

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 115/2002

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SECTION OFFICER (Judl.)

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.
GUWAHATI.

ORDER SHEET

Original No. 115/2002
Misc. Petition No.
Contempt Petition No.
Review Application No.

Applicant(s) Ralthansanga Vaite Poma

Respondent(s) W.O.P. Poma

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

Advocate for Respondent(s) CAK

Notes of the Registry

Date

ORDER OF THE TRIBUNAL

Heard learned counsel for the

parties. Issue notice to show cause as to why the application shall not be admitted. Returnable by 4 weeks. List on 8.5.02 for Admission.

Vice-Chairman

8.5.02

List on 29.5.02 to enable the respondents to obtain necessary instruction. Endeavour shall be made to dispose of the application at the admission stage.

Vice-Chairman

Notice heard and sent to DLS for filing the Respondent No 1 to 4 by Regd Adv

DINo 1195 W 98

Dtd 26/4/02

① Service report was still awaited.

7.5.02

2
Sent vide D/No 119SW
78 dtd. 28/4/02
b

31.5.02

Heard Mr. S.Sarma, learned counsel for the applicant and also Mr. B.C.Pathak, learned Addl. C.G.S.C. for the respondents.

The application is admitted. Call for the records.

List on 12.6.2002 for orders.


Vice-Chairman

mb

12.7.2002

At the request made by Mr.B.C. Pathak, learned Addl.C.G.S.C for the respondents four weeks time is allowed to the respondents to file written statement.

List the case for order on 16.8.02

NA w/s has been
filed.

NB
14/8/02


Member

bb

16.8.02

At the request of Mr.B.C.Pathak learned Addl.C.G.S.C. for the respondent three weeks time is allowed for filing of written statement. List on 13.9.02 for orders.


Member

13.9.02

Written statement has been filed. List on 11.10.02 for hearing.

The applicant may file rejoinder, if any within two weeks from today.


Vice-Chairman

pg

11.10.02

Mr.S.Sarma learned counsel for the applicant prays for adjournment due to his personal difficulty. Prayer is allowed. List on 22.11.02 for hearing.


Member

lm

19.8.02
W/S submitted
by Respondents Nos. 1, 2 & 3.
D

Note of the Registry


Date

Order of the Tribunal

13.11.2002
Shillong

Heard counsel for the parties.
Judgment delivered in Open Court, kept in
separate sheets.

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


Vice-Chairman

bb

26.11.2002

Copy of the
Judgment has been
sent to the D/Sec.
for issuing the
same to the applicant
as well as to the
A/Adv. Gen. for the Regd.

HLS

2
Note of the Registry

Date

Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXX~~No.115 of 2002 .~~xxx~~

DATE OF DECISION.13.11.2002.....

Shri Lalthansanga Varte & 3 Others. APPLICANT(S)

Mr.M.K.Choudhury,S.Sarma& U.K.Nair. ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

Union of India & Others. RESPONDENT(S)

Mr.B.C.Pathak, Addl.C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

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

Judgment delivered by Hon'ble Vice-Chairman.

Ho.



X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

CIRCUIT COURT AT SHILLONG.
Original Application No.115 of 2002.

Date of Order : This the 13th Day of November, 2002.

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

1. Shri Lalthansanga Varte
Deputy Director
All India Radio, Shillong.
2. Sri C.Lalbiaktluanga
Deputy Director
All India Radio, Shillong.
3. Sri R.Giri
Asstt. Engineer
AIR, Nongstoin, Shillong.
4. Md. Naseer Rafique Diengdoli
Programme Executive
All India Radio, Shillong. . . . Applicants.

By Advocates Mr.M.K.Choudhury, S.Sarma & U.K.Nair.

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Information & Broadcasting
AGCR Building, Indraprastha Estate
New Delhi.
2. The Secretary to the Government of India
Ministry of Finance, North Block
New Delhi.
3. The Director General
All India Radio, Akashvani Bhawan
Parliament Street, New Delhi- 110 001.
4. The Station Director
All India Radio, Shillong. . . . Respondents.

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

O R D E R

CHOWDHURY J.(V.C.):

The issue relates to payment of Special Duty
Allowance (SDA) and the steps taken/ for the recovery of the same.

Contd./2

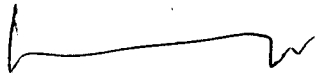
1. Admittedly, these applicants belong to N.E.Region are not eligible for SDA as has been clarified by the Hon'ble Apex Court in S.Vijayakumar and Others -vs- Union of India & Others reported in (1994) Supp 3 SCC 649. The said decision was followed up by a number of cases by Apex Court as well as by the Tribunal. However, fact remains that these applicants were paid SDA spread ^{out for} /long. As per the pleadings the applicant Nos.1 & 2 were paid SDA since 1986. The applicant Nos.3 & 4 were paid SDA from April, 1998. After the decision of the Hon'ble Supreme Court and after some circulars issued by the authorities the authority took steps to correct the error and stopped the payment of SDA. The respondents authority also sought to recover of the amount already paid to the applicant Nos.1 & 2 from April, 2000 and in case of applicant Nos.3 & 4 from April, 2001 and recovered the amount from these applicants.

2. The action of the respondents in stopping the SDA cannot be held to be illegal. The respondents acted lawfully in terms of the Hon'ble Supreme Court's order as well as the Govt. of India instructions. But at the same time the action of the respondents in recovering the amount from the applicants which was already paid to them was seemingly arbitrary that ^{had} caused hardship to these applicants. Recovery of amount retrospectively is not to be readily resorted, however even in ~~number~~ of number of decisions it has been indicated that the

recovery already made, is not to be refunded and any payment made is not to be recovered.

3. I have heard Mr.S.Sarma, learned counsel for the applicants and also Mr.B.C.Pathak, learned Addl.C.G.S.C. In the set and circumstances of the case I hold the action of the respondents in recovering the payment already paid to the applicants is unlawful and accordingly direct the respondents to refund the amount to the applicants already recovered from them.

The application is partly allowed. There shall, however, be no order as to costs.



(D.N.CHOWDHURY)
VICE CHAIRMAN

FILED BY
The Applicants
through;
Anni Krishnan Nair
Advocate.

THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
AT GUWAHATI

D. A. NO. 115 /2002

BETWEEN

1. Shri Lalthansanga Varte,
Deputy Director,
All India Radio, Shillong.
2. Sri C. Lalbiaktluanga,
Deputy Director,
All India Radio, Shillong.
3. Sri R. Giri,
Asstt. Engineer,
AIR, Nongstoin, Shillong.
4. Md. Naseer Rafique Diengdoli,
Programme Executive,
All India Radio, Shillong.

