19. B. DEY, LDC
20. GAUTAM PAUL, LDC
21. I. J. LINGDOH, LDC
22. S.K. CHAKROBARTY, UDC
23. P.K. DAS, UDC
24. G.N. SAIKIA, UDC
25. L.R. KOCHARI, UDC
26. SMTI. JONAKI JONAKI BORO, UDC
27. S. DUTTA CHOUDHURY, LDC
28. SWAPAN MONDAL, LDC
29. N.G. DAS, LDC
30. J.N. DAS, LDC
31. K.R. BORO, OFFICE SUPDT.
32. G.D. PRASAD, JHT
33. K.K. CHAKROBARTY, UDC
34. P.K. RAVA, UDC
35. J.C. DAS, UDC
36. PRADIP SARKAR, LDC
37. PURNIMA SHARMA, LDC
38. J.K. BAIDYA, STENO(O.G)
39. D. ROY BURMAN, STENO(SR.G)
40. SMTI. SAINIYA SARKAR, UDC
41. ANWAR HUSSAIN, UDC
42. S.K. LASKAR, STENO(O.G)
43. AJAY THAKUR, LDC
44. J.P. BORO, LDC
45. PRADIP SINGH, LDC

~~18~~ ~~18~~ 17

24

46. S.A. LASKAR, LDC
47. S.C. SAHA, LDC
48. R.C. MONDAL, UDC
49. S. SAHA, LDC
50. G.C. DAS, UDC
51. PRANAB ROY, LDC
52. S.K. CHAUDHURY, LDC
53. D.D. BASUMATARY, LDC
54. J. BASUMATARY, LDC
55. D.C. SAIKIA, UDC
56. R.C. DAS, UDC
57. N.C. MONDAL, LDC
58. L. BORO, LDC
59. S. DUTTA, LDC
60. M. SUTRADHAR, LDC
61. N. LASKAR, LDC
62. N. SINGH, LDC
63. U.C. DAS, HEAD CLERK
64. H.N. SHARMA, UDC
65. P.K. MOZUMDER, UDC
66. S.R. CHAKROBARTY, UDC
67. ANJAN DAS, UDC
68. U.C. TALUKDAR, UDC
69. D.D. DAS, UDC
70. S.C. MOZUMDER, LDC
71. SMT. J. SONOWAL, LDC
72. MORMESWAR DAS, LDC
73. A.K. DAS, LDC
74. D.K. BANIK, LDC
75. KANAK NEMOSUDRA, LDC
76. H.M. MALI, LDC
77. J. SUTRADHAR, LDC
78. K. CHAKROBARTY, LDC
79. MOHESH DOLEY, LDC
80. CHANDAN SONOWAL, LDC
81. N.C. BHATTAL, LDC
82. JAGANNATH PAUL, UDC
83. PRADIP KUMAR DAS, UDC
84. HARI SANKAR BISWAS, LDC
85. KANCHAN DAS, LDC
86. ANUP KUMAR DUTTA, LDC
87. UTTAM KUMAR BARDHAN, LDC
88. ARDHANENDU DUTTA, STENO (SR.G)
89. HIMANGSHU DAS, LDC
90. BIDHAN CHANDRA DEB, LDC

*Handwritten signatures and initials*

Contd...



