

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 360/2002

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SECTION OFFICER (Judl.)

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI
....

ORDER SHEET

Original Application No : 360 / 2002
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant (s) Bikash Choudhury

Respondent (s) W/O 2 ON -Vs-

Advocate for the Applicant (s) Mu Adil Ahmed

Advocate for the Respondent(s) CGSC B.C. Pathak for B-Pathak Respdt 5

Notes of the Registry	Date	Order of the Tribunal
<p>This is application in form C. F. for Rs. 50/- deposited vide IP No. <u>79</u> <u>575395</u> Dated <u>8/10/2002</u></p> <p>By, Registrar <u>rvs</u> <u>11/10/02</u></p> <p><u>Sd/-</u> <u>Notice prepared</u> <u>and sent to D/S for filing</u> <u>the Respondent No 1 to 4</u> <u>to Regd. A.D.</u> <u>8/11/02</u></p> <p><u>8/No 3255 to 58</u> <u>dt 4/12</u></p>	<p>8.11.02</p> <p>lm</p> <p>13.12.02</p> <p>mb</p>	<p>Heard learned counsel for the parties.</p> <p>Issue notice on the respon- dents to show cause as to why the application shall not be admitted. Returnable by four week List on 13.12.02 for Admission.</p> <p><u>1c</u> <u>Wsharma</u> <u>Vice-Chairman</u> Member</p> <p>Await service report. List on 7.1.2003 for admission.</p> <p><u>Vice-Chairman</u></p>

O.A.360/2002

No. reply has been
filed.

7.1.2003

Present:- The Hon'ble Mr. Justice
V.S. Aggarwal, Chairman
The Hon'ble Mr. K.K.
Sharma, Member (A).

3

12.12.02

No. reply has been
filed.

3

6.1.03

The learned counsel for the respondents Mr. B.C. Pathak, Addl. C.G.S.C. states that he has received the necessary instruction and shall be filing their reply/ written statement to the Original Application within four weeks. Rejoinder, if any, should be filed within next one week.

List the case for admission on 13.2.2003.

10.3.03

W/s submitted

by respondents nos. 1, 2,
3 & 4.

K. K. Sharma

Member

V. S. Aggarwal

Chairman

bb

13.2.2003

Put up again on 12.3.2003 to enable the respondents to file reply on the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.

24.4.03

Rejoinder submitted
by the applicant.

mb

12.3.2003

Written statement has been filed by the respondents. Considering the pleadings, the application is admitted. No further notice need to be issued. List the matter for hearing on 25.4.2003. The applicant may file rejoinder, if any within two weeks from today.

Vice-Chairman

mb

25.4.2003

List again on 25.5.2003 for hearing. In the meantime, the respondents may obtain necessary instructions on the matter.

Vice-Chairman

Vice-Chairman

14.5.2003

Mr. A.K. Choudhury, learned Addl. C.G.S.C. stated that the case was entrusted Sri B.C. Pathak, learned Addl. C.G.S.C. who is absent today and prayed for little accommodation. The case is accordingly, adjourned. List again on 27.6.2003 for hearing.


Vice-Chairman

mb

27.6.2003

On the prayer of learned counsel for the applicant the case is adjourned. List again on 8.8.2003 for hearing.


Vice-Chairman

mb

8.8.2003

Adjourned on the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents. List the matter on 22.8.2003 for hearing.


Vice-Chairman

mb

22.8.2003

On the prayer of learned counsel for both the parties, the case is adjourned. List again on 29.8.2003 for hearing.


Vice-Chairman

mb


29.8.03

On the prayer of learned counsel for the parties case is adjourned to 12.9.03 for hearing.



Vice-Chairman

lm

Wks and Regoinder
has been filed.


26.6.03

The case is ready
for hearing on
regard Wks and
Regoinder


7.8.03

12.9.2003 Present: The Hon'ble Mr.K.V.Prahalada
Administrative Member

List the case again on 24.10.2003
for hearing.


Member

bb

24.10.03 There is no Bench
today. Adj. to 28.10.03.

1870
m

28.10.03 Put up again on 21.11.03 for
hearing on the prayer of Mr B.C.Pathak,
learned Addl.C.G.S.C.


Vice-Chairman

12-12-03

pg

Ready for hearing.

21.11.03 no S/B today.
Adj. to 15.12.03.

1870
m

15.12.03 There was a reference.
Adj. to 7.1.04.

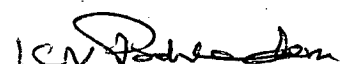
1870
m

7.1.2004 On the prayer of Mr. A. Ahmed,
learned counsel for the applicant, the
case is adjourned. List on 9.2.2004
for hearing.

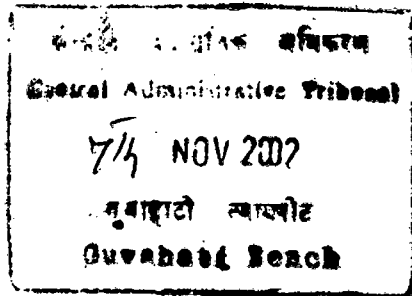

Member (A)

mb

1.3.2004 On the plea of the learned counsel
for the applicant the case is adjourned
to 21.4.04 for hearing. Mr B.C. Pathak,
learned Addl. C.G.S.C. is present.


Member

nkm



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 360 OF 2002.

BETWEEN

Sri Bikash Choudhury -Applicant.

-Versus-

Union of India & Others - Respondents.

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Filed by

Advocate.

Choudhury

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

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

ORIGINAL APPLICATION NO. 360 OF 2002.

B E T W E E N

Sri Bikash Choudhury,
Farm Assistant, (T-4),
Central Plantation Crop Research
Institute, (RC) (Indian Council of
Agricultural Research) Kahikuchi,
Guwahati-781017.

-AND-

- 1] The Union of India represented
by the Secretary to the Government
of India, Ministry of Agriculture,
New Delhi.
- 2] The Director General,
Indian Council of Agriculture
Research Krishi Bhawan, New Delhi.
- 3] The Secretary,
Indian Council of Agricultural

Filed by
Sri Bikash Choudhury
Applicant
through [Signature]
(Adv. AHMED)
February

[Signature]

Research Krishi Bhawan, New Delhi.

41 The Director,
Central Plantation Crops
Research Institute Indian
Council of Agricultural
Research, Kasaragod-671124,
Kerala.

-Respondents.

DETAILS OF THE APPLICATION:

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

The application is made for non-implementation of Memo No. 20014/3/83-4 dated 14-12-83 and F No. 11(2)/97-E II(B) Government of India, Ministry of Expenditure, New Delhi dated July 22 1998, regarding payment of Special Duty Allowance for Central Government Employees serving in the States of North Eastern Region as per recommendation of Fifth Central Pay Commission.

2) JURISDICTION OF THE TRIBUNAL:

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

Bhaskar

3) LIMITATION:

The applicant further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4) FACTS OF THE CASE:

4.1 That the applicant is a citizen of India and as such, he is entitled to all the rights and privileges guaranteed under the Constitution of India.

4.2 That your applicant begs to state that he is working under the Respondent No. 4 as Farm Assistant, (T-4) in the office of the Director, Central Plantation Crops Research Institute, (RC) (Indian Council of Agricultural Research) Kahikuchi, Guwahati-781017. He is a Central Government Employees belongs to Group-C.

4.3 That your applicant begs to state that he was recruited in Port Blair, Andaman and he was transferred to Kahikuchi (Assam) vide F. No. 4(166)/96-Estt. Dated 31-08-1999 issued by the Senior Administrative Officer, Central Plantation Crops Research Institute (Indian Council of Agricultural Research) Kasaragod, Kerala. In the said transfer order some terms and conditions were

Chowdhury

imposed by the Respondents to the applicant. In Paragraph No. 2 of the said transfer order it has been stated by the Respondents that the Head quarter of the applicant will be at C P C R I research center, Kahikuchi, Assam for the present but liable to be work anywhere in the country under ICAR. Accordingly, your applicant ^{accepted} the said transfer order and now he has been working at Kahikuchi, Assam. L1

Annexure-A is the photocopy of the transfer order dated 31-08-1999 issued by the Respondents to the applicant.

4.4 That your applicant begs to state 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 at the rate of Rs. 25% of the basic pay subject to ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. The relevant portion of the office Memorandum dated 14.12.1983 is quoted below:

Chandru

*** (iii) Special (Duty) Allowance:**

Central Government Civilian employee who have all India Transfer Liability will be granted a Special (Duty) Allowance at the rate of Rs. 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North East Region. Such of these employees who are exempted from payment of Income Tax, will however not be eligible for the Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any Special Pay and for allowances already being drawn subject to the condition that the total of such Special (Duty) Allowance plus Special Deputation (Duty) Allowance will not exceed Rs. 400/- per month. Special Allowance like Special Compensatory (Remote) Locality Allowance, Construction Allowance and Project Allowance will be drawn separately."

The Govt. of India, Ministry of Finance, Department of Expenditure vide its Office Memorandum No. F. No. 11(2)/97-E-II(8) dated 22-07-1998 continued the said facilities as per recommendation of the Fifth Central Pay Commission.

Chowdhury

12

b

An Extract of Office Memorandum dated 14-12-1983 is annexed hereto and marked as Annexure- B.

Annexure-C is the photocopy of Office Memorandum No. F. No. 11(2)/97-E-II(B) dated 22-07-1998.

4.5] That your applicant begs to state that with reference to the said Office Memorandum dated 14-12-83 and 22-07-1998 your applicant had approached the appropriate authorities for payment of Special (Duty) Allowance in terms of said Office Memorandum Dated 14-12-83 and 22-12-1998 as the applicant fulfilled the criteria laid down in the Office Memo. Dated 14-12-83 and 22-12-1998. your applicant demanded for payment of Special (Duty) Allowance before the Respondents. He has also filed representations in this regard but the authorities did not pay the Special Duty Allowance to the applicant. Hence, he has been compelled to approach this Hon'ble Tribunal for seeking justice.

Annexure-D & E are the photocopies of the representations dated 11-05-2001 and 19-02-2002 filed by the applicant.

4.6 That your applicant begs to state that he is saddled with All India Transfer Liability in

Shankar

terms of his offer of appointment and with the said liabilities he accepted the transfer order dated 31-08-1999 as per paragraph No. 2 of the above said transfer order. It is to be stated that, he is liable to be transferred outside the North Eastern Region. Therefore, the applicant is in practice saddled with all India Transfer Liability and in terms of Office Memorandum dated 14-12-1983, ^{As such} he is legally entitled for grant of Special (Duty) Allowances. [

4.7 That your applicants beg state that as per cabinate Secretariat letter No. 20-12-1999-EA-1-1799 dated 02-05-2000 it has been clearly stated that an employee hailing from N E Region, posted to N E Region from outside will be entitled for Special Duty Allowance.

Annexure- F is the photocopy of letter No. 20-12-1999-EA-1-1799 dated 02-05-2000.

4.8 That the applicant begs to state that he was recruited outside of North Eastern Region and he was transferred to North Eastern Region. As such, he is entitled for ~~pay~~ of Special Duty Allowance as per Cabinet Secretariat Clarification dated 02-05-2000.