EC 11986

OCT → 1986

APR → 1988

MAY → 1988

..APPLICANTS

-VERSUS-

1. The Union of India,
represented by the Secretary to the
Government of India, Ministry of
Information & Board casting AGCR Building,
Indraprastha Estate, New Delhi.

Contd..P/-

2. The Secretary to the Government of India,
Ministry of Finance, North Block, New Delhi.

3. The Director General,
All India Radio, Akashwani Bhawan,
Parliament Street, New Delhi-110001.

4. The Station Director,
All India Radio, Shillong.

..RESPONDENTS

DETAILS OF APPLICATION

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

This instant application is made against the action on the part of the Respondent authorities in stopping payment of SDA to the applicants and the recovery effected from their salaries of the amounts already paid to them as SDA, without affording any opportunity of hearing.

2. LIMITATION:

The applicants declare that the instant application has been filed within the limitation period prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

Contd..P/-

3. JURISDICTION:

The applicants further declare that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1 That the applicants are citizens of India and as such they are entitled to all the rights, protections and privileges guaranteed under the Constitution of India and the laws framed thereunder.

4.2 That the applicants have by way of this application raised a grievance common to all of them and the reliefs sought for are one and the same. As such the applicants pray that they may be permitted to file this application jointly as per provisions of Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

4.3 That the applicants have by way of this application assailed the legality and validity of the action on the part of the authorities in stopping payment of SDA to them and the recovery already effected from their salaries of the amounts paid to them as SDA earlier. The applicants who were eligible to draw SDA, were granted the same as far back as in 1986 and they thereafter continued to draw the same till the later part of the 1999, when it was stopped. Thereafter, the

Contd..P/-

Respondents w.e.f. April, 2000, proceeded to make deductions from the salaries of the applicants to the tune of Rs. 4000/- to 5000/- per month towards recovery of the amounts already paid to them as SDA. The appeals made by the petitioners to refrain from making the deduction and latter for repayment of the amounts already deducted have fallen upon deaf ears. Even if it is held that the applicants are not entitled to SDA, then also, the amounts already paid to them cannot be recovered. Having failed to get any response from the authorities as regards the genuine grievances raised by them, the applicants have by way of this application come under the protective hands of your Lordships seeking redressal of their grievances.

4.4 That your applicants state that they are at present holding responsible posts and have got all India Transfer liability. Further by the nature of the posts being held by the applicants and the conditions attached thereto they are entitled to draw Special Duty Allowance (SDA) and other such perks granted by the Government from time to time.

4.5 That the Respondents with regard to payment of SDA issued of various circulars specifying the eligibility criteria for payment of such allowance. Mention may be made of the OM issued vide memo No. 20014/9/83-B.IV dated 14.12.83 by which guidelines for payment of

Contd..P/-

SDA has been issued. Basically the said OM dated 14.12.83 were the initial guidelines by which the terms and conditions regarding the payment of SDA has been stated. The basic foundation of granting SDA was to meet the hardship being faced by the people of N.E. Region in comparison to other region in all respect including essential commodities because of it's peculiar geographical position as well as the unstable political situations. The N.E. Region comprises of seven states covering Assam, Meghalaya, Manipur, Nagaland, Mizoram, Tripura and Arunachal Pradesh. The major percentage of the land area is covered by hilly areas and same creates obvious disadvantages in road transportation and other communications resulting in higher price of essential commodities. The above hardship covers the people on posting from outside NE Region.

4.6 That noticing the hardship the Govt. of India considering all the inconvenience and disadvantages faced by the employees of Central Govt. and on acting on the demand raised by the various levels/forums, issued an OM dated 14.12.83 granting an allowance namely special duty allowance (SDA). The said allowance was made applicable to the employees working in the NE Region specifying certain eligibility criteria for the same. Amongst the eligibility criteria one of the most vital criteria is All India Transfer Liability.

Contd..P/-

A petitioner craves leave of this Hon'ble Tribunal to produce a copy of the OM dtd. 14.12.83 as and when required of him.

4.7 That your applicants state that they fulfill all the required qualification as well as eligibility criteria laid down in the OM dated 14.12.83 towards drawal of SDA. All the applicants have got All India Transfer Liability. The authorities have issued classifications clarifying that all the Civilian employees having All India Transfer Liability would be entitled to draw SDA, irrespective of fact of their domicile.

4.8 That the applicants being entitled to draw SDA, as per the provisions of the instructions issued in this direction by the Government of India, were allowed to draw SDA by the Respondents. The applicant No.1 drew his SDA w.e.f. October, 1986, the applicant No.2 w.e.f. October, 1986, the applicant No.3 w.e.f. April, 1988 and the applicant No. 4 w.e.f. May, 1988.

4.9 That the applicants state that w.e.f. the dates indicated in the forgoing paragraphs, the applicants were being regularly paid SDA without any hindrance. The said action of the paying SDA to its employees was in pursuance to a policy decision of the Respondent authorities and the same was taken independent of the circulars and instructions issued by the Government of India from time to time in this connection

Contd..P/-

4.10 That your petitioners state that w.e.f. Oct, 1999 the Respondents without any rhyme and reason stopped payment of SDA to the applicants. The said action on the part of the Respondents in stopping the payment of SDA to the applicants was so done without any notice and no prior opportunity of hearing was given to the applicants. The payment of SDA were stopped to the applicants on various dates. Such payment was stopped with effect from October, 1999 in case of the applicants No. 1 & 2 and in case of applicants No. 3 & 4 w.e.f. April, 2000 and November, 1999 respectively.

4.11 That pursuant to stoppage of payment of SDA to them, the applicants made several appeals before the authorities to pay to them SDA as before, but the same fell upon deaf ears and the applicants were deprived of their legitimate dues.

4.12 That pursuant to stoppage of payment of SDA no steps were taken towards effecting recovery of the amounts already paid as SDA and as per the decisions passed by this Hon'ble Tribunal and the Apex Court, it was the understanding that no recovery would be made of the amount which was already paid as SDA.

4.13 That poised thus the applicants on receipt of their pay slips for the month of April, 2000, were

Contd..P/-

shocked to note that deductions to the tune of Rs.4000/- to Rs.5000/- have been made from their salaries. The said deduction was towards recovery of the amounts already paid to them as SDA. The said deductions were continued to be made till April,2001 and the appeals preferred by the petitioners to stop such illegal action was not paid heed to by the Respondents. The deductions so effected was for recovery of the amounts paid as SDA w.e.f. the year 1994.