- Artalet  
Artalet

136. RAJESH CHETTRI, LDC
137. SAMIR BHATTACHARYA, LDC
138. BISHAJIT DEBATHI, LDC
139. ZETTE SHUMNATH KOIRALA, LDC
140. N. SALU MAO, LDC
141. PROBIR GURUNG, LDC
142. SUKUMAR SINHA, LDC
143. KAMAKHYA PRASAD MALLICK, STENO CR. I
144. MRS. DRASTINA THAM, HEAD CLERK
145. MRS. EDWARDS NONNUM, UDC
146. MRS. LINI PHUMAI SAWIAN, UDC
147. MRS. MALBIA MARY SAHNIAR, UDC
148. MRS. PALEIMON MILLAR, UDC
149. MRS. BLANDINA DONCKYNRIH, UDC
150. MRS. KALYANI DAS, LDC
151. MRS. SHILA KOLLA DIBEDON, LDC
152. MRS. RISALIN DORA AGBOLE
153. MRS. JACINTA DKHAR, LDC
154. MRS. PATRICIA GRACE LYNDON, LDC
155. MRS. KONTIMAI KHONSOM, LDC
156. MISS. KYNTIEMRIT EMM KARSCHICH, LDC
157. MISS. BITOLIN DIBEDON, LDC
158. MISS. SIDI RANAT, LDC
159. MISS. LISSIE CLEVELL KAPSAND, LDC
160. MISS. PRESETILLA KHYLLER, LDC
161. MISS. JHINTINA KHARHON, LDC
162. LALTHANA CHIANGTE, S.O
163. BUANSING THAWNG SIAN DONG, ASSTT.
164. ASHIM KUMAR MONDAL, ASSTT.
165. SUBRATA CHATTERJEE, ASSTT.
166. AJAY LALOO, LDC
167. SMTI. FREEDA ROSE TARIANG, ASSTT.
168. SMTI. AITILIN RYIJAH, LDC
169. SMTI. RIDAMON SYIBALIEH, LDC
170. SMTI. SELRIPIE WAHLANG, LDC
171. MRINAL DEY, LDC
172. T. THIAN KUAN MUAN, ASSTT.
173. STEPHEN ROY BASAIAIMOIT, MESSENGER
174. BISWA DEB RAUHA, MESSENGER
175. MICHAEL MARBANIAN, MESSENGER
176. DINESH PRASAD YADAV, MESSENGER.

AA-74  
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 Advanta

No. 71/2/2002-Admn.  
Government of India  
Office of Chief Engineer (NEZ)  
Central Public Works Department  
Shillong-03.

Dated, 17.7.2002

OFFICE MEMORANDUM

Subject:- S.D.A. for Civilian Employees to the Central Govt. Serving in the state and Union Territories of North Eastern Region i/c Sikkim.

The undersigned is directed to refer to SE/ACC-I letter No. 55(13)/E-II/SDA/ACC-I/2002/1853 dated 9.7.02 and SE/ACC-II letter No. 3(I)/ACC-II/2002/398 dated 21.6.02 on the above subject and to say that the case has been examined as per instructions contained in M/o Finance, Deptt. of Expenditure O.M. No. 11(3)/95-E.II(B) dated 12.1.96, No. 11(5)/97-E.II(B) dated 29.5.02, M/o Urban Dev. & P.A. O.M. No. 1069/DOI/W&E/02 dated 6.6.02 and found that group 'C' 'D' and W.C. employees of N.E. Region are not entitled to SDA irrespective of being posted to N.E.R. from outside the Region as they do not fulfill the conditions stipulated in M/o Finance O.M. dated 12.1.96.

2. The Group 'A' 'B' including JE, OS, and Steno Grade-I belonging to outside N.E. Region appointed and on their first appointments posted in 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 and posted in N.E. Region promoted as EE, AE, OS or Steno Grade-I in N.E. Region are not entitled to SDA as they are not transferred out of the Region and they are continuing in the Region. Those categories i.e. AE, JE, OS and Steno grade-I who are only posted to N.E. Region on transfer from outside the Region irrespective of they are being posted on their own willingness or not are entitled to S.D.A.

3. As such, all cases of S.D.A. may be regulated strictly in accordance with the instructions contained in the above letters referred to above and the amount already paid on account of S.D.A. to ineligible persons after 5.10.2001 should be recovered immediately.

This issues with the approval of CE(NEZ).

(James Vanlalhlir)  
Dy. Director of Admn.