Chowdhury

4.9] That your applicant begs to state that similarly situated persons i.e., employees of the Coconut Development Board, under the Ministry of Agriculture, who are posted in Assam, have been drawing Special Duty Allowance.

Annexure-6 is the photocopy of certificate of payment of S D A to the employees of above said Board.

4.10] That your applicants state that he has fulfilled all the criteria laid down in the aforesaid Memorandum regarding payment of Special duty allowance, hence the Respondents can not deny the same to the applicant without any justification.

4.11] That your applicants submit that there is no other alternative remedy and the remedy sought for if granted would be just, adequate and proper.

4.12] That this application is filed bona fide and for the cause of justice.

5) GROUND'S FOR RELIEF WITH LEGAL PROVISIONS:

5.1] For that on the reason and facts which are narrated above the action of the Respondents is prima facie illegal and without jurisdiction.

Chowdhury

- 5.2] For that the action of the Respondents are mala fide and illegal and with a motive behind.
- 5.3] For that the applicant is practically having all India Transfer liability and he has been transferred from outside of the North Eastern Region.
- 5.4] For that that the applicant^{is} ~~are~~ having practically All India transfer liability. As such, ~~they~~ ^{is} ~~are~~ legally entitled to draw the Special (Duty) Allowance as per Office Memorandum dated 14-12-83, 01-12-88 and 22-07-1998.
- 5.5] For that there is no justification in denying the said benefit to the applicant and denial has resulted in violation of Articles 14 and 16 of the Constitution of India.
- 5.6] For that similarly situated persons who are working in the same Ministry have already been given the reliefs but the Respondents are not giving the same reliefs to the instant applicant. As such, the action of the Respondents are bad in the eye of law and also not maintainable.

Chandhury

5.7] For that being a model employer the Respondents can not deny the same benefits to the instant applicant which have been granted to other similarly situated persons. As such, the Respondents should extend this benefit to the instant applicant without approaching this Hon'ble Tribunal.

5.8] For that in any view of the matter the action of the Respondents are not sustainable in the eye of law.

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

6) DETAIL REMEDY EXHAUSTED:

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

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

Bhowhary

The applicant further declares that he have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8) RELIEF PRAYED FOR:

Under the facts and circumstances stated above your Lordships may be pleased to admit this petition, call for the records of the case, issue notice to the Respondents as to why the relief and reliefs 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 please to direct the Respondents to give the following reliefs:

- 8.1 That the Hon'ble Tribunal may be pleased to direct the Respondents to Grant the Special Duty Allowance to the Applicant in terms of Office Memorandum F. No. 11(2)/1997-E-II(B) Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi dated 22-07-1998.

Chowdhury

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8.2 To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.

8.3 Cost of the application.

9) INTERIM ORDER PRAYED FOR:

No interim order is prayed before this Hon'ble Tribunal at this stage.

10) APPLICATION IS FILED THROUGH ADVOCATE.

11) PARTICULARS OF I.P.O./~~BANK DRAFT~~

I.P.O.No./~~Bank Draft~~: 76575395

Date of Issue :

8.10.2002

Issued from :

GUWAHATI

Payable at :

GUWAHATI

12) LIST OF ENCLOSURES:

As stated in index.

-Verification.

Bhaskar

Verification

I, Sri Bikash Choudhury, Farm Assistant, (T-4), Central Plantation Crop Research Institute, (RC) (Indian Council of Agricultural Research) Kahikuchi, Guwahati-781017 do hereby verify the statements made in accompanying application and in paragraphs 4.1, 4.2, 4.6, 4.8, 4.10,

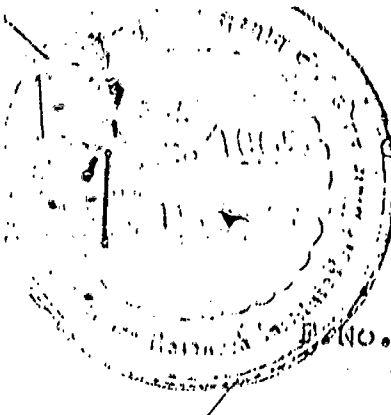
are true to my knowledge and those made in paragraphs 4.3, 4.4, 4.5, 4.7, 4.9

are true to my information being matter of records and which I believe to be true and those made in paragraph 5 are true to my legal advise and I have not suppressed any material facts.

I signed this verification on this 7th day of ~~Nov~~ 2002 at Guwahati.

Bikash Choudhury

Declarant.



-14-

ANNEXURE - A

CENTRAL PLANTATION CROPS RESEARCH INSTITUTE
(Indian Council of Agricultural Research)
Kasaragod-671 124, Kerala.

No. 4(166)/96-Estt--.

Dated 31st August, 1999.

The Director,
Central Agricultural Research Institute,
Andaman-Nicobar & Lakshdweep Group of Islands,
P.B. No. 181,
PORT BLAIR - 744 101.

Sub: Inter-Institutional transfer of Sri Bikash
Showdhury, T4(Training Asst)--reg.

Ref: Your letter No. 2-1(21)/CARI/KVK/94/829
dated 19.5.99.

.....

15/8
10/9/99
Sir,

With reference to the above, it is informed that the request of Sri Bikash Chowdhury, T4 (Training Assistant) of that Institute for Inter-Institutional transfer to this Institute has been accepted by the Competent Authority on the following terms and conditions:

- 01 He will be ranked junior to all the Technical Assistants/Farm Assistants at this Institute as on the date of his joining, i.e. T-II-3
- 02 His headquarters will be at CPCRI Research Centre, Kahikuchi, Assam for the present, but liable to work anywhere in the country under ICAR.
- 03 He will not be entitled to transfer TA, joining time etc., as the transfer is at his own request.
- 04 He is adjusted against the vacant post of T-II-3 (Farm Assistant) at CPCRI Research Centre, Kahikuchi and has to work in that capacity.
- 05 As the presence of the Technical Assistant is essential at the Research Centre, he should stay in the Farm Campus for which he will be provided with a residential quarters.
- 06 He will be governed by all other rules and conditions issued by the Council from time to time pertaining to Inter-Institutional transfer.

.....2)

Attested
Advocate

✓
KVK please
Estt.
14/9/99

If the above terms and conditions are acceptable to Sri Bikash Chowdhury, an undertaking to that effect may be obtained from him and forwarded to this Office (CPCRI, Kasaragod) and he may be relieved of his duties at that Institute with direction to report for duty at CPCRI Research Centre, Kalkuchi, Assam. Necessary transfer order may also please be issued at that end.

Yours faithfully,

(Signature)
(C MURALIDHARAN)
Senior Administrative Officer

Copy to:

- 01 The Scientist-in-charge, CPCRI Research Centre, Kalkuchi, Assam.
- 02 Senior Finance & Accounts Officer, CPCRI, Kasaragod.
- 03 Asst Administrative Officer (Stores/CDN/Bills) CPCRI, Kasaragod.
- 04 Confidential Section/PMF/Personal file (Tech.)

SENIOR ADMINISTRATIVE OFFICER

ravi/

-10001-

(Signature)
1
Accounts

23-16-12

Annexure-1 (Extract)

ANNEXURE-B

6

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

New Delhi, the 14th Dec '83

OFFICE MEMO

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

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

- i) Tenure of posting/deputation.
x x x x x x x x
- ii) Weight-age for Central deputation/training abroad and special mention in Confidential Records.
x x x x x x x
- iii) Special (Duty) Allowance :

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

Contd..

Admte

20-17-26
Annexure A (Contd.)

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

xxxxxxx

xxxxxxxxx

xxxxxxxxxxx

xxxxxxxxxxx

xxxxxxxxxxx

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

[Signature]
Admte

New Delhi, Dated July 22, 1998.

OFFICE MEMORANDUM

Subject: Allowances and Special Facilities for Civilian Employees of the Central Government serving in the States and Union Territories of the North-Eastern Region and in the Andaman & Nicobar and Lakshadweep Groups of Islands - Recommendations of the Fifth Central Pay Commission.

With a view to attracting and retaining competent officers for service in the North-Eastern Region, comprising the territories of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, orders were issued in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 extending certain allowances and other facilities to the Civilian Central Government employees serving in this region. In terms of paragraph 2 thereof, these orders other than those contained in paragraph 1(iv) *ibid.* were also to apply mutatis mutandis to the Civilian Central Government employees posted to the Andaman & Nicobar Islands. These were further extended to the Central Government employees posted to the Lakshadweep Islands in this Ministry's O.M. of even number dated March 30, 1984. The allowances and facilities were further liberalised in this Ministry's O.M. No. 20014/16/86/E.IV/E.II(B) dated December 1, 1988 and were also extended to the Central Government employees posted to the North Eastern Council when stationed in the North-Eastern Region.

2. The Fifth Central Pay Commission have made certain recommendations suggesting further improvements in the allowances and facilities admissible to the Central Government employees, including Officers of the All India Services, posted in the North-Eastern Region. They have further recommended that these may also be extended to the Central Government employees, including Officers of the All India Services, posted in Sikkim. The recommendations of the Commission have been considered by the Government and the President is now pleased to decide as follows:

(i) Tenure of Posting/Deputation

The provisions in regard to tenure of posting/deputation contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read with O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(ii) Weightage for Central Deputations/Training Abroad and Special Mention In Confidential Records

The provisions contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read with O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(iii) Special [Duty] Allowance

Central Government Civilian employees having an "All India Transfer Liability" and posted to the specified Territories in the North-Eastern Region shall be granted the Special [Duty] Allowance at the rate of 12.5 per cent of their basic pay as prescribed in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, but without any ceiling on its quantum. In other words, the ceiling of Rs 1,000 per month currently in force shall no longer be applicable and the condition that the aggregate of the Special [Duty] Allowance plus Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs 1,000 per month shall also be dispensed with. Other terms and conditions governing the grant of this Allowance shall, however, continue to be applicable.

In terms of the orders contained in this Ministry's O.M. No. 20022/2/88-E.II(B) dated May 24, 1989, Central Government Civilian employees having an "All India Transfer Liability" and posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands are presently entitled to an Island Special Allowance at varying rates in lieu of the Special [Duty] Allowance admissible in the North-Eastern Region. This Allowance shall continue to be admissible to the specified category of Central Government employees at the same rates as prescribed for the different specified areas in the O.M. dated May 24, 1989, but without any ceiling on its quantum. This Allowance shall also henceforth be termed as Island Special (Duty) Allowance. Separate orders in regard to this Allowance have been issued in this Ministry's O.M. No. 12(1)/98-E.II(B) dated July 17, 1998.

Attention is also invited in this connection to the clarificatory orders contained in this Ministry's O.M. No. 11(3)/95-E.II(B) dated January 12, 1996, which shall continue to be applicable not only in respect of the Central Government employees posted to serve in the North-Eastern Region but also to those posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands.