4.14 That your applicant No.1 states that the recovery in his case was effected w.e.f. April,2000 at a monthly rate of Rs.5000/-. The said deductions were in place till April,2001 and a total of Rs.75,000/- was deducted from his salaries, during this period of time towards recovery of the amount paid as SDA.

Copies of a few pay slips of the applicants to indicate the deductions being made are annexed hereto as Annexure- 1 series.

4.15 That your applicant No.2 states that the recovery in his case was also effected w.e.f. April,2000 and the same continued till February,2001. A sum of Rs.5000/- was deducted every month during the said period. A sum of Rs.55,000/- was deducted during the said period as recovery of the amount paid as SDA.

Contd..P/-

Copies of a few pay slips of the applicant to indicate the deductions being made are annexed hereto as Annekure- 2 series.

4.16 That your applicant No.3 states that in his case also the deduction were stated w.e.f. April,2000 and the same continued till April,2001. A sum of Rs.5000/- was deducted every month during the said period and the total amount deducted works out to Rs.75,000/-.

Copies of a few pay slips of the applicant to indicate the deductions being made are annexed hereto as Annekure- 3 series.

4.17 That your applicant No.4 states that in his case the deduction at a monthly rate of Rs.4000/- was effected from April,2000 to April,2001 and the total amount deducted towards recovery of the amount paid as SDA works out to Rs.52,000/-.

Copies of a few pay slips of the applicant to indicate the deductions being made are annexed hereto as Annekure- 4 series.

4.18 That your applicants state that being aggrieved by the arbitrary and illegal action on the part of the respondents firstly in stopping payment of SDA and then without any notice proceeding to make deductions from their salaries towards recovery of the

Contd..P/-

amounts already paid to them as SDA, the applicants individually preferred representations, praying for refund of the amounts deducted for them. The applicants had also prayed, at the initial stage of the process of effecting deductions from their salaries, to refrain from making such deductions but to no avail. It may be mentioned here that in case of persons similarly situated like the applicants, the amounts deducted from their salaries towards recovery of the amounts already paid to them as SDA have been refunded. As such the applicants have been discriminated against

The representations preferred by the respondents are annexed herewith and marked as Annexure - 5 series.

4.19 That your applicants state that the Respondents continued to make payment of SDA till October, 1999 in case of Applicants No.1 & 2 and till November, 1999 and April, 2000 in case of the Applicants No.3 & 4. The orders that may have been issued in this connection can only have prospective operation and as such the amounts already paid as SDA stood waived. Further the action on the part of the respondents in discriminating between its employees in matters of payment of SDA and using different yard sticks in this connection would go to show that no firm decision has been taken as of yet to stop payment of SDA.

Contd..P/-

4.20 That even assuming though not admitting that the applicants are not entitled to SDA, then also the respondents are estopped from recovering the amounts already paid to the applicants as SDA.

4.21 That your applicants state that persons similarly situated like the applicants had approached this Hon'ble Tribunal by way of Original Applications raising grievances against the stoppage of payment of SDA and the recoveries being made for the amounts already paid as SDA. In this connection mention may be made of O.A. No.149/99, wherein this Hon'ble Tribunal by its Judgment dated 22.12.2000, had held that no recovery could be made of the amounts already paid as SDA.

A copy of the said judgment and order dated 22.12.2000 is annexed hereto as Annexure-6.

4.22 That your applicants states that the said Judgment passed by this Hon'ble Tribunal was brought to the notice of the Respondents with a prayer not to effect the deductions being made from their salaries and to refund the amounts already deducted, but the Respondents ignored the same causing innumerable hardships to the applicants. The manner and method in which the said deductions were effected shows the arbitrary and mala-fide intention on the part of the Respondents and such

Contd..P/-

action is uncalled for on the part of a model employer like the Respondents.

4.23 That your applicants submit that they being salaried persons, such huge deduction effected from their salaries has a telling effect on their budget and they have been forced to face a situation of the financial stringency for no fault of their and as such appropriate directions are required to be issued to the Respondents to refund the amounts already deducted from their salaries.

4.24 That the conditions attached to their services and the manner and method of their appointment also makes the applicants eligible for payment of SDA and as such the Respondents cannot be allowed to deny them the same any further.

4.25 That this application has been filed bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS

5.1 For that the impugned action on the part of the Respondents are not sustainable and the applicants are entitled to the reliefs prayed for.

5.2 For that the eligibility of the applicants for grant of SDA was not considered by the Respondents

Contd..P/-

and abruptly without rhyme and reason the payment of SDA was stopped in their case.

5.3 For that in view of the judicial pronouncements of the Apex Court and this Hon'ble Court, the Respondents are estopped for recovering the amounts already paid as SDA and as such the action on the part of the respondents in making deduction from the salaries of the applicants towards recovery of the amounts already paid as SDA is arbitrary, illegal and in addition to being in clear violation of the Judicial pronouncements in this connection.

5.4 For that the applicants have been discriminated against inasmuch as similarly situated persons have already been refunded the amounts deducted from them towards recovery of SDA already paid to them.

5.5 For that there being no difference between the applicants as well as the employees who are receipt of SDA so far it relates to duties and responsibilities the respondents ought not to have stopped payment of SDA and make recoveries of the amounts already paid based on such criteria.

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

Contd...P/-

6. DETAILS OF REMEDIES EXHAUSTED:

The applicants declare that they has exhausted all the remedies available to them and there is no alternative and efficacious remedy available to them.

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

The applicants further declare that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal 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 pray that the instant application be admitted, records be called for after hearing the parties on the cause or causes that may be shown and on perusal of the records, be pleased to grant the following reliefs to the applicants:

8.1 To direct the Respondents to pay to the applicants SDA at the prevailing rate w.e.f. the dates the same were stopped.

Contd..P/-

8.2 To direct the Respondents to refund forthwith, the amounts already deducted from the salaries of the applicants towards recovery of the amounts paid to them as SDA along with interest at bank norms w.e.f. the date of the deduction till actual repayment.

8.3 Cost of the application.

8.4 Any other relief/ reliefs to which the applicants is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of this application the applicants pray that a direction be issued to the respondents to allow them to draw current SDA at the prevailing rates.

10.....

The application is filed through Advocate.

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

- i) I.P.O. No. : 79 551977
- ii) Date : 24.1.2002
- iii) Payable at : Guwahati


12. LIST OF ENCLOSURES:

As stated in the Index.