All SES. /all

Attested  
J.S.  
Advocate

Date of application for the copy.	Date fixed for notifying the requisite number of stamps and fees.	Date of delivery of the requisite stamps and fees.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
1/4/02	1/4/02	1/4/02	1/4/02	1/4/02

ANNEXURE - C

IN THE GAWMATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,  
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from  
Civil Judge

W. P. (C)

No. 2574 of 1900

Appellant  
Petitioner

Union of India & Ors  
Versus

Shri. Tasiruddin Ahmed & Ors

Respondent  
Opposite-Party

Appellant  
For  
Petitioner

Mr. P. N. Chaudhury

Respondent  
For  
Opposite-Party

Noting by Officer in  
Advocate

Serial  
No.

Date

Other notes, reports orders or proceedings  
with signature

Advocate

-AND-

## IN THE MATTER OF:

1. Union of India  
Through Secretary,  
Ministry of Information Technology,  
Electronics Niketan, 6, C.G.O. Complex,  
New Delhi - 110003
2. National Informatics Centre (NIC)  
Through The Director General, NIC  
Ministry of Information Technology  
A-Block, C.G.O. Complex  
New Delhi-110003
3. The Technical Director &  
State Informatics Officer  
National Informatics Centre  
Assam State Unit  
F-Block, Assam Secretariat  
Guwahati - 781006

Petitioners  
Respondents

## -VERSUS-

1. Sri Tasiruddin Ahmed  
Scientist-C  
Employee Code No.2364
2. Sri Dinesh Kumar Bhuiyan  
Scientist-C  
Employee Code No.2349
3. Sri Dipanta Barman  
Senior Systems Analyst  
Employee Code No.1692

Attor CI  
Adm 6

4. Sri Hemanta Kumar Saikia  
Scientist-D  
Employee Code No.1691
5. Sri Himamoni Goswami  
Scientist-C  
Employee Code No.2366
6. Ms. Kakuli Choudhury  
Scientist-C  
Employee Code No.3628
7. Ms. Himamayee Goswami  
Scientist-C  
Employee Code No.2325
8. Sri Manabendra Goswami  
Scientific Officer-Sh  
Employee Code No.4085
9. Mr. S.M. Sheikh  
Scientific Officer-Sh  
Employee Code No.3943
10. Sri Dipam Kumar Baruah  
Scientific Officer-Sh  
Employee Code No.2370
11. Ms. Anuradha Barua  
Scientific Officer-Sh  
Employee Code No.4080
12. Ms. Binswati Datta  
Scientist-B  
Employee Code No.2373
13. Sri Gautam Choudhury  
Scientist-C  
Employee Code No.2360
14. Sri Pranjal Bezbaruah  
Scientist-C  
Employee Code No.3694
15. Sri Arun Chandra Dutta  
Scientific Officer-Sh  
Employee Code No.3945
16. Md. Asan Ali  
Lower Division Clerk  
Employee Code No.0871

Atty. Genl  
/

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17. Sri Ranjyoti Choudhury  
Upper Division Clerk  
Employee Code No.2710
18. Sri Mokab Ali  
Upper Division Clerk  
Employee Code No.2713
19. Sri Chinmoy Bhattacharya  
Scientist-C  
Employee Code No.
20. Sri Ajit Kumar Nath  
Scientist-C  
Employee Code No.2718
21. Sri Chandra Gupta Dutta Barua  
Scientist-C  
Employee Code No.2356
22. Sri Sandip Paul  
Scientist-GR  
Employee Code No.4172
23. Ms. Seemantinee Sengupta  
Scientist-C  
Employee Code No.2334
24. Sri Dipankar Sengupta  
Scientist-C  
Employee Code No.2709
25. Ms. Kavita Mazumdar  
Scientist-C  
Employee Code No.2326
26. Mr. Kabin Roy Das  
Scientist-C  
Employee Code No.2365
27. Sri Chaitum Bhattacharya  
Scientist-B  
Employee Code No.2333
28. Sri Sumitran Balkia  
Scientist-C  
Employee Code No.2604
29. Mrs. Nafsa Begum  
Scientist-C  
Employee Code No.2606