Attache
Jil
Advocate

(iv) Special Compensatory Allowances

Orders in regard to revision of the rates of various Special Compensatory Allowances, such as Remote Locality Allowance, Bad Climate Allowance, Tribal Area Allowance, Composite Hill Compensatory Allowance, etc., which are location-specific, have either been separately issued or are under issue based on the Government decisions on the recommendations of the Fifth Central Pay Commission relating to these allowances. These orders shall apply to the eligible Central Government employees posted in the specified localities in the North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands, depending on the area(s) of their posting and subject to the observance of the terms and conditions specified therein. Such of those employees who are entitled to the Special [Duty] Allowance or the Island [Special Duty] Allowance shall also be entitled, in addition, to the Special Compensatory Allowance(s) as admissible to them in terms of these separate orders.

Central Government employees entitled to Special Compensatory Allowances, separate orders in respect of which are yet to be issued, will continue to draw such allowances at the existing rates with reference to the 'notional' pay which they would have drawn in the applicable pre-revised scales of pay but for the introduction of the corresponding revised scales till the revised orders are issued on the basis of the recommendations of the Fifth Central Pay Commission and the Government decisions thereon.

(v) Travelling Allowance on First Appointment

The existing concessions as provided in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 and further liberalised in O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(vi) Travelling Allowance for Journeys on Transfer; Road Mileage for Transportation of Personal Effects on Transfer; Joining Time with Leave

The existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 shall continue to be applicable.

(vii) Leave Travel Concession

In terms of the existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, the following options are available to a government servant who leaves his family behind at the old headquarters or another selected place of residence, and who has not availed of transfer travelling allowance for the family :

(a) the government servant can avail of the leave travel concession for journey to the Home Town once in a block period of two years under the normal Leave Travel Concession Rules;

OR

(b) in lieu thereof, the government servant can avail of the facility for himself/herself to travel once a year from the station of posting to the Home Town or the place where the family is residing and for the family
• [restricted only to the spouse and two dependent children of age up to 18 years in respect of sons and up to 24 years in respect of daughters] also to travel once a year to visit the government servant at the station of posting.

These special provisions shall continue to be applicable.

In addition, Central Government employees and their families posted in these territories shall be entitled to avail of the Leave Travel Concession, in emergencies, on two additional occasions during their entire service career. This shall be termed as "Emergency Passage Concession" and is intended to enable the Central Government employees and/or their families [spouse and two dependent children] to travel either to the home town or the station of posting in an emergency. This shall be over and above the normal entitlements of the employees in terms of the O.M. dated December 14, 1983, and the two additional passages under the Emergency Passage Concession shall be availed of by the entitled mode and class of travel as admissible under the normal Leave Travel Concession Rules.

Further, in modification of the orders contained in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, Officers drawing pay of Rs 13,500 and above and their families, i.e. spouse and two dependent children [up to 18 years in respect of sons and up to 24 years in respect of daughters] will be permitted to travel by air on Leave Travel Concession between Agartala/Aizawl/Imphal/Lilabari/Silchar in the North East and Calcutta and vice versa; between Port Blair in the Andaman & Nicobar Islands and Calcutta/Madras and vice versa; and between Kavaratti in the Lakshadweep Islands and Cochin and vice versa.

Amal
JS *Amal*

(viii) Children Education Allowance and Hostel Subsidy

The existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 shall continue to be applicable. The rates of Children Education Allowance and Hostel Subsidy having been revised in the Department of Personnel & Training O.M. No. 21017/1/97-Est.(Allowances) dated June 12, 1998, the Allowance and Subsidy shall be payable at the revised monthly rates of Rs. 100 and Rs. 300 respectively per child.

(ix) Retention of Government Accommodation at the Last Station of Posting

The facility of retention of Government accommodation at the last station of posting by the Central Government employees posted to the specified territories and whose families continue to stay at that station is available in terms of the orders contained in the erstwhile Ministry of Works & Housing O.M. No. 12035/24/77-Vol. VI dated February 12, 1984, as amended from time to time. This facility shall continue to be available to the eligible Central Government employees posted in the North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands. In partial modification of these orders, Licence Fee for the accommodation so retained will be recoverable at the applicable normal rates in cases where the accommodation is below the type to which the employee is entitled to and at one and a half times the applicable normal rates in cases where the entitled type of accommodation has been retained. The facility of retention of Government accommodation at the last station of posting will also be admissible for a period of three years beyond the normal permissible period for retention of Government accommodation prescribed in the Rules.

(x) House Rent Allowance for Employees in Occupation of Hired Private Accommodation

The orders contained in this Ministry's O.M. No. 11016/1/E.II(B)/84 dated March 29, 1984, and extended in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(xi) Retention of Telephone Facility at the Last Station of Posting

As provided in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, Central Government employees who are eligible for residential telephones may be permitted to retain their residential telephone at their last station of posting, provided the rental and all other charges are paid by the concerned employees themselves.

(xii) Medical Facilities

Families and the eligible dependants of Central Government employees who stay behind at the previous stations of posting on the employees being posted to the specified territories shall continue to be eligible to avail of CGHS facilities at stations where such facilities are available. Detailed orders in this regard will be issued by the Ministry of Health & Family Welfare.

3. The President is also pleased to decide that these orders, in so far as they relate to the Central Government employees posted in the North-Eastern Region, shall also be applicable *mutatis mutandis* to the Civilian Central Government employees, including Officers of the All India Services, posted to Sikkim.

4. These orders will take effect from August 1, 1997.

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

6. Hindi version will follow.

N. Sunder Rajan

(N.SUNDER RAJAN)

Joint Secretary to the Government of India

To

All Ministries/Department of the Government of India [As per standard Distribution List]

Copy [with usual number of spare copies] forwarded to C&AG, UPSC, etc. [As per standard Endorsement List]

Copy also forwarded to Chief Secretary, Andaman & Nicobar Islands and Administrator, Lakshadweep.

Advised
Advised

To
The Director,
Central Plantation Crops Research Institute,
Kasaragod - 671 124.

Through : Proper channel.

Sub:- Payment of Special Duty Allowance (SDA) - reg.

Sir,

With most respectfully I beg to state the few following lines before your honour for kind consideration and necessary action thereof.

That Sir, I am working at CPCRI, Research Centre, Kahikuchi, Guwahati, Assam under IIE Region. I have earlier worked in the Central Agril. Research Institute (CARI), Port Blair, Andaman. My appointment has been made by the CARI, Port Blair situated at Andaman. Now I have been transferred from outside of IIE Region to your Research Centre at Kahikuchi under IIE Region on inter-Institutional Transfer basis.

That Sir, the present representation is relating to release of my SDA. I have through this application praying before your honour to for taking necessary steps for payment of my SDA. In the following paragraphs, I have stated some of the facts as well as grounds for your kindself's sympathetic action for release for such SDA.

That Sir, as stated above presently I am an employee of CPCRI, Research Centre, Kahikuchi under IIE Region and my this organisation is a sister concern of CPCRI, Kasaragod, Kerala under ICAR. I am having All India Transfer Liability which is mentioned in my transfer order which is issued from CPCRI, Kasaragod vide order No.4(166)/96-Extt.dt.31-03-1999.

The fact, the employee of ICAR Research Complex for IIE Region, Barapani, Shillong are getting SDA, but I have been deprived of the said benefit. It is noteworthy to mention here that Shri H.C.Das, T-3, who was transfer from ICAR Research Complex for IIE Region, Barapani, Shillong to CPCRI, Research Centre, Kahikuchi like me for this I am enclosed herewith his LPC as a relevant document.

That Sir, it is also noteworthy to mention here that the employees of Central Inland Capture Fisheries Research, Guwahati Division which HQ at Barakpur, 24-Paraganas, West Bengal under ICAR and Regional Low Land Rice Research Station, Gorua, Guwahati which HQ at Cuttack, Orissa are getting SDA which is also a sister concerned Dept. of ICAR. For these, I am also enclosed herewith relevant documents of transfer order and pay slip of Shri K.K.Sharma, T-5 and Shri Alak Shankar, T-5 and pay slip of Shri P.Jana, T-5, hence there is no earthly reason as to why the said benefit could not be made available to me.

Hence, I earnestly request your honour to extend the said benefit to me treating me at par with those employees.

That apart from the aforesaid facts, the employees of Coconut Development Board, Guwahati, they also have been paid SDA for IIE Region as the work pattern as well as the duties and responsibilities are similar to us. In this context, I am enclosed herewith a certificate which is made by Deputy Director of Coconut Dev. Board, Guwahati for your kind perusal.

In that view of the matter, I earnestly request your honour to grant ESI SDA and to pass necessary orders for payment of SDA as well as arrears thereto.

I hope and trust that your honour would graciously be pleased to take a positively steps in regard to redressal of grievances to me.

Yours faithfully

(Signature)
(BIRASHI CHOWDHURY.)

Param Asst(T-4),

CPCRI, RC, Kahikuchi, Chy.-17.

Dated: Kahikuchi
the 11 th May, 2001.

Encl: As stated above.

(Signature)
22/5/01

Copy for favour of kind information and necessary action to:-
01. Dr. V.A.Parthasarathy, HD Crop Improvement, CPRI, Kasaragudi
02. The Secretary, CPRI, CPRI, Kasaragudi.

Adm
Adm

To

The Director
Central Plantation Crops Research Institute
Kasaragod 671 124
Kerala State

ANNEXURE-E

Through Proper Channel

Sub: Payment of Special Duty Allowance (SDA) - regarding.

Ref.-My earlier submission dated 11.05.2001 and reminder- I 07.09.2001.

Sir,

With reference to the above subject cited and my submission dated 11.05.2001 and reminder- I 07.09.2001 for granting of my Special Duty Allowance (SDA). I am to state that unfortunately till date I did not receive any communication with regards my representation for granting SDA after my two repeated reminders.


I had been transferred from Central Agricultural Research Institute at Port Blair, Andaman to C.P.C.R.I., Kahikuchi, Guwahati in N.E. Region that, has been mentioned in my earlier submission. Sir, I am duly entitled for SDA as per Ministry of Finance O.M. No. 11(3)/95-E.II (B) dated 12.01.1996 in Para No.6 that Central Government civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE Region from out side the region. A copy of the above order is enclosed for your ready reference.

Therefore, I humbly request you to consider my request for granting Special Duty Allowance (SDA) at an early date and necessary orders may please be issued in this regard.

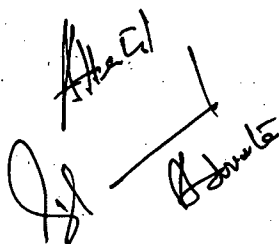
Thanking you.

Dated: 19.2.2002

Yours faithfully


(BIKASH CHOWDHURY)
Farm Asst. T-4
CPCRI (RC), Kahikuchi,
Guwahati 17

1. Enclosed relevant document.



COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(E.A.I. Section)

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

SSB Directorate may kindly refer to their LO No. 12/99(18)-2369 dated 31.3.2000 on the subject mentioned above.