VERIFICATION

I, Shri Lalthansanga Varte, aged about 48 years, presently working as Deputy Director, All India Radio, Shillong, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7 to 4.22, 4.24, 4.25 and 5 to 12 are true to the best of my knowledge, those made in paragraphs 4.21 being matters of record are true to the best of my information derived therefrom. On being authorised by the co-applicants to swear this affidavit on their behalf, I am competent to swear this affidavit on behalf of all the applicants.

And I sign this verification on this 28
day of *March*, 2002.


(LALTHANSANGA VARTE)

17

Annexure - Series

PAY SLIP

PAC (IRLA) MINISTRY OF I&B

MONTH : Apr '2000

PARTICULARS

GROSS PAYMENTS

DEDUCTIONS

MISC PNTS

MISC DEBS

EMP. NO. : 9429

B.PAY : 11950

L.T. : 0

Hill Deval All : 300 Addl. wages : 5000

NAME : LALITHA NSANGA VARTE

P.PAY : 0

LTF : 2000

DESIGNATION : DY. DIRECTOR

S.PAY : 0

GPF REC : 975

DEPARTMENT : ALL INDIA RADIO

DS.PAY : 0

PLD : 0

CITY : SHILLONG

DA : 4331

L.THE : 0

(DT/CT CODE : 02/123)

IR : 0

HVR : 250

BANK-CODE : 1123/ 13

HRA : 0

L.A. REC : 1011

ACCOUNT NO. : 1011904017647

CCA : 0

L.A. REC : 0

HEAD OF A/C : 1201 PLAN

CEA : 0

LON REC : 0

INC. MONTH : 1

LAPL ALLOW : 210

A. INS. : 100

* GPF BALANCE : 99704

MISC PNTS : 310

MISC DEBS : 5000

BL BALANCE : 1119

TOTAL : 15131

TOTAL : 5757

HPL BALANCE : 125

NET PA : 15131

* NOTE:- G.P.F. BALANCE INCLUDES INTEREST UP TO THE YEAR 1999-2000 AND ADVANCES / WITHDRAWALS UP TO END OF 1999.

Attested
 In: Mr.
 Advocate

27

SLIP

PAC ISLAM MINISTRY OF ISL

MONTH : May '2000

PARTICULARS

GROSS PAYMENTS

DEDUCTIONS

MISC FUND

MISC DEBS

EMPL. NO. : 9429

PAY : 11911

I.T. : 0

Misc. Fund : 300

Addl. Wages : 5000

NAME : ALATHA NSANGA VARTÉ

PAY : 0

CPF : 1000

DESIGNATION : DIR. DIRECTOR

PAY : 0

CPF REC : 00

DEPARTMENT : ALL INDIA RADIO

PAY : 0

FLI : 0

CITY : SHILLONG

PA : 0

DEMO : 0

IDENTITY CODE : 02/123

IR : 0

NSA : 245

BANK-DEBS : 1123/12

NSA : 0

NSA REC : 1000

ACCOUNT NO. : 101196/017547

NSA : 0

NSA REC : 0

HEAD OF A/C : 1201 PLAN

NSA : 0

NSA REC : 0

INC. NORTH : 0

NSA : 0

NSA REC : 0

* GPF BALANCE : 33500

NSA : 0

NSA REC : 0

NSL BALANCE : 1119

NSA : 0

NSA REC : 0

NSL BALANCE : 1123

NSA : 0

NSA REC : 0

OUTSTANDING LIABILITIES

CPF : 4000 INST-RECORD : 10

NSA : 1000-01 INST-RECORD : 10

* NOTE:- G.P.F. BALANCE INCLUDES INTEREST UP TO THE DATE 31-12-1999 AND ADVANCES & WITHDRAWALS UP TO NOVEMBER ' 1999.

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Annexure-2 series

PAY SLIP

PAD (IRLA) MINISTRY OF I&B

MONTH : Apr '2000

PARTICULARS

EMP. NO. : 9755
NAME : C. LALBIAKTLUANGA
DESIGNATION : ASSTT. STN. DIRECTOR
DEPARTMENT : ALL INDIA RADIO
CITY : SHILLONG
(DI/CT CODE : 02/123)
BANK-CODE : 123/ 8
ACCOUNT NO. : 5432
HEAD OF A/C : 2321 NON-PLAN
INC. MONTH : 1
* GPF BALANCE : 132346
EL BALANCE : 320
HPL BALANCE : 479

GROSS PAYMENTS

B.PAY : 10925
P.PAY : 0
S.PAY : 0
DP.PAY : 0
DA : 4152
IR : 330
HRA : 1639
CCA : 0
CEA : 0
TRAN.ALLW : 400
MISC PMTS : 300
TOTAL : 17745

DEDUCTIONS

I.T. : 0
GPF : 5000
GPF REC : 0
PLI : 0
CGHS : 0
HRR : 0
MCA REC : 0
HBA REC : 0
COM REC : 0
GR. INS. : 120
MISC DEDS : 7220
TOTAL : 12340

MISC PMTS

Hill Com.All : 300

MISC DEDS

Addl. Wages : 5000
CGE GIS : 2220

OUTSTANDING ADVANCES

NET PAY : RS. 5406

* NOTE:- G.P.F. BALANCE INCLUDES INTEREST UPTO THE YEAR 1998-1999 AND ADVANCES / WITHDRAWALS UPTO NOVEMBER ' 1999.

*Attended
Ann. Bk
delivered*

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Annexure-2 series

PAY SLIP

PAG(IRLA) MINISTRY OF IBS

MONTH : May 2000 ✓

PARTICULARS

EMP. NO. : 9755
NAME : C. LALBIAKTLUANGA
DESIGNATION : ASSTT. STN. DIRECTOR
DEPARTMENT : ALL INDIA RADIO
CITY : SHILLONG
(DT/CT CODE : 02/123)
BANK-CODE : 123/ S
ACCOUNT NO. : 13422
HEAD OF A/C : 2221 NON-PLAN
INC. MONTH : 1

GROSS PAYMENTS

B.PAY : 10925
P.PAY : 0
S.PAY : 0
DP.PAY : 0
DA : 4152
IR : 0
HRA : 1639
CCA : 0
CEA : 0
TRAN.ALLW : 400
MISC PMTS : 300
TOTAL : 17418
NET PAY : RS. 7296

DEDUCTIONS

I.T. : 0
GPF : 5000
GPF REC : 0
PLI : 0
CGHS : 0
HRR : 0
MCA REC : 0
HBA REC : 0
CDM REC : 0
GR. INS. : 120
MISC DEDS : 5000
TOTAL : 10120

MISC PMTS

Hill Com.All : 300

MISC DEDS

Addl. Wages : 5000

OUTSTANDING ADVANCES

* GPF BALANCE : 137346

SL BALANCE : 1220

HFL BALANCE : 479

* NOTE:- G.P.F. BALANCE INCLUDES INTEREST UPTO THE YEAR 1998-1999 AND ADVANCES / WITHDRAWALS UPTO NOVEMBER 1999.