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T. K. P.  
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Advanta

30. Sri Robulym H. Ali  
Scientist-C  
Employee Code No. 2603
31. Sri Ballesh Kallin  
Scientist-C  
Employee Code No. 2352
32. Sri Dibyajit Dutta  
Scientist-C  
Employee Code No. 2329
33. Sri Anup Kumar Baran  
Scientist-C  
Employee Code No. 2351
34. Sri Joydeep Sengupta  
Scientist-C  
Employee Code No. 2358
35. Sri Upen Baishya  
Messenger-Cum-Helper  
Employee Code No. 0879

(All the above named Respondents are working in the Office of the Petitioner No.3)

36. Central Administrative Tribunal  
Guwahati Bench  
Guwahati

Respondent  
Applicant

Advocate



by Officer or Advocate

Serial No.

Date

Police notes, reports, orders or proceedings with signature

W.P.(C) No.2004/2001

PRESENT -

THE HON'BLE MR JUSTICE JN GARMA  
THE HON'BLE MR JUSTICE IA ANSARI

10-03-2002

There is no merit in this writ application and the same shall stand dismissed in view of paragraph 11 of the judgment of Central Administrative Tribunal in OA No.140/99. That paragraph 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 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. 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."

U.T.Y.

Attor  
S  
Advocate

By this order only the recovery has been prohibited and that aspect of the matter has already been clinched by the Apex Court.

*Sd/- J. A. Arundani*

*Sd/- J. M. Sarma*

P/N 6067  
1/10/01

CERTIFIED TO BE TRUE COPY  
Date .....  
Superintendent (Copying Section)  
Gauhati High Court  
Authorized 12/3/76, Part 1, 1973

*Att. (u)*  
*Advocate*

~~R-5~~

ANNEXURE - D

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

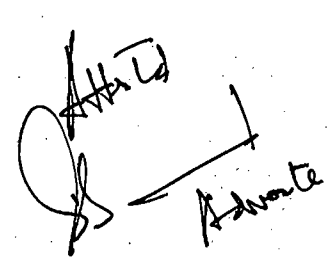
Leave granted

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.

  
Advocate

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

Certified to be true copy  
Assistant Registrar (Jr.)  
20.11.2001  
Supreme Court of India

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

544783

Union of India & Anr. ... Appellants

Versus

National Union of Telecom Engineering Employees Union Anr. ... 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. V. Lakshmanan & Ors. reported as 1994 (Supp. 3) SCC, 640 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

Annex 1  
Admitted

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 amount has been allowed.

.....J  
(N. SANTOSH REDDI)

.....J  
(P.G. BALAKRISHNAN)

New Delhi,  
October 05, 1972

Attal  
Advocate

Filed by

25/11/02  
38  
(A. DEBROY)  
Sr. C. C.  
C. A. T. Bench: Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI  
BENCH, GUWAHATI

In

O. A. Nos: 262/2002, ~~263/2002, 264/2002, 265/2002, 266/2002 & 270/2002~~

1. CPWD Staff Association.
2. CPWD Engineering & Drawing Staff Association.
3. CPWD Non-Gazetted Staff Association.
4. CPWD Mazdoor Union.
5. CPWD Junior Engineer Association.
6. CPWD Class-IV Staff Association. ----- Applicants.

Vs.

Union of India & others ..... ----- Respondents.