2. The points of doubt raised by SSB in their LO No. 12/99(18)-2332 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Department Expenditure) and clarification to the points of doubt is given under for information, guidance and necessary action:

- 1) The Hon'ble Supreme Court in their judgement delivered on 26.11.95 in writ petition No. 794 of 1995 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their LO No. 11(3)/95, E.I.T(B) dated 7.5.97.
 - a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on All India basis and having a common/centralised seniority list and All India Transfer Liability. ✓
 - b) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/ service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability. ✓
 - ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of 10A vide Ministry of Finance LO No. 20911/2/83-E.I.T. dated 14.12.83 and 20.6.87 read with

Contd...2/-

Atstcl
Sc *Adm.*

Atstcl
Sc *Adm.*

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

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

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

v) The MOP, Deptt. of Expar. vide their No.11(3)/95-E.T.I(B) dated 7.6.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. For determination of the admissibility of the SDA to any Central Govt. Civilian employees having All India Transfer Liability will be by applying tests

In case the employee hailing from NE Region is posted within NE Region he is not entitled to SDA E.T.I(B) is once transferred out of that Region

(a) whether recruitment to the Service/Cadre/post has been made on All India basis. (b) whether promotion is also done on the basis of All India Zone of promotion based on common seniority for the Service/Cadre/Post as a whole (c) in the case of SSB/DGS, there is a common recruitment system based on All India basis and promotion is also done on the basis of All India Common Seniority. Based on the above criteria/ tests all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from NE Region or posted to NE Region from outside the NE Region.

Attd
S R
Adm. T

Contd... 2/...

Attd
S R
Adm. T

vi) Based on point (iv) above, some of the units of SSB/DGS have authorised payment of SDA to the employees hailing from NE Region and posted within the NE Region while in the case of others, the DACS have objected payment of SDA to employees hailing from NE Region and posted within the NE Region irrespective of the fact that their transfer liability is All India Transfer Liability or otherwise. In such cases what should be the norm for payment of SDA i.e. on fulfilling the criteria of All India Recruitment Test & to promotion of All India Common Seniority basis having been satisfied are all the employees eligible for the grant of SDA.

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

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

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

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

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

1. Shri R.S. Bedi, Director, ARC
2. Shri R.P. Kureel, Director, SSB
3. Brig (Retd) G.S. Ubani, IG, SFF
4. Shri S.R. Mehra, JD (P&C), ECS
5. Shri Ashok Chaturvedi, JS (Pers), RAW
6. Shri B.S. Gill, Director of Accounts, DACS
7. Shri J.H. Menon, Director Finance (S), Cabinet Secy.
8. Col. K.L. Jaspal, CMA, CTA

Cabinet Secretariat No. no. 20/12/99-EA-1-1799 dt. 2-5-2000

[Handwritten signatures and initials]

- 27 -

ANNEXURE - C

330564
R : 0361-560504

नारियल विकास बोर्ड

(कृषि मन्त्रालय : भारत सरकार)

COCONUT DEVELOPMENT BOARD

(Ministry of Agriculture : Govt. of India)

STATE CENTRE

Juripar (Six Mile), Panjabari Road, Khanapara

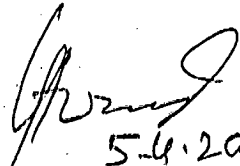
GUWAHATI - 781 037

No. 110/SCA/PB/2000-01/Admn.

Date 5/4/2000

TO WHOM IT MAY CONCERN

It is to inform that all employees of the Coconut Dev. Board, State Centre, Guwahati have been paid Spl. Duty Allowance (SDA) for North Eastern Region.


5-4-2000.
Deputy Director.

Deputy Director
Coconut Development Board
GOVT OF INDIA
State Centre, Guwahati

Attest
Jil
Admn

=====

CENTRAL RICE RESEARCH INSTITUTE, CUTTACK - 753 006

PAY SLIP FOR THE MONTH OF March, 2000

=====

DETAILS OF DUES

Sl.No.	2
Name	Mr. P. Jana
Designation	T-5
Division	RRLRRS, GERUA
Pay Scale	6500-200-10500
Incr. month	December
Bank A/c.No.	
GPF No.	871
Basic Pay	7100
Adv. Incr.	
P. Pay	
D.A.	2627
H.R.A.	355
C.C.A.	
Tr. Allow.	200
F.P.A.	
S.D.A.	863
Miscellaneous	
S.C.A.	160

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Total Due 11305

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DETAILS OF DEDUCTIONS

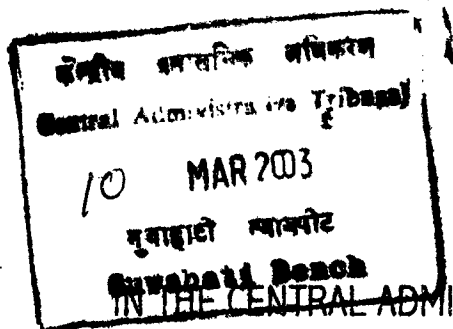
Car Adv.	
IT	
GPF Con.	4000
GPF Adv.	
L. Fee	
Electricity	
Water	
Bus	
Con Adv.	
LIC	
HBA	
GI	60
Misc. 1	
Misc. 2	
Mis. 3	
Total deducn.	4060.00
GPF. Instl.	/
Con. Instl.	/
HBA. Instl.	/
Car. Instl.	/

=====

Net Pay 7245.00

=====

Handwritten signature and initials



O.A. NO. 360/2002

Sri Bikash Choudhury

... Applicant.

-Vs-

Union of India & Others

... Respondents.

(Written statements filed by the respondent No. 1,2,3 and 4).

The written statements of the respondents are as follows :

1. That the copy of the O.A. No. 360/2002 (referred to as the "Application") has been served in the respondents. The respondents have gone through the same and understood the contents thereof.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.
3. That before traversing the various paragraphs of the application, the respondents beg to state a brief resume to the facts and circumstances of the case and the basis for entitlement for payment of Special Duty Allowance (referred to as the "SDA") as under :
 - (a) That the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi, vide Office Memorandum No. 20014/3/83-E.IV dt.14.12.1983 brought out a scheme thereby extending certain facilities and allowances including the SDA for the civilian employees of the Central Govt. serving in the North-Eastern States and Union Territories etc. This was done to attract and retain the services of officers in the region due to

V. Rajappa

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

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

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

"2. Instances have been brought to the notice of this Ministry where Special (Duty) Allowance has been allowed to Central Govt. employees serving in the North East Region without the fulfillment of the condition of all India Transfer liability. This against the spirit of the orders on the subject. For the purpose of sanctioning special (duty) allowance, the all India transfer liability of the members of any service/cadre or incumbents of any posts/group of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all India basis and whether promotion is also done on the basis of the all-India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of special (duty) allowance."

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

V. P. Singh

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

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

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

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

(e) That the Hon'ble Supreme court in another decision dated 23.2.1995, in Ca No.3034/95 (Union of India & ors -vs-Executive Officers Association Group-C) held that the spirit of the O.M. dt. 14.12.83 is to attract and retain the services of the officers from outside posted in the North-Eastern Region, which does not apply to the officers belonging to the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. Therefore, the incentives granted by the said O.M. is meant for the

V. Rajend

✓ persons posted from outside to the North-Eastern Region, not for the local residents of the said defined region. The Hon'ble Supreme Court in this decision also held that the spirit of the O.M dt.14.12.83 is to attract and retain the services of the officers posted in the N.E Region from outside and therefore, application of these provisions to the local residents of N.E.Region does not arise.

A true copy of the said judgment dt.23.2.95 is annexed as ANNEXURE- R5.

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

A true copy of the judgment dt. 7.9.95 is annexed as ANNEXURE-R6.

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

A true copy of the said O.M.dt.12.1.96 is annexed as ANNEXURE-R7.

(h) That in another case vide Writ petition No.794/1996 in Sadhan Kumar Goswami & others -vs- Union of India & others, the Hon'ble Supreme Court again put reliance on the earlier decision as in S. Vijoykumar case and held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D,- and there is no

J. P. Rajagopal

distinction. By the said judgment, the said Hon'ble court also held that the SDA paid to the ineligible employees after 20.9.94 be recovered.

A true copy of the judgment dt. 25.10.96 is annexed as ANNEXURE-R8.

(i) That the Ministry of Finance further in connection with query made by the Directorate General of Security, New Delhi gave some clarification to the questions raised by some employees regarding eligibility of SDA. This was done vide I.D No.1204/E-II(B)/99 and which was duly approved by the Cabinet Secretariat U.O. No.20/12/99-EA.I-1798 dt.2.5.2000. According to that clarification, an employee belonging to the N.E.Region, posted in the N.E.Region having all India transfer liability as a condition of service, shall not be entitled to grant of SDA. But if such employee is transferred out of the N.E.Region and reposted to N.E.Region on transfer from outside, in that case such employee would be entitled to SDA. The applicant being initially posted in Portblair, which is also a defined area for grant of SDA was not entitled to grant of SDA being posted there initially and not on transfer. On the other hand his transfer and posting in the N.E. Region was also made under a special circumstances on his own request and not in public interest or in the interest of service. Moreover, the applicant is not under all India transfer liability as per administrative and establishment control of the department. Hence, the applicant in the instant case have no cause of action to agitate in this Tribunal.

A true copy of the said clarification of Cab. Sectt. Dt. 2.5.2000 is annexed as ANNEXURE-R9.

(j) That in a recent decision dt. 5.10.2001, in Union of India & others -vs- National Union of Telecom Engineering Employees Union & others (CA No. 7000/2001) the Hon'ble Supreme court once again

V. Rajagopal

clinched on the vexed question of grant of SDA to the central govt. employees and by relying on the earlier decision of S.Vijoykumar held that the amount already paid to such ineligible employees should not be recovered.

The true copy of the judgment dt. 5.10.2001 is annexed as ANNEXURE-R10.

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

A copy of the O.M. dt. 29.5.2002 is annexed as ANNEXURE-R11.

Now, from the above facts and circumstances of the case and the clarifications made in the matter, it is very much clear that only those employees irrespective of their group in A,B,C or D, shall be entitled to grant of SDA if they fulfil the criteria as underlined in O.M. dt. 20.4.87 and such employees are in fact posted in the North-Eastern Region actually on transfer in public interest. Therefore the amount paid to the ineligible employees upto 5.10.2001 would be waived. However, the amount paid after 5.10.2001 should be recovered. This aspect of the matter is clear as indicated by the Hon'ble Supreme Court in its all earlier decisions also. According to the Hon'ble Supreme court, as stated above, the provision for SDA is to attract and retain the services of the officers from out side the N.E.Region and therefore, payment of the SDA to the local residents of N.E.Region does not arise. The applicant in the instant case is a local resident of village and post office Chhagalia, Dist. Dhubri, Assam and he

V. P. Biswas

has been posted from outside on his own request, therefore, by applying the test of "to attract and retain the services", the applicant is not entitled to grant of SDA.

4. That with regard to the statements made in paragraph 1 of the application, the answering respondents state that from the facts and circumstances of the case as stated hereinabove there is no cause of action for filing of the instant application. Hence the application is liable to be dismissed summarily.