Deduction begins from APRIL 2000

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Annexure-4 series

PAY SLIP

RAD (IRLA) MINISTRY OF I&B

MONTH : Apr '2000

PARTICULARS

EMP. NO. : 112711
NAME : M D N R DIENGDOH
DESIGNATION : PROG. EXECUTIVE
DEPARTMENT : ALL INDIA RADIO
CITY : SHILLONG
(BT/CT CODE : 02/123)
BANK-CODE : 1123/ 1
ACCOUNT NO. : 01190014323
HEAD OF A/C : 2221 NON-PLAN
INC. MONTH : 3
* GPF BALANCE : 300433
EL BALANCE : 282
HPL BALANCE : 398

GROSS PAYMENTS

B.PAY : 9500
P.PAY : 0
S.PAY : 0
DE.PAY : 0
DA : 3510
IR : 235
HRA : 1425
CCA : 0
CEA : 0
TRAN.ALLW : 300
MISC PMTS : 300
TOTAL : 15320

DEDUCTIONS

I.T. : 0
GPF : 2500
GPF REC : 0
FLI : 0
CGHS : 0
PRR : 0
NCA REC : 0
HBA REC : 0
CDH REC : 0
GR. INS. : 60
MISC DE DS : 4000
TOTAL : 6560

MISC PMTS

Mill Corr.All : 300

MISC DEDS

Addl. Wages : 4000

OUTSTANDING ADVANCES

NET PAY : RS. 8760

* NOTE:- G.P.F. BALANCE INCLUDES INTEREST UPTO THE YEAR 1998-1999 AND ADVANCES / WITHDRAWALS UPTO NOVEMBER ' 1999.

Attended
Mr. P. B. B.
Attended

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Annexure-4 series

PAY SLIP

NES

MONTH : May '2000

PAO (IRLA) MINISTRY OF I&B

PARTICULARS

EMP. NO. : 112711
NAME : M D N R DIENGDOH
DESIGNATION : PRDG. EXECUTIVE
DEPARTMENT : ALL INDIA RADIO
CITY : SHILLONG
(DT/CT CODE : 02/123)
BANK-CODE : 123/ 1
ACCOUNT NO. : 01190014323
HEAD OF A/C : 2321 NON-PLAN
INC. MONTH : 5
* GPF BALANCE : 302933
EL BALANCE : 282
HPL BALANCE : 1398

GROSS PAYMENTS

B.PAY : 9750
P.PAY : 0
S.PAY : 0
DP.PAY : 0
DA : 3703
IR : 0
HRA : 1423
CCA : 0
CEA : 0
TRAN.ALLW : 200
MISC PMTS : 300
TOTAL : 15418

DEDUCTIONS

I.T. : 0
GPF : 2500
GPF REC : 0
PLI : 0
CGHS : 0
HRR : 0
MCA REC : 0
HBA REC : 0
COM REC : 0
CR? INS. : 60
MISC DEDS : 4000
TOTAL : 6360

MISC PMTS

Hill Com.All : 300

MISC DEDS

Addl. Wages : 4000

OUTSTANDING ADVANCES

NET PAY : RS. 8858

* NOTE:- G.P.F. BALANCE INCLUDES INTEREST UPTO THE YEAR 1998-1999 AND ADVANCES / WITHDRAWALS UPTO NOVEMBER * 1999.

NO:SHG.7(5)/2000-01/AC/

Dated the 23rd March, 2001

To,

The Pay & Accounts Office,
(Shri Praveen Nandwana, DCA(PB)-by name),
Min. Of I & B,
AGCR Building, Indraprastha Estate,
NEW DELHI - 110 002

Subject:- Refund of Recovery of Special Duty Allowance with
reference to CAT, Guwahati Bench Division.

Reference:- CAT Guwahati Bench Division dated December, 22nd 2000.

Sir,

I respectfully beg to submit my application for favour of
your kind prompt action to refund the recovery of SDA upto 31.1.1999.
The points for favour of my application are:-

1. That as per Central Administrative Tribunal, Guwahati
Bench Division dated December 22nd, 2000 to original application No.
149 of 1999 (And 17 other original Application) page 12 Para 12, it is
clearly directed that. ("No recovery would be made by them of the amount
of SDA already paid to the applicants upto 31.1.1999. In case any
amount on account of payment of SDA has been recovered/withheld from
retiral dues, the same shall be refunded/released to the applicants
immediately").

2. That the judgement of the Supreme Court was passed
on 20.9.1994 but PAO IRLA on their own had continued to make the pay-
ment of SDA to the Gazatted Officers of All India Radio and Doordar-
shan Kendras till September 1999. Why is the sudden recovery without
prior information? As a matter of fact, even the recovery was done only
from A.I.R. Shillong, North Eastern Service, AIR, Shillong and A.I.R. Imphal
officers only.

I therefor request you in view of the above points, especial-
ly Sl.No.1- That Special Duty Allowance (SDA) recovered from me prior
to 31.1.1999 be refunded to me immediately.

My IRLA No. 9429. Zerox copy of the last pay slip, Zerox
copy of CAT Guwahati Bench Division dated December, 22nd 2000 and
Zerox copy of Directorate's letter is hereby enclosed for your kind
perusal.

- Enclo:- 1. A copy of CAT Guwahati Bench
Division dated December 22nd
2000.
2. A Zerox copy of last pay slip
3. A Zerox copy of Directorate's
letter.

Yours faithfully,

Shri 23/3/2001
(LALTHANSANGA VARTE)
DEPUTY DIRECTOR
A.I.R. SHILLONG

Attested
Ann: for
Adm: cate

Prasar Bharati
(Broadcasting Corporation of India)
All India Radio: Shillong

NO.SHG.7(5)/2000-2001/AC/-

Dated, Shillong, the 27/3/2001

To,
The Dy. Controller of Accounts,
(Shri) Praveen Nandwana, DCA(PB) by name,
Min of Information & Broadcasting,
AGCR Building, Indraprastha Estate,
New Delhi 110 002

Subject :- Refund of recovery of SDA with reference to CAT,
Guwahati Bench Division.