REPLY AFFIDAVIT ON BEHALF OF RESPONDENTS.1,2,3,4 & 5

MOST RESPECTFULLY SHOWETH: -

I, S. K. Roy, working as Superintending Engineer, Assam Central Circle No.I, Central Public Works Department, Guwahati under Chief Engineer(NEZ), CPWD, Shillong of the Director General of Works, CPWD under Ministry of Urban Development & Poverty Alleviation, New Delhi, do hereby solemnly state and affirm as under: -

1. That the deponent is Superintending Engineer, in the Directorate General of Works under Ministry of Urban Development & Poverty Alleviation, New

*S.K. Roy*  
25/11/02  
**S.K. Roy**  
Superintending Engineer  
Assam Central Circle No.I  
CPWD, Guwahati-781021

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Delhi and has been authorized to file the Counter Reply on behalf of Respondents. Deponent is also fully acquainted with the facts of the case.

2. That the Deponent has read and understood the contents of the Applications filed by the Applicants.

3. That the averments of the applicants in the aforesaid applications, which are not specifically admitted, are denied.

4. That the Respondents crave leave to submit the following objections and being facts of the cases before submitting their parawise reply to the applications.

#### PRELIMINARY OBJECTIONS.

1. That the applicants are working under various cadres in Central Public Works Department, Govt. of India. The impugned office Memorandum dated 17-7-2002 is a follow up clarification to office memorandum of department of expenditure, Ministry of Finance, Government of India, New Delhi No. 11(5)/97/E-II (B) dated 29.05.2002 issued based on the order of Hon'ble Supreme Court, judgment delivered on 5-10-2001 in civil appeal No. 7000 of 2001 of Union of India & others Vs. National Union of Telecom Engineering Employees Union Members and hence the same is not liable to judicial intervention.

2. The recovery of payment of SDA paid beyond the admissible date set by the Hon'ble Supreme Court is not amenable to the jurisdiction of this Hon'ble Tribunal as contemplated under section 19 of the Administrative Tribunal Act. 1985.

*S.K. Roy* 29/10/02  
S.K. Roy  
SuperIntending Engineer  
Assam Central Circle No.1  
CPWD, Guwahati-781021

### PARAWISE REPLY

1. The impugned Office Order dated 17-7-2002 is not an Office Order but a memorandum clarifying certain issues raised by subordinate offices to it. This Memorandum has been issued by the Respondent No.4 based on the clarification received vide O.M. No. 26/6/2001 – ADG(ER), dtd. 10-6-2002 and of Additional Director general(ER), CPWD, Kolkata, O.M. No. 1069/DOI/W&E/02 dt.6-6-2002 of Ministry of Urban Development and Poverty Alleviation, New Delhi and O.M. No. 11(5)/97/E-II(B) dt.29-5-2002 of Deptt. of Expenditure, Ministry of Finance, Government of India, New Delhi. All these Office Memorandums have been issued based on the orders passed by the Hon'ble Supreme Court of India on 5-10-2001 in Civil Appeal No. 7000 of 2001 of Union of India Vs. National Union & Telecom Engineering Employees Union Members.

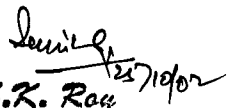
2. Jurisdiction of this Hon'ble Tribunal is not disputed.

3. This is a matter of arguments.

### 4. FACTS OF THE CASE.

4.1 & 4.5. The contents of these paras are matters of records and therefore need no reply.

4.6 the contention of the Applicants that they are legally entitled for grant of Special Duty Allowance is hereby denied. As per the judgment of Hon'ble Supreme Court dtd.20-9-1994 in civil Appeal No. 3251 of 1993 of Union of India & others Vs. S. Vijayakumar & others, the Central Govt. employees who have been transferred from other Regions and posted to North Eastern Region are only entitled to receive Special Duty Allowance. Matter of

  
**S.K. Ray**  
SuperIntending Engineer  
Assam Central Circle  
CPWD, Guwahati-781021



eligibility has been settled by orders of Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A Nos. 18,19,20,21,23 & 24 of 2002 date of judgment 14.05.02.

Contention of Applicants is also contradictory as they claim that they are eligible for payment of Special Duty Allowance (Which they are not as settled in the orders passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench) but are not praying for continuation of payment of SDA. Their prayer is for stopping recovery of paid SDA from 06.10.2002.