5. That with regard to the statements made in paragraph 2,3,4.1 and 4.2, the respondents have no comment to offer.

6. That with regard to the statements made in paragraph 4.3, the respondents state that the applicant was transferred to Kahikuchi on his own request and not in the public interest as indicated in Annexure A of the application.

7. That with regard to the statements made in paragraph 4.4, the respondents state that the applicant has been appointed under Technical service rules and the staff those not belonging to combined cadre are not entitled for payment of SDA. The ICAR in the case of one of the Technical staff posted at WCGC (CPCRI), Andamans (Shri Saran Kumar Rizal (T6) has clarified that the Technical staff are not holding the combined cadre post and therefore do not have all India Transfer Liability.

A copy of Council's letter no. 6-13/95-IAV dated 2.5.1997 is annexed as Annexure-R12.

J. Rajappa

8. That with regard to the statements made in paragraph 4.5, the respondents state that the applicant submitted his final representation dated 12.4.2002 to the respondents through the Scientist Incharge, Research Center, Kahikuchi and a reply thereof given to the applicant through this office letter no. F.7(12)HR/96-Bills dated 18.6.2002 and 8.10.2002. The CAT, Ernakulum Bench in O.A. 993/99 held that the SDA is available to only those posts having combined cadre with All India Transfer Liability. This was communicated vide letter No. 7(12)HR/96-Bills dated 13.3.2002.

Copies of the representation, letters dt. 13.3.2002 and order in O.A. 993/99 and 1028/96 etc. are annexed as Annexure - R13(series) and R14 (series).

9. That with regard to the statements made in paragraphs 4.6,4.7,4.8, the respondents state that the statements made by the applicant in this para that he is having the transfer liability and with this condition he accepted the transfer order etc. are not tenable in view of the reasons submitted in the above para. The transfer was made based on his request and the technical post he is holding is not a post of combined cadre and therefore do not have All India Transfer Liability. As such he is not entitled for grant of SDA just because of a mere clause in the appointment letter/transfer order to the effect that he is liable to be transferred anywhere in India. The applicant's posting at Port Blair was his initial posting in service and his transfer to Kahikuchi (Assam) was purely on his personal request only and not involving the All India Transfer Liability.

10. That with regard to the statements made in paragraph 4.9, the respondents state that the certificate produced as Annexure - 6 in the application, has no relevance in this OA since the Government of India order

V. Rajagopal

under which the SDA is being paid to the staff of that department has not been mentioned in the certificate nor the facts and circumstances and fulfillment of criteria is explained.

11. That with regard to the statements made in paragraphs 4.10, 4.11 and 4.12, the respondents state that the applicant is not entitled for payment of SDA since he is not holding the combined cadre post and therefore do not have All India Transfer Liability as explained in the above para. The respondents also reiterate and reassert the forgoing statements made in this written statements.

12. That with regard to the statements made in paragraphs 5.1 to 5.8, the respondents state that in view of the facts explained in the above paragraphs and the documentary evidences and the legal provisions, the denial of SDA to the applicant is justified. None of the grounds put forward by the applicant is, therefore, tenable in law and hence the application is liable to be dismissed with cost.

13. That with regard to the statements made in para 6 and 7, the respondents have no comment to offer.

14. That with regard to the statements made in paragraphs 8.1 to 8.3, the respondents state that under the facts and circumstances of the case and the legal provisions etc. as explained hereinabove, the applicant is not entitled to get any SDA as prayed for and the application is liable to be dismissed with cost as devoid of any merit.

J. Rajappa.

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

VERIFICATION

I, Dr. V. Rajagopal presently working as the Director in the Central Plantation Crops Research Institute who is taking steps in the case and being competent and duly authorized, do hereby solemnly affirm and state that the statements made in para 1-14 being the 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 fact.

And I sign this verification on this 24th day of February 2003 at Guwahati.

V. Rajagopal

DEPONENT

निदेशक
केन्द्रीय रोपण फसल अनुसंधान संस्थान
पो. कुडुलु, कासारगोड - १८१ १२
Director
Central Plantation Crops Research Institute
P. O. KUDLU, KASARGOD-6711

~~ANNEXURE~~ - 11 -

ANNEXURE : R₁

(39)

No. 20014/3/P3-2.17
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE : R₁ us
ANNEXURE : R₁
Assam Circle, Guwahati-781001

New Delhi, the 14th December 1959.

OFFICE MEMORANDUM

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

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

(1) Tenure of posting/deputation:

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

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

(11) Waiver for Central deputation/training abroad, and special mention in Confidential Records.

Satisfactory performance of duties for the

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Confidential

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

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

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

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

(iii) Special (Duty) Allowance

Central Government civilian employees who have all India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 per cent of basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs.400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance

1. Assam and Meghalaya

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

2. Manipur

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

Pay upto Rs.260/-	Rs.40/- p.m.
Pay above Rs.260/-	15% of basic pay subject to a maximum of Rs.150/- p.m.

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- 13 - | 1 | (41)
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3. Tripura

The rates of the allowance will be as follows:-

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

(b) Other Areas

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

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

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

(v) Travelling Allowance on first appointment:

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

(vi) Travelling Allowance for journey on transfer:

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

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

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

(viii) Joining Time with leave:

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

(ix) Leave Travel Concession:

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

Officers drawing pay of Rs. 2250/- or above, and their families, i.e., spouse and two dependent children (upto 10 years, for boys and 24 years for girls) will be allowed air-travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance / Hostel Subsidy:

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

Contd...5....

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

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

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

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

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

sd/-

(S.C. KARALIK)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

To,

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

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

15-16-75
ANNEXURE-71
ANNEXURE: R2 9
ANNEXURE: R2
ANNEXURE: R2
No. 20014/3/83-E.IV
Government of India
Ministry of Finance
Department of Expenditure
.....

New Delhi, the 20th April, 1987.

OFFICE MEMORANDUM

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

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

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

"Central Government civilian employees who have all-India transfer liability will be granted a special (Duty) allowance at the rate of 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/deputation (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowance like special compensatory (remote locality) allowance, construction allowance and Project Allowance will be drawn separately".

2. Instances have been brought to the notice of this Ministry where special (Duty) Allowance has been allowed to Central Government employees serving in North East Region without the fulfilment of the condition of all India transfer liability. This is against the spirit of orders on the subject. For the purpose of sanctioning special (Duty) allowance, the all India transfer liability of the members of any Service/Cadre or incumbents of any posts/group of posts has to be determined by applying tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all-India basis and whether promotion is also done on the basis of the all-India zone of as a whole. Mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of special (Duty) allowance.

Contd... 2/-

Attended

21/4/87

Asst. Dir. (M)

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

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

To

Financial Advisors of all Ministries/Departments.

J.K.

6-18-46
F.No. 20014/16/CG/E.IV/E.11(B)
Government of India
Ministry of Finance
Department of Expenditure

Annexure - 2
ANNEXURE: R3
ANNEXURE: 3

New Delhi, the 1 December, 1960

ANNEXURE: R3

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/CG-E.IV dt. 14th December, 1953 and 20th March, 1954 on the subject mentioned above and to say that the question of making suitable improvements in the allowances and facilities to Central Govt. employees posted in North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been engaging the attention of the Govt. Accordingly the President is now pleased to decide as follows:-

(1) Tenure of posting/deputation

The existing provisions as contained in this Ministry's P.M. dated 14.12.53 will continue.

(ii) Maintenance for Central deputation and training abroad

The existing provisions as contained in this Ministry's P.M. dated 14.12.53 will continue. Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion in the cadre posts, deputation to Central cadre post and course of training abroad.

(iii) Special (Duty) Allowance

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

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

(iv) Special Servantary Allowance:-

The existing provisions of the 4th Pay Commission have been accepted by the Govt. and Special Servantary Allowance at the revised rates have been made effective from 1.10.06.

(v) Traveling Allowance on First appointment:-

The present concessions as contained in this Ministry's O.M. dt. 14.12.03 will continue with the liberalisation that on first appointment T.A. should be admissible for the total distance, instead of for the distance in excess of first 400 kms. only.

(vi) Traveling Allowance for journey on transfer:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(vii) Home Allowance for transportation of baggage effects and effects:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(viii) Joining time with leave:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(ix) Leave Travel Concession:-

The existing concession as contained in this Ministry's O.M. dated 14.12.03 will continue.

Officers drawing pay of Rs 500/- or above, and their families (i.e. spouse and the dependent children (upto 8 years for boys and 4 years for girls) will be allowed air fares between Amritsar/Allahabad/Agra/Delhi/Calcutta and vice-versa; Bombay/Port Blair and Calcutta/Bombay and vice-versa in case of postings in A & N Islands; and between Kavaratti and Cochin and vice-versa in case of postings in Lakshadweep.

(x) Children Education Allowance/Hotel subsidy

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto Rs 200/- will be admissible in respect of children studying at the last station of posting of the employee concerned or any other station where the children reside. If children studying in boarding schools or in hotels at the last station of posting or any other station, the Government servant concerned will be given monthly subsidy without other restrictions.

...3/-

rates of Children Education Allowance/Hostel subsidy will be in the DOP&F, O.M. 10011/1/07-Extt. (Allowances) dt. 31.12.07. Amended from time to time.

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

The present concession as contained in this Ministry's O.M. No. 11016/1/E, II(D)/04 dt. 29.3.04 an amended from time to time will continue to be applicable.

(xii) Telephone facilities

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

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

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

4. In so far as the foregoing concerns the Indian Audit & Accounts Deptt, the concerned orders shall be issued after consultation with the Comptroller & Auditor General of India.

5. All versions of this Memorandum is attached.

(A. JAYARAMAN)

JOINT SECRETARY TO THE GOVT. OF INDIA.

To

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

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

ANNEXURE - R4

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ANNEXURE: R2

ANNEXURE: R4

CIVIL APPEAL NO. 3721 OF 1973

Union of India and others

.... Appellants

VERSUS

S. Vijayakumar and others

... Respondents

[with Civil Appeal Nos. 6103-81

SLF(C) Nos. 16794/81, 10070-79/83, 16571-82/83,

10461/83, 9240/81-83]

J U D G M E N T

HANSARIA, J.

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

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

2. The Tribunal took the aforesaid view because of an office memorandum dated 14.12.1905 which in all the subject of "Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of the North-Eastern Region" had stated that allowance shall be payable if the posts be those which have "All India Transfer Liability". The stand of the Union of India, however, is that this office memorandum, if it is read along with what was stated subsequently in office memorandum dated 20.4.1907, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the aforesaid service condition and not to those who were residents of this region. The office memorandum of 1907 has clearly stated that the allowance

of inaccessibility and difficult terrain. It was said so because even the 1963 memorandum stated that the need for the allowance was for "on service and retaining" the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 year to claim the allowance depending upon the period of service of the incumbent. The 1963 memorandum makes this position clear by stating that "All India Transfer Liability" of employees who have All India Transfer Liability would be granted the allowance "on posting to a station to the North Eastern Region". This aspect is made clear beyond doubt by the 1967 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1963 the subject was mentioned as quoted above is not enough to concede the submission of Dr. Ghosh.

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

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

4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, in view of what was stated in the memorandum dated 23.10.1983 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.