Reference:- CAT Guwahati Bench Division, dated December, 22nd, 2000.

Sir,

I beg to submit my application for favour of your kind prompt action to refund the recovery of SDA upto 31/1/1999, on the basis of the following points:-

- 1) That as per Central Administrative Tribunal, Guwahati Bench Division dated December 22nd, 2000 to original application NO. 149 of 1999 (And 17 other original application) page 12, para 12, it is clearly directed (No recovery would be made by them of the amount of SDA already paid to the applicants upto 31/1/1999. In case any amount on account of payment of SDA has been recovered/withheld from retiral dues, the same shall be refunded/released to the applicants immediately).
- 2) That the judgement of the Supreme Court was passed on 20/9/1994, but PAO IRLA on their own had continued to make the payment of SDA to the officers of All India Radio and Doordarshan Kendra till the North East till September, 1999. Recovery of SDA @ 5000/- was done from April, 2000 till February, 2001 without prior information and consultation of the officer concerned. As a matter of fact, even the recovery was done only from All India Radio and North Eastern Service All India Radio, Shillong, while some departments of Central Government are still enjoying SDA till today.

In view of the above points especially Sl.No.1-that SDA already recovered from me prior to 31/1/1999 be refunded to me immediately according to CAT decision referred to above.

My IRLA NO.09755, Xerox copy of the last pay slip, Xerox copy of CAT Guwahati Bench Division dated December, 22, 2000 and Xerox copy of Directorate's letter No 15/3/97-A&G(Vol:II) dated New Delhi, 13/3/2001 is hereby enclosed for your kind perusal.

Yours faithfully,

(C. Lalbiaktluanga)
By: Director
Rr: A.I.R: SHILLONG

Enclo:-

1. A copy of CAT Guwahati Bench Division dated December 22nd, 2000.
2. A xerox copy of last pay slip.
3. A xerox copy of Directorate's letter.

To
The Pay & Accounts Office
(Shri Jaiswal, Sr. P.A.O. by name)
Ministry of Information & B'casting
A.G.C.R. Building, Indraprastha Estate
New Delhi - 110002.

(Through Proper Channel)

Sub: Special duty allowance recovery.

Sir,

Reference to subject cited above, I would like to draw your kind attention in respect of over deduction from my salary for recovery of the same. It may be mentioned here that the amount to be recovered is Rs 44,407/- (Rupees Forty four thousand, four hundred seven) only, while recovery that has been made till May 2001 is Rs 70,000/- (Rupees Seventy thousand), at the rate of Rs 5,000/- (Rupees Five thousand) per month since April 2000.

It is also reliably learnt that such cases has been settled in the case of my colleagues working in the same office. This made me to anticipate of the same nature of settlement but unfortunately it was not so and on the contrary, deduction still continued till the last salary drawn i.e. for the month of May, 2001.

Hence, you are kindly requested to look into the matter and necessary adjustment of the over deduction may kindly be made at your earliest convenience.

Yours faithfully,

Dated, Shillong
08.06.2001.

(R. Giri)
Assistant Engineer
AIR Nongstoin (Shillong)
IRLA No. 12931.

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Annexure-5 series

To
The Pay & Accounts Officer
(Sh Madaswamy PAO by name.)
Ministry of Information and Broadcasting
Computer Section, IRLA Group
AGCR Building, Indraprastha Estate
New Delhi - 110002

SUBJECT : Refund of Recovery of Special duty Allowance with Reference to CAT.
Guwahati Bench decision.
REFERENCE: CAT Guwahati Bench Decision dated 22.2.00.

Sir,

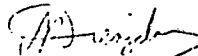
I respectfully beg to submit my application for favour of your kind perusal and necessary action to refund the recovery of SDA upto 31.1.99.

The points in favour of my application are as follows :-

- 1) That as per Central Administrative Tribunal Guwahati Bench Decision dated 22.02.00 to Original Application No 149 of 1999(& 17 other Original applications) Page 12 Para 12 it is clearly directed that " No recovery would be made by them of the amount of SDA already paid to the applicants upto 31.1.99 . In case any amount or account of payment of SDA has been recovered or withheld from retiral dues, the sum shall be refunded or released to the applicants immediately ".
- 2) That the judgement of the Supreme Court was passed on 20.9.94 but PAO IRLA on their own had continued to make payment of SDA to the Gazetted officers of All India Radio in the North Eastern region till Sept 99. Why is the sudden recovery without prior intimation ?

I therefore request you in view of the above points that special SDA recovered prior to 31.1.99 be refunded to me immediately. My IRLA NO is 12711. A Xerox copy of my last pay slip is enclosed also

Yours Faithfully


(M. N. R. DIENGDOH)

PROGRAMME EXECUTIVE

NORTH EASTERN SERVICE, AIR, SHILLONG

ENCLOSURES

- 1) A COPY OF CAT GUWAHATI
BENCH Decision dated 22.2.00.
- 2) PAY SLIP.

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Annexure-6 39

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

(O.As 217, 274, 207, 296 and 187 of 1998; 18, 21, 223, 23, 380 and
51 of 1999 AND 252, 203, 24, 21, 428 and 234 of 2000)

Date of decision - December 22, 2000.
THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN
THE HON'BLE MR. M.P. SINGH, ADMINISTRATIVE MEMBER.

1. Ordinance Depot Civil
Workers' Union,
Masimpur, P.O. Arunachal,
Dist Cachar, Assam.
2. Sri Badal Ch. Day,
President,
Ordinance Depot Civil
Workers' Union,
Masimpur,
P.O. Arunachal,
Dist Cachar, Assam.
3. Sri Badal Chandra Day,
Son of Late Birendra Chandra Day,
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. Sarker, 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 ...

Attended
Advocate

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. E.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.20014/3/83.2.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, Jorun 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 (Makhon Ch. Das and others - Vs - Union of India and others), (5) O.A. No.282/2000 (Rabi Shanker 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.203/2000 (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.297/93 (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.296/93 (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.34/2000 (Subodh Ch. Gupta and 56 others - Vs - Union of India and others). We, therefore, proceed to hear all the

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 and the applicant No.3 and 4 are the 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. ^{But} The Respondent No.3 issued the impugned order dated 12th January, 1999

wherein ...

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, 1994 (in Civil Appeal No.3281 of 1993) upheld the submission of the Government civilian employees, ^{and these} 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

the clause ...

the clause in the appointment order relating to all India transfer liability. It is also stated that the Apex Court 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 the applicants 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 pertaining 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 ...