4.7 The contention of the Applicants are hereby denied. The Applicants were paid Special Duty Allowance even after the Order of Hon'ble Supreme Court because of the interim injunction granted by Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati though they are ineligible. The matter of recovery of SDA paid beyond 5-10-2001 (i.e., the date of Judgment delivered by Hon'ble Supreme Court in Civil Appeal No. 7000 of 2001 on 5-10-2001) has been clarified by Respondent No.4 by Memorandum dated 17-7-2002 as and when the clarifications were received from Ministry of Finance, Ministry of Urban Development & Poverty Alleviation and other higher authorities of Department.

4.8 The contention of Applicants that the act of Respondents is arbitrary regarding recovery of payment of Special Duty Allowance is absolutely incorrect as this order has been passed by the competent authority based on the judgment delivered by the Hon'ble <sup>Supreme</sup> Court of India in civil appeal on 7000/2001 on 5-10-2001. Hence their contention is hereby denied.

4.9 It is incorrect that the Respondents can not recover the paid SDA prior to their recovery order dated 17-7-2002. The recovery has been ordered with prospective effect of date of 5-10-2001 being the date of order passed by the

*S.K. Roy*  
**S.K. Roy** 27/10/02  
Superintending Engineer  
Assam Central Circle  
CPWD, Guwahati-781021

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Hon'ble Supreme Court of India. Hence the Applicants are not entitled to get any SDA beyond 5-10-2001.

4.10 The recovery effect is based on the Hon'ble Supreme Court of India's judgment dated 5-10-2001 in Civil Appeal No. 7000/2001. Hence the recovery is in order and the contentions of the Applicants are hereby denied.

4.11 The Respondents are entitled to recover the SDA paid after 5-10-2001 i.e., after the date of Judgment of Hon'ble Supreme Court of India. Hence their contentions are denied and as such they are not entitled.

4.12 to 4.15: The contents of these para are totally incorrect. The Respondent are entitled to recover the SDA paid after 5-10-2001 as per the Hon'ble Supreme Court of India in civil Appeal No. 7000/2001. Hence denied.

4.16 & 4.17. In view of the above facts, these O.As. are not fit to be admitted and liable to be rejected.

## 5. GROUNDS

In view of the submission made above and the legal position mentioned therein, none of the grounds in 5.1. to 5.8 are maintainable under the law and as such all the O.As. are liable to be dismissed being devoid of any merit.

6. The contents of this para need no reply in view of submissions made in the preceding paras.

7. Denied for want of knowledge.

*S.K. Roy*  
23/10/02  
**S.K. Roy**  
Superintending Engineer  
Assam Central Circle No. 1  
CPWD, Guwahati-781021

8 & 9. In view of the factual position stated and parawise replies furnished herein above with legal submissions made therein, none of the relief's including interim relief prayed for the applicant is legally admissible to Applicant. The present O.As. being devoid of any merit are liable to be dismissed with costs in favour of the Respondents. It is prayed accordingly.

10.-12. These paras need no reply being formal in nature.

Deponent

*S.R. Rao* 27/10/12  
S.R. Rao  
Superintending Engineer  
Assam Central Circle No. I  
CPWD, Guwahati-781021

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CERIFICATION

I, S. K. Roy, working as Superintending Engineer, Assam Central Circle-I, Guwahati under Chief Engineer (NEZ), CPWD, Shillong do hereby verify that contents of the above counter reply are true and correct to my knowledge which is derived from the office records and upon information received from concerned Officers. Nothing material has been concealed there from.

Verified at Guwahati on the date 25<sup>th</sup> day of October 2002.

*S.K. Roy*  
25/10/02  
**S.K. Roy**  
Superintending Engineer  
Assam Central Circle No.1  
CPWD, Guwahati-781021