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

Reserve Bank of India vs. Reserve Bank of India Staff

Officers' Association and others, 1991 (1) 1000-1001

which an attention has been invited by the learned Additional Solicitor General. In which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

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

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ANNEXURE

15 459-

P-12

Filed to be true copy
Assistant Registrar (Judl.)
11/3/99
Supreme Court of India

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

579905

ANNEXURE : 5

CIVIL APPEAL NO. 3034 OF 1995
(Arising out of S.L.P. (C) NO. 18717 of 1994)

Union of India & Ors.

.....Appellants

Vs.

Executive Officers Association
Group-C

.....Respondents

J U D G M E N T

Faizaluddin, J.

1. Delay condoned.
2. Leave granted. The counsel for parties are heard.

3. This appeal has been directed by the appellants against the judgment dated May 28, 1993 passed by the Central Administrative Tribunal, Guwanati Bench (hereinafter referred to as Tribunal) in O.A. No.

172 of 1972. By the said judgment the Tribunal held that the respondents are entitled to Special Duty Allowance in terms of Office Memorandum dated December 14, 1983 with effect from the date specifically indicated in the said Office Memorandum and directed the appellants herein to pay and clear the Special Duty Allowance to the respondents herein within 90 days from the date of receipt of copy of the judgment in respect of the arrears due and to release the current Special Duty Allowance with effect from the month of June, 1993.

4. The respondent No. 1 is an Association of Group (C) Inspectors of Customs and Central Excise under the Collectorate of Customs and Central Excise, Shillong and respondent Nos. 2 and 3 are its President and General Secretary respectively. The respondents approached the Tribunal claiming Special Duty Allowance on the strength of Office Memorandum No. 20014/2/83-E.IV dated December 14, 1983 and the Office Memorandum No. 20014/16/86.IV/E.II(B) dated December 1, 1986 issued by the Ministry of Finance, Government of India. The respondent-Association claimed that its members have all India transfer liability under the Central Excise and Land Customs Department Group (C) Posts Recruitment Rules, 1979 which were applicable to its members and in pursuance of which three of its members had been

transferred and one Smt. Lisa L. Rynjan of Enillong has been posted at Goa under the said recruitment Rules and, therefore, they are eligible and entitled to claim Special Duty Allowance. The appellants herein opposed and contested the aforesaid claim of the respondents before the Tribunal. The appellants took the defence by stating that the Office Memorandum No. 20014/3/BS.E/IV dated April 20, 1987 had clarified that the Special Duty Allowance is payable only to those officers, incumbents of Group (C) of posts who are having all India transfer liability defined in the said Office Memorandum keeping in view the original Office Memorandum dated March 14, 1983 and that the conditions stipulated in the Recruitment Rules, 1979 referred to above cannot be taken as basis for saddling the respondents or its members with all India transfer liability and consequent payment of Special Duty Allowance to them. The appellants also took the plea that all India transfer liability of the members of any service/cadre or incumbent of any posts/Group of posts is to be determined by applying the tests of recruitment to the service/cadre/post made on all India basis and that mere clauses in the Recruitment Rules/Appointment Order stipulating all India transfer liability does not make him/them eligible for grant of Special Duty Allowance in terms of Office Memorandum dated December 14, 1983.

5. After considering the rival contentions the Tribunal observed that the contents of Office Memorandum dated April 12, 1984 as well as the letter No. 7/47/48.EA dated September 28, 1984 have been fully discussed by the Full Bench. Calcutta and held that the real test/criteria for determination is whether all India transfer liability exists and opined that without recalling the Office Memorandum issued in 1963 the concerned departments had no reason to deny the benefit of memorandum available to certain classes of employees and to withdraw its application to certain other classes. Relying on the said Bench decision of the Central Administrative Tribunal, Calcutta, the Tribunal allowed the application of the respondents by the impugned judgment and granted the relief as stated above against which this appeal has been preferred.

6. Learned counsel for the appellants submitted that the Tribunal has failed to appreciate the true meaning, intention and spirit behind the term 'all India transfer liability' which occurred in the Finance Ministry Office Memorandum referred to above and has thus seriously erred in holding that the members of the respondent-Association are entitled to the Special Duty Allowance. He further submitted that the package of incentives contained in the Ministry's Office Memorandum

P-16

dated December 14, 1983 (as amended) is based on the recommendations of the committee to review the facilities and allowance admissible to Central Government Employees in the North-Eastern Region and it was with a view to attract and retain competent officers service in the States and Union Territories in the North-Eastern Region that the Government of India on the recommendations of the committee made the provision for Special Duty Allowance to be paid to such officers who come on posting and deputation to North-Eastern Region from other Regions. It was, therefore, submitted that since the members of the respondent-Association belonged to the North-Eastern Region itself who were recruited and posted in the same Region, they were not entitled for Special Duty Allowance.

7. The main source for claiming the Special Duty Allowance, is the Office Memorandum dated December 14, 1983 the very first paragraph of which reads as under:-

"The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram have been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary Department of Personnel & Administrative Reforms, to review the existing allowances and

(59)

P-17

facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows."

.....

B. A careful perusal of the opening part of the Office Memorandum reproduced above would show that the Government had appointed a Committee under the Chairmanship of the Secretary Department of Personnel and Administrative Reforms to review the existing allowances and facilities admissible to the various categories of Civilian Central Government Employees serving in the North-Eastern Region so that competent officers may be attracted and retained in the North-Eastern Region States. The use of words 'attracting and retaining' in service are very much significant which only suggest that it means the competent officers belonging to the Region other than the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. The intention of the Government and spirit behind the Office Memorandum is to provide an incentive and attraction to the competent officers belonging to the Region other than

P-18

the North-Eastern region to come and serve in the North-Eastern Region. It can hardly be disputed that the geographical, climatic, living and food conditions of people living in North-Eastern Region and the States comprising therein are different from other Regions of the country. The North-Eastern Region is considered to be 'hard zone' for various reasons and it appears that it is for these reasons that the Government provided certain extra allowance, benefits and other facilities to attract competency officers in the North-Eastern Region at least for two to three years of tenure posting. The Ministry's Office Memorandum in question came up for consideration before this Court in Chief General Manager (Telecom) Vs. S. Rajender C.H. Bhattacharjee & Ors. [JT 1995 (1) SC 440] which was decided by us by judgment dated January 18, 1995 in which this Court took the view that the said Office Memorandas are meant for attracting and retaining the services of competent officers in the North-Eastern Region from other parts of the country and not the persons belonging to that region where they were appointed and posted. This was also the view expressed by this Court in yet another case reported in J.T. 1994 (6) 243 - Union of India Vs. S. Vinaya Kumar & Ors. In Vinaya Kumar (Supra) the point for consideration was exactly identical, with regard to the entitlement to Special Duty Allowance to those employees/officers who

(61)

are residents of North-Eastern Region itself. After considering the memorandum dated December 14, 1983 and other related Office Memorandums indicated above, it was held that the purpose of the allowance was to attract persons from outside the North-Eastern Region to work in the North-Eastern Region because of inaccessibility and difficult terrain. In the facts and circumstances stated above the view taken by the Tribunal cannot be upheld and deserves to be set aside.

9. For the reasons stated above the appeal is allowed. The impugned order of the tribunal is set aside and the application filed by the respondents before the tribunal for grant of Special Duty Allowance to them is dismissed. In the facts and circumstances of the case, we make no order as to costs.

.....J.
(B.C. Agrawal)

.....J.
(Faiyaz Uddin)

New Delhi.

February 23, 1995.

- 25 -
R-5-34-(62)

ANNEXURE : R6
ANNEXURE : R5

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8208 - 8213

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

ANNEXURE : R6

Union of India & Others

- Appellants

- versus -

Geological Survey of India
Employees' Association & Others.

- Respondents

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 such Group C and Group D employees of Geological Survey of India who are residents of the region in which they are posted. We may also indicate that such question has been considered by this Court in Union of India & others Vs. S Vijay Kumar & others (1994) (3) SCC 649.

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

New Delhi

September 7, 1995.

Sd/- G.N. Ray,

Sd/- S.B. Majumdar

ANNEXURE - V
ANNEXURE: R7 (B)
ANNEXURE: R6 (B)
ANNEXURE: R7

No. 11(3)/95-E.11(B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the

12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20014/16/86-E.IV/E.11(B) dt. 12.88 on the subject mentioned above.

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

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

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

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

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

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

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

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

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

10. Hindi version of this OM is enclosed.

(C. Balachandran)
Under Secy to the Govt of India
All Ministries/Departments of the Govt. of India, etc.
Copy (with spare copies) to CGAG, UPSC etc. as per standard endorsement list.

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

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L. No. 3366/9677

ANNEXURE: R8
SUPREME COURT
INDIA

Dated New Delhi, the 26th November, 1996

FROM: ASSISTANT REGISTRAR (JUDL)

ANNEXURE: R7
ANNEXURE: R8

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

WRT PETITION NO. 724 OF 1996
(Under Article 32 of the Constitution of India)

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

Sadan Kumar Goswami & Ors.

VS
THE UNION OF INDIA & Ors.

.. PETITIONERS
.. RESPONDENTS

(Dine. 23) Sir,

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

Yours faithfully,

Assistant Registrar (JUDL)

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CP
197-11/1996
M.I.

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Admitted to be true
S. S. B. (1991)
Supreme Court of India
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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION NO. 794 OF 1995

(Under Article 32 of the Constitution of India)

Sub-Inspector Sadhan Kumar Goswami &
Ors.

...Petitioners

v.
The Union of India & Ors.

...Respondents

THE 25TH DAY OF OCTOBER, 1995

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

Present:
Sankar Ghosh, Sr. Adv. and Amlan Ghosh, Adv. with him for
the Petitioners.

O_R_D_E_R

The following Order of the Court was delivered:

-30- -39- (67) 96 1/2 43 (69)

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION.

WRT PETITION NO. 793 OF 1996

Sub-Inspector Sadhan Kumar Goswami &
Ors.

... Petitioners

Versus

The Union of India & Ors.

... Respondents

O R D E R

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

The admitted facts are that the petitioners who joined service under the Special Security Bureau (SSB) in North Eastern Region of India, claimed special duty allowances as per order of the Central Government.

The question was considered by this Court in Union of India vs. S. Vijay Kumar [CA No. 325 of 93] decided on September 20, 1994; therein this Court had held thus:

"We have only considered the rival submissions and are inclined in agreement with the contention advanced by the

AM

learned Additional Solicitor General, Shri Tuli for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 28.10.1966 which has been quoted in the memorandum of 20.4.1967, clearly shows that allowance in question was meant to attract persons outside the North Eastern Region to work in that region because of inaccessibility and difficult terrain. We have said so because even the 1966 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining" the service of the competent officers in service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that region on deputation used to come back after joining thereby taking leave and. therefore, the memorandum stated that this period of leave would be excluded when counting the period of tenure of posting which was required to be of 2 1/2 years to claim the allowance depending upon the period of service of the incumbent. The 1966 memorandum makes this position clear by stating that Central Government civilian employees who have All India transfer liability would be granted the allowance "on posting to any station in the North Eastern Region". This aspect is made clear beyond doubt by the 1967 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India transfer liability. Merely because in the office memorandum of 1967 the subject was mentioned as quoted above is not be enough to concede to the submission of Dr. Ghosh.