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, 1993 thereby extending certain monetary and other benefits including "Special (Duty) Allowance" (in short SDA). While the provisions of the office memorandum dated 14th December, 1993 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, 1993 by the office memorandum dated 20th April, 1997 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.

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

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."

S. 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, 1993. 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.

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



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

22

correct ...

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 be 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. 8203-3213 (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 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.

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 retired 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)

TRUE COPY

प्रतिलिपि

Section Officer (J)

आयुक्त न्यायाधीश (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय

Guwahati Bench, Guwahati

गुवाहाटी बेंच, गुवाहाटी

16/12/2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

O.A.No. 115/2002

Filed by:-

Defina 19/8/02
(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

Shri L. Varte & Ors.

- Applicant

- Vs -

Union of India & Ors.

- Respondents

(Written statements filed for and on behalf of
Respondents No. 1, 2 & 3)

The written statements of the ab-ove-noted
respondents are as follows :

1. A copy of the O.A.No. 115/2002 (hereinafter referred to as the "application") has been served on the respondents. The respondents have gone through the same and noted the contents thereof.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.
3. That before traversing various paragraphs of the application, the respondents give a brief resume to the matter in issue in the application as under :

That the Govt. of India, vide Ministry of Finance, Department of Expenditure, its Office Memorandum No. 2014/3/83-E/IV dated 14-12-1983 granted certain incentives to the Central Govt. Civil employees posted in the N.E.Region. One amongst others such facility was the provisions for payment of Special Duty Allowance ("SDA"). These facilities

were extended only with the aim and objectives for attracting and retaining the services of competent "Officers" for service in the region. These provisions for payment of SDA became effective with effect from 1-11-1983 to 31-10-1986, subject to review. In implementing the said incentives, some departments fell into error and some departments sought clarifications in connection with matters which went to the Court. Under that circumstances, the Govt. of India brought out another Office Memorandum vide No. 2014/3/83/F.IV dated 20-4-1987 and thereby made it clear that mere clause of All India Transfer Liability laid down in the appointment letter as done almost in all cases, will not make an employee eligible for SDA. The Govt. of India, thereafter, further extended the said incentive of SDA to such government employees vide another Office Memorandum No. 2014/16/86/E.IV/E.II(B) dated 1-12-1988. In the meantime, a good number of cases came up before the Court regarding eligibility and claims of employees for payment of SDA. One such matter went up to the Hon'ble Supreme Court which was registered as Civil ^{Appeal} No. 3251/93. The Hon'ble Supreme Court passed the final judgement/order on 20-9-1994. By the said judgement, the Hon'ble Supreme Court, on the basis of the relevant Office Memorandum, held that the SDA, in question, was meant to attract persons from outside the N.E. Region to work in N.E. Region because

of inaccessibility and difficult terrain. It was also made clear that Central Govt. employees having All India transfer liability shall be granted SDA on posting to any station to the N.E. Region. By the said order, the said Civil Appeal was dismissed against the applicant employees. By the said judgement the Hon'ble Supreme Court also made it clear that the amount already paid to the employees shall not be recovered. After that, the Govt. of India, Ministry of Finance, Deptt. of Expenditure, by another Office Memorandum vide No. 11(3)/95-E.II(B) dated 12-1-1996 issued directions to all the Ministries and Departments of Govt. of India and also reiterated the terms given by the Hon'ble Supreme Court. Direction also was issued to recover the amount if so paid as SDA after 20-9-1994. In another case, which directly went to the Supreme Court, vide writ petition No. 794/96 filed by Sub-Inspector, S. K. Goswami & Ors. as Petitioner, the Hon'ble Supreme Court, vide its order dated 25-10-1996 held that the said Hon'ble Court made no distinction regarding the applicability of law and the liability criteria between group 'C' and 'D' employees and group 'A' and 'B' officers. The judgement was that way applicable for both group 'C' and 'D' employees as well as group 'A' and 'B' officers too. By that judgement, the Hon'ble Court also held that the payment after 20-9-1994 be recovered from the employees who were not entitled to SDA. The Ministry of Finance, vide ID No. 1204/E-II(B)/99 dated 30-3-2000 issued a clarification

to the doubts raised by SSB. According to the said clarification, it was clarified that an employee hailing from the N.E. Region selected on the basis of an All India recruitment ^{test} ~~case~~ and borne on the centralised cadre/service, common seniority on first appointment and posted in the N.E. Region having All India transfer liability, is not entitled to SDA. By the said clarification, it was also clarified that an employee who belongs to N.E. Region appointed as group 'C' and 'D' employee based on local recruitment when there were no cadre/rules for the post (prior to grant of SDA) but subsequently the post/cadre was centralised with common seniority/promotion list All India transfer liability etc. On his continuing in the N.E. Region though they can be transferred out to any place outside the N.E. region having All India transfer liability, shall also not be eligible for SDA. By the said clarification, it was also made clear that any payment of SDA after 20-9-94 shall be recovered from such employee.

In a recent decision rendered by Hon'ble Supreme Court dated 5-10-2001 in civil appeal No.7000/2001 filed by Union of India and another, the said Hon'ble Apex Court relied upon the earlier decision as is in Union of India & Ors. Vs S. Vijay Kumar & Ors. reported in 1994 (Suppl.3) SCC 649 and Union of India & Ors. Vs Executive Officers Association group 'C'

reported in 1995 (Suppl.1) SCC 757 and accordingly allowed the appeal in favour of Union of India. That is to say the respondent employees were not entitled to grant of SDA. However, the Hon'ble Apex Court by that decision held that whatever payment was made in any event such payment were not to be recovered from the non-entitled employees. In pursuance to the ^{/said} latest judgement, Govt. of India, Ministry of Finance, Deptt. of Expenditure, issued an Office Memorandum vide No. F.No.11(5)/97-E.II(B) dated 29-5-2002 thereby directed all the Ministries and Departments of Govt. of India that whatever payment for SDA that was made up to 5-10-2001 (that is the date of judgement) should not be recovered. Any payment made thereafter shall be recovered. By the said Office Memorandum, it was also made clear that recoveries, if any already made, need not be refunded.

The respondents crave leave of this Hon'ble Tribunal to allow them to produce and rely upon such office memorandum, letters, circular, judgement and order etc. as stated hereinabove, at the time of hearing of the case.

4. That with regard to the statements made in paragraph 1 of the application, the answering respondents state that the statements are baseless. In view of the facts as stated hereinabove, discontinuation of SDA and also the recovery from the non-entitled employees needs no notice or opportunity of any hearing.

5. That with regard to the statements made in paragraph 2, 4.1 and 4.2 of the application, the respondents have no comments to offer.

6. That with regard to the statements made in paragraph 4.3 of the application, the respondents state that the SDA

was paid to the applicants by mistake as they were not entitled to grant of SDA. However, on the basis of Hon'ble Supreme Court decision and the office memorandum issued by Govt. of India from time to time as stated hereinabove, the payment of SDA was stopped and also necessary recovery has been made strictly in terms of the law. Hence, such stoppage of SDA and also the consequent recovery cannot be termed as illegal or invalid at the instance of the applicants.

7. That with regard to the statements made in paragraphs 4.4, 4.5, 4.6 and 4.7 of the application, the respondents state that the criteria for entitlement of grant of SDA has been well defined and laid down by the Hon'ble Supreme Court. Hence, the contention of the applicants cannot sustain in law. The settled position of law is that ~~the~~ an official who is a resident of N.E. Region (defined area) and has been posted in the N.E. Region and also has not been transferred to other region from N.E. Region and thereafter reposted to N.E. Region, such official are not entitled to grant of SDA. The statement of facts detailing the service antecedents, transfer and posting, residents etc. pertaining to the applicants are shown separately in a statement based on their service record available with the department. From the said statement, it is indicative that the applicants are resident of N.E. Region and they are posted in N.E. Region and continued all along in the N.E. Region. Therefore, they are not entitled to grant of SDA under the provisions of rules and the law.

A copy of the such statement based on service book and personnel file of the respective officers /applicants are annexed as Annexure - R-I. ..7/-

8. That with regard to the statements made in paragraph 4.8, the answering respondents state that these are matter of records relating to the applicants. Nothing is admitted which are not supported by records or beyond such records.

9. That with regard to the statements made in paragraphs 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19 and 4.20, the respondents reiterate and reassert the foregoing statements and say that by stopping payment of SDA and also making the recovery, the respondents acted as per provisions of law and there was no illegality in doing so.

10. That with regard to the statements made in paragraphs 4.21, 4.22 and 4.23, the respondents state that the judgement and order passed in OA No. 149/99 (series) by the Hon'ble Central Administrative Tribunal, Guwahati Bench, has been over-ridden by the Hon'ble Apex Court decision as cited hereinabove. Hence, there is no relevancy so far the instant cause of action is concerned.

11. That with regard to the statements made in paragraph 4.24 and 4.25, the answering respondents reiterate and reassert the foregoing statements and state that they are not entitled to grant of SDA and the recovery so far made need not be refunded as per Govt. of India office memorandum dated 29-5-2002.

12. That with regard to the statements made in paragraphs 5.1 to 5.6 of the application, the answering respondents state that in view of the facts and circumstances of the case and the provisions of law, the grounds shown by the applicants are not tenable in law and hence the application is liable to be dismissed with cost.

13. That with regard to the statements made in paragraphs 6 and 7 of the application, the respondents have no comments to offer.

14. That with regard to the statements made in paragraphs 8.1, 8.2, 8.3, 8.4 and 9 of the application, the answering respondents state that under the facts and circumstances of the case and also the provisions of law, the applicants are not entitled to any ~~action of~~ relief whatsoever as prayed for and the application is liable to be dismissed with cost being devoid of any merit.


In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the record and after hearing the parties and perusing the record shall also be pleased to dismiss this application with cost.

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

VERIFICATION

I, Shri L. P. Yolmo, presently
working as Station Director, in the Office
of the Station Director All India Radio,
Shillong, being duly authorised and competent ^{to} sign this
Verification, do hereby solemnly affirm and state that the
statements made in paragraphs 1, 2, 4, 5, 6, 8 to 13 and 14 - -
are true to my knowledge and
belief, those made in paragraphs 3 and 7 - - -
being matter of records are true to my
information derived therefrom and the rest are my humble
submission before this Hon'ble Tribunal. I have not
suppressed any material facts.

And I sign this Verification on this, the 16th
day of August, 2002 at Guwahati.


(Signature)

DEPONENT

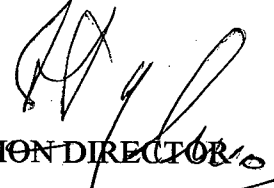

(Station Director)
Station Director,
All India Radio, Shillong.

STATEMENT OF OFFICERS SHOWING THEIR TRANSFER AND POSTING IN THE NORTH EASTERN REGION (DEFINED AREA) SINCE THEIR INTIAL APPOINTMENT.
(O.A.No. 115/2002 dated 26.04.2002 filed by Shri Lalthansanga Varte, Deputy Director, Shri C. Lalbiaktluanga, Deputy Director, Shri R.Giri, Assistant Engineer,
Md. Naseer Rafique Diengdoh, PEX AIR, Shillong V/S OUI regarding recovery of special Duty Allowance.

| Sl. No | Name of Employee | Designation | Initial Appointment | | If transferred from outside toNER | | | If transferred from NER to outside & re- transferred | | | Whether resident of NER | REMARKS |
|--------|-------------------------|-----------------|---------------------|---------------|-----------------------------------|-------|----|--|---------------------|----|---------------------------------|---------|
| | | | Date | Place | Date | Place | | Retransferred date | Retransferred Place | | If yes, then indicate the place | |
| | | | | | | From | To | | From | To | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 1 | Shri Lalthansanga Varte | Deputy Director | 27.09.80 | (PEX) Aizawl | No | No | No | No | No | No | Yes Aizawl (Mizoram) | |
| 2 | Shri C.Lalbiaktluanga | Deputy Director | 02.03.82 | (PEX) Aizawl | No | No | No | No | No | No | Yes Aithur (Mizoram) | |
| 3 | Shri N.R. Diengdoh | Prog. Executive | 10.02.78 | (PA) Shillong | No | No | No | No | No | No | Yes Shillong (Meghalaya) | |
| 4 | Shri R.Giri | Asstt. Engineer | 22.05.76 | (EA) Shillong | No | No | No | No | No | No | Yes Shillong (Meghalaya) | |

Certified that the above data and facts are based on the Service Book/Personal files/Bio-Data of the officers concerned.


ASSISTANT
Assistant
ALL INDIA RADIO
SHILLONG.


STATION DIRECTOR

Station Director
आफाशवाणी, शिल्लॉग
ALL India R. & T. Shillong