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

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

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

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

Of late, we have been coming across this type

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

It is next contended that the Government is recovering as per Memorandum dated January 17, 1990 the amounts paid which is contrary to the direction issued

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

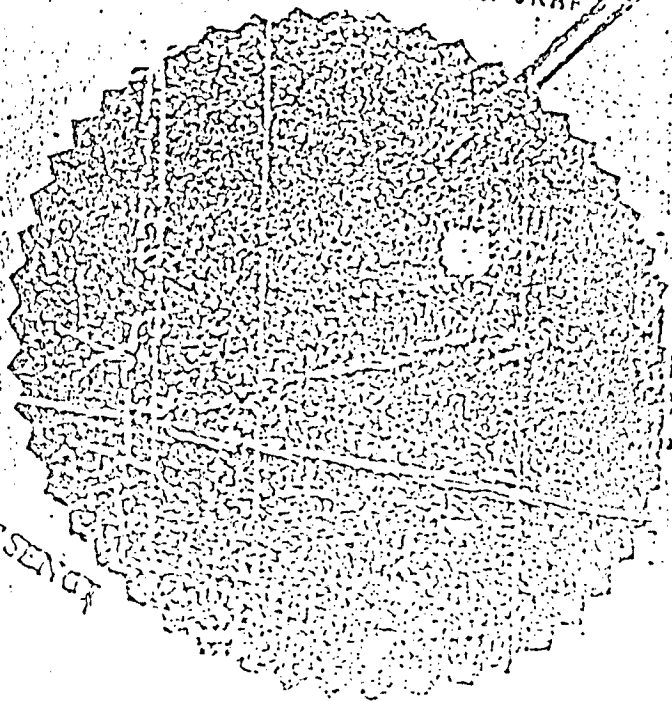
Under those circumstances, we do not think that there will be any justification to direct the respondents not to recover the amount from the petitioner after the date of the judgment of this Court.

The writ petition is accordingly dismissed.

(K. R. NARAYAN)

(S. P. KURUKAR)

NEW DELHI;
OCTOBER 25, 1926.



SEALED IN MY PRESENCE
12/11/26

(R.N. CHAKRABORTY
SECTION OFFICER

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

SSB Directorate may kindly refer to their UO No.42/SSB/A1/99(18)-2369 dated 31.3.2000 on the subject mentioned above.

2. The points of doubt raised by SSB in their UO No. 42/SSB/A1/99(18)5202 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Deptt. of Expenditure) and clarification to the points of doubt is given as under for information, guidance and necessary action:

- i) The Hon'ble Supreme Court. in their judgement delivered on 26.11.95 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.

- (a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on All India basis and having a common/centralised seniority list and All India Transfer Liability.

NO

- (b) An employee hailing from the N.E. region selected on the basis of an All India recruitment test and borne on the Centralised cadre/service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.

- ii) An employee belongs to N.E. Region was appointed, as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/03-E.IV dated 14.12.93 and

NO

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20.4.87 read with OM 20814/16/86 E.II(B) dated 1.12.80, but subsequently the post/cadre was centralized with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the NE Region though they can be transferred out to any place outside the NE Region having All India Transfer Liability.

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

YES

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

YES

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

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

vi)

Based on point (iv) above, some of the units of SSB/DCS have authorized payment of SDA to the employees hailing from NE Region and posted within the NE Region while in the case of others, the PACS have objected payment of SDA to employees hailing from NE Region and posted within the NE Region irrespective of the fact that their transfer liability is All India Transfer Liability or otherwise. In such cases what should be the norm for payment of SDA i.e. on fulfilling the criteria of All India Recruitment Test & to promotion of All India Common seniority basis having been satisfied are all the employees eligible for the grant of SDA.

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

vii)

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

The payment made to employees hailing from NE Region & posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employees hailing from NE Region and posted in NE Region be recovered from the date of payment or after 20th Sept. 91 whichever is later.



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3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1349 dated 10.10.99 and Ministry of Finance (Expenditure)'s I.D. No. 1204/E-11(3)/99 dated 30.3.2000.

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Traced 2/5/00

(P.H. Thakur)
Director (SR)

236/ND(1)
2/5/2000

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|----------------------------------|-----------------------|-----------------|
| 1. Shri R.S. Bedi, | Director, | ARC. |
| 2. Shri R.P. Kureel, | Director, | SSB. |
| 3. Brig (Retd) G.S. Uban, | IG, " | SFF. |
| 4. Shri S.R. Mehra, | JD (P&C), | DSS. |
| 5. Shri Ashok Chaturvedi, | JS (Pers), | RAW. |
| 6. Shri B.S. Gill, | Director of Accounts, | DACS. |
| 7. Smt. J.M. Menon, | Director-Finance (S), | Cab. Sectt. |
| 8. Col. K.L. Jaspal, | CIOA, | CIA. |
| Cab. Sectt. DO No. 20/12/99-EA.1 | | dated 02-5-2000 |

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ANNEXURE

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Assistant Registrar (Jr.)
Supreme Court of India

CIVIL APPEAL NO. 7000 OF 2001
(Arising out of S.L.P.(C) No. 6465 of 1999)

ANNEXURE-29

544733

R010

Union of India & Anr.

Appellants

versus

National Union of Telecom Engineering
Employees Union & Ors.

Respondents

O R D E R

Leave granted.

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

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

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

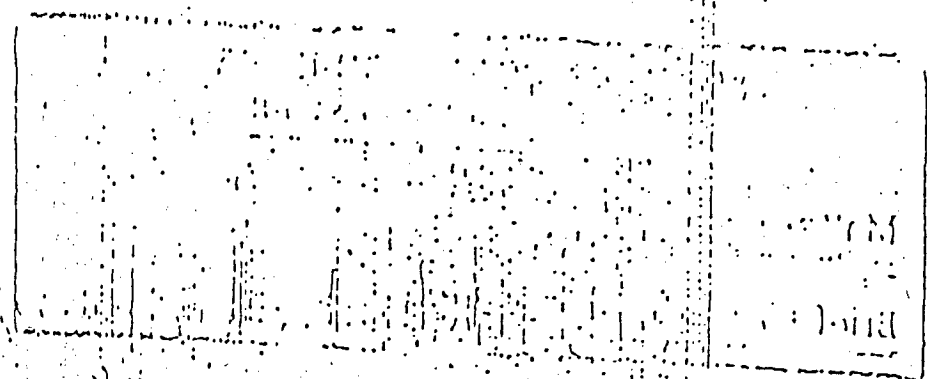
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the Union of India shall not be entitled to recover any
amount paid as special duty allowance in spite of the fact
that this appeal has been allowed.

(H. SANTOSH HEGDE)

(K.G. BALAKRISHNAN)

New Delhi,
October 05, 2001



ANNEXURE-X

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ANNEXURE R11

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F.No.11(5)/97-E.II.(U)

Government of India

Ministry of Finance

Department of Expenditure

ATTENTION: R10

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

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

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

2. Certain incentives were granted to Central Government employees posted in NE region vide OM dt. 14.12.83. Special Duty Allowance (SDA) is one of the incentives granted to the Central Government employees having 'All India Transfer Liability'. The necessary clarification for determining the All India Transfer Liability was issued vide OM dt. 20.4.87, laying down that the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in NE region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT. Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgement delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993 in the case of UOI and Ors V/s Sh. S. Vijaya Kumar and Ors) have upheld the submissions of the Government of India that C.G. civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

4. In a recent appeal filed by Telecom Department (Civil Appeal No 7000 of 2001 - arising out of SLP No.5455 of 1999), Supreme Court of India has ordered on 5.10.2001 that this appeal is covered by the judgement of this Court in the case of UOI & Ors. vs. S. Vijayakumar & Ors. reported as 1994 (Supp 3) SCC, 649 and followed in the case of UOI & Ors vs. Executive Officers' Association 'Group C' 1995

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

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

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

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

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

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

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

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

/s/

(N.P. Singh)

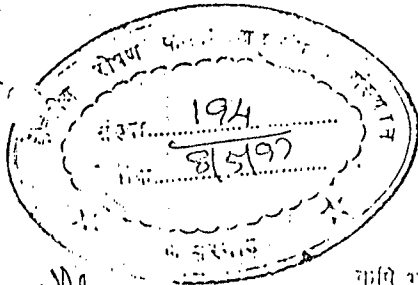
Under Secretary to the Government of India

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

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

54

ANNEXURE

No. 18
Ex. R. 12

TELEPHONE OFF. : 3385991 E
TELEX : 031 - 622
FAX : 011 - 338
TELEGRAM : AGRISec

भारतीय कृषि अनुसंधान परिषद्
कृषि भवन, डॉ० राजेन्द्र प्रसाद मार्ग, नई दिल्ली-110 001
INDIAN COUNCIL OF AGRICULTURAL RESEARCH
Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi-110 001

F.No.6-13/95-IA-V

Dated the 02nd May, 97.

To

The Director,
Central Plantation Crops Research Instt.,
Kasaraqod.

Sub.: Sanction of S.D.A. @20% of basic pay to the staff
at WCGC- Reg.

Sir,

With reference to your letter No.20-6/8/94-Bills dated 25-2-97 on the subject cited above, I am to say that the proposal for grant of S.D.A. to the eligible staff of CPCRI posted at WCGC, Sipighat, Andaman has been considered in consultation with Finance Division, I.C.A.R. Sh. Saran Kumar Rizal has been appointed as T-6 which is not a post of combined cadre and therefore do not have All India Transfer Liability. He is thus, not entitled for payment of Island Special Duty allowance under the instructions issued by Ministry of Finance.

Yours faithfully,

(Y.R. NIMDEKAR)
UNDER SECRETARY (N)

To
The Director,
Central Plantation Crops Research Institute,
Kasaragod- 671 124,
Kerala State

(Through Proper Channel)

Sub.: - Request of payment of Special Duty Allowance (SDA) employee posted at North East Region- regarding.

Ref.: - 1. Head quarter letter No. F.No. (12) HR/96-Bills on dated 13.3.2002.
2. My earlier representation on dated 11.05.2001 and
3. My earlier reminder II on dated 19.2.2002.

Sir,

With reference to the subject cited above I would like to say that you have only highlighted that SDA is eligible only to those who are holding the post of Combined Cadre having all India Transfer liability as per the OA NO.993/1999 of Central Administrative Tribunal, Ernakulam Bench.

Sir, as per the OA No. 993/1999 in Para No. 4 it is also mentioned that civilian employees would be entitled to SDA only if they are posted to North East from outsides. In this ground I am duly entitled for SDA. Because I had been transferred from Central Agricultural Research Institute, Port Blair, Andaman & Nicobar Islands to CPCRI, Kahikuchi, Guwahati, Assam in North East Region from outside. Initially I was appointed C.A.R.I., Port Blair, Andamans.

In this connection, I would like to bring your kind attention that I am not locally recruited person in CPCRI, Kahikuchi and having all India Transfer liability and posted in N.E. Region.

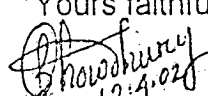
In view of this facts and circumstances stated above you are once again requested to kindly consider my case for payment of SDA for which I am entitled as per the above O.A. No. 993/1999.

Sir, my fervent appeal again goes to you to consider my case sympathetically.

If I do not get favourable consideration regarding my SDA payment within **one month** from date of my representation, I will be compelled to approach Central Administrative Tribunal Guwahati Bench for appropriate decision in this regard.

This may be treated as most urgent.

Dated 12.4.2002.

Yours faithfully,

(Bikash Chowdhury)
Farm Asstt. (T-4),
CPCRI, Kahikuchi,
Guwahati-17

Grams 'RESEARCH'
Telex Kasaragod
Fax 08001 202 PALM
IN
91-499-430 322

कन्द्रीय रापण फसल अनुसंधान संस्थान
(कृषि अनुसंधान परिषद)
कासरगोड - 689124, केरल, भारत
Phone : 0499 - 430
893 - 6
Email :
cpcrri@hub1.nic.in
URL :
http://cpcrri.nic.in



CENTRAL PLANTATION CROPS RESEARCH
INSTITUTE
(Indian Council of Agricultural Research)
KASARAGOD 671 124, KERALA, INDIA



F.No.7(12)HR/96-Bills

Date:13.03.2002

The Scientist i/c,
CPCRI Res. Centre,
KAHIKUCHI, ASSAM.

Sub:- Payment of Special Duty Allowance(SDA) - reg.
Ref:- Your letter No.F.6(7)/96-Bills dt.15.05.2001.

Sir,

Please find enclosed herewith a copy of OA No.993/1999 of Central Administrative Tribunal, Ernakulam Bench regarding the payment of Special Duty Allowance (SDA). As per the OA, Special Duty Allowance is eligible only to those who are holding the posts of Combined cadre having All India Transfer liability. It is requested that the matter may please be informed to all the staff members working at CPCRI(RC) Kahikuchi.

Yours faithfully,

Asst. Administrative Officer (Bills)

Encl:a/a

13/3/02
ok 13/3/02

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C. A. T. (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.993/1999

Dated the 6th July, 2000

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

1. U.P.Sayedmohammed,
Umbrampappada,
Kalpeni Island-682557,
U.T. of Lakshadweep.
2. K.K.Mohammed,
Kunhikadiyappada,
Agatti Island-682553,
U.T. of Lakshadweep.
3. B.Aboosala,
Baliyakam,
Amini Island-682552,
U.T. of Lakshadweep.
4. Abdulla.M.I.,
Melaillam,
Kalpeni Island-682557,
U.T. of Lakshadweep.
5. Arif M.I.
Melaillam,
Kalpeni Island-682557,
U.T. of Lakshadweep.

.. Applicants

(By Advocate Mrs. V.P.Seemanthini)

vs.

1. Union of India, represented by
the Secretary to Govt. of India,
Ministry of Finance, New Delhi.
2. Indian Council of Agricultural
Research, represented by its
Director, Finance, Krishi Bhavan,
New Delhi.
3. The Director, Central Plantation Crops Research
Institute, Kasaragod-670124. ... Respondents

(By Advocate Mr. C.N.Radhakrishnan)

The Application having been heard on 16.6.2000, the Tribunal
on 6.7.2000 delivered the following:

ORDER

The applicants 5 in number are Senior Clerk/Junior
Technical Assistant/Watchman/ Mazdoor/ Climber-cum-Mazdoor

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respectively in the Minicoy Research Centre of CMFRI. Their grievance is that they are being denied Special Duty Allowance/Island Special Allowance on the ground that they do not hold the posts of combined cadre having all India transfer liability. It is alleged in the application that the first applicant though entered service as a Junior Clerk on 23.7.1976 at CPCRI, Kasaragod was transferred to Minicoy, that the applicants have all India transfer liability and that there is no justification in denying to them the Special Duty Allowance/Island Special Allowance. They have therefore filed this application to set aside Annexure A6 order by which their claim was rejected and for a direction to the respondents to continue to pay Special Duty Allowance/Island Special Allowance from September 1996 onwards.

2. The respondents in their reply statement contend that the applicants do not have all India transfer liability, that the applicants belong to the Lakshadweep Islands, that the first applicant was sent to Kasaragod only for the purpose of training and that in terms of the O.M. dated 12.1.96 as the applicants are locally recruited and posted in Lakshadweep Islands, are not entitled to the Special Duty Allowance/Island Special Allowance, as claimed by them.



3.

3. I have heard the arguments of the learned counsel on either side and have perused the pleadings and materials on record.

4. The Apex Court has in Union of India and others vs. S.Vijaykumar and others reported in 1994(5)SLR 582 649 held that the Central Govt. civilian employees would be entitled to Special Duty Allowance only if they are posted to North East from outside and just because there is a clause of all India transfer liability in their appointment order, locally recruited persons would not be entitled to Special Duty Allowance. The case on hand is exactly similar. The applicants who belong to Lakshadweep, are locally recruited and are posted in Lakshadweep are not entitled to get Special Duty Allowance which was intended as an incentive to persons from outside to come and work putting up with the hazardous conditions in the Islands. The applicants who are born and brought up in the Islands do not need any such incentive.

5. In the result in the light of what is stated above, the application is dismissed leaving the parties to bear their own costs.

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

Annexure referred to in the Order:

1. Annexure A6

True copy of letter of the
Director, Indian Council of
Agriculture Research dt. 14.9.98.

CERTIFIED TRUE COPY

Date 7.7.2000

Deputy Registrar



O.A.No.1028/1996

Monday this the 21st day of July, 1997.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

1. Rabindra Nath Baruah, Farm Assistant,
Central Plantation Crops Research Institute,
Research Centre, Kahikuchi, Guwahati.
 2. Madan Chandra Rava,
Central Plantation Crops Research Institute,
Research Centre, Kahikuchi, Guwahati.
 3. Surendra Chāmuah, Supporting Staff -do-
 4. Arun Chandra Sarmah, Supporting Staff -do-
 5. Jatin Chandra Borah, Supporting Staff -do-
 6. Purna Chandra Das, Supporting Staff -do-
 7. Jamiruddin Seikh, Supporting Staff -do-
 8. Upendra Chandra Das, Supporting Staff -do-
 9. Puna Rasm Das, Supporting Staff -do-
 10. Rameswar Kaiverta, Supporting Staff -do-
 11. Birendra Chandra Das, Supporting Staff -do-
 12. Ram Bahadur, Supporting Staff -do-
 13. Tikaram Sarmah, Supporting Staff -do-
 14. Dobon Chandra Das, Supporting Staff -do-
 15. Kamaleswar Doka, Supporting Staff -do-
 16. Biron Chandra Das, Supporting Staff -do-
 17. Kasoprasad Sharmah, Supporting Staff -do-
 18. Sankar Ram, Supporting Staff -do-
 19. Ram Autar, Supporting Staff -do-
 20. Prakash Barman, Supporting Staff -do-
 21. Gopal Thapa, Supporting Staff -do-
 22. Satish Baishya, Supporting Staff -do- ..Applicants
- (By Advocate Mr. P.V. MOHANAN)



Vs.

1. The Director,
Central Plantation Crops Research Institute,
Kudlu PO, Kasaragod.
2. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi-110 001.
3. Union of India represented by Secretary,
Ministry of Finance,
Department of Expenditure,
New Delhi.

... Respondents

(By Advocate Ms. PK Nandini for Sh. CN Radhakrishnan)
for R1&2

The application having been heard on 21.7.1997, the
Tribunal on the same day delivered the following:

O R D E R

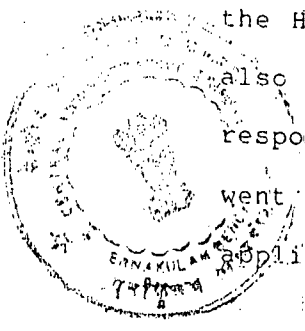
HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Central Government employees posted in North East were entitled to receive an allowance known as Special Duty Allowance. This allowance was being extended to the employees under the Indian Council of Agricultural Research (ICAR) also. But when an order dated 19.12.89 was issued informing the applicants and one K.Soman as also similarly situated employees that the practice of paying Special Duty Allowance had been stopped in accordance with the ICAR Circular aforementioned, the applicants alongwith the said Soman filed O.A.137/90 seeking to have the order dated 19.12.89 set aside and for a declaration that they were entitled to get the Special Duty Allowance in accordance with the order dated 2nd/4th February, 1988 marked as A-8 in that case during the currency of that order as if the order impugned in that case did not have any effect at all. That application was allowed. On the basis of the above judgment the applicants were being paid continuously the Special Duty Allowance. In the meanwhile certain other employees

similarly situated like the applicants approached the Guwahati and Calcutta Benches of the Tribunal claiming the benefit of Special Duty Allowance. These two cases were heard by a Full Bench and it was decided that the employees who have all India transfer liability while posted in North East would be entitled to the Special Duty Allowance irrespective of the fact they belong to the same place. The Union of India took up the matter before the Hon'ble Supreme Court in Civil Appeal No.3251/93. The Hon'ble Supreme Court by its judgment dated 20.9.94 reported in 1994(5) SLR 582 (Union of India and others vs. S.Vijaykumar and others) reversed the judgment of the Full Bench of the Tribunal and held that those who are local residents and locally recruited in the North East would not be entitled to the Special Duty Allowance solely because they have all India transfer liability. In the conclusion paragraph of the judgment the Supreme Court observed as follows:

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

The applicants were not parties to the case decided by the Hon'ble Supreme Court. No Special Leave Petition was also filed against the judgment in O.A.137/90. The respondents even after the judgment of the Supreme Court went on making payments of Special Duty Allowance to the applicants. While so the Government of India, Ministry of



Finance, Department of Expenditure issued an Office Memorandum dated 12.1.96 in which direction was given to all Ministries/Departments to report compliance. The instructions to be complied with were:

- (1) The amount already paid on account of SDA to the ineligible persons or or before 20.9.94 would be waived.
- (2) 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 ie., 20.9.94) will be recovered.

Pursuant to this Office Memorandum the impugned orders dated 18.6.96 and 6.8.96 (A2 and A3) were issued by the first respondent. The payment of SDA to ineligible persons namely locally recruited staff was stopped with immediate effect by order dated 18.6.96 (A2). The order further directed recovery of SDA already paid from September 1994 to May, 1996. By order dated 6.8.96 the amounts paid to the applicants as also to some others as SDA from September, 1994 to May, 1996 were worked out and directed to be recovered in 20 equal instalments commencing from the salary of the concerned staff for the month of August, 1996. Under these circumstances the applicants have jointly filed this application to have the impugned orders A2 and A3 set aside, for declarations that the applicants are entitled to get the Special Duty Allowance by virtue of their posting at Kahikuchi in North Eastern Region and that the A-1 order is not applicable to the applicants and for a direction to respondents not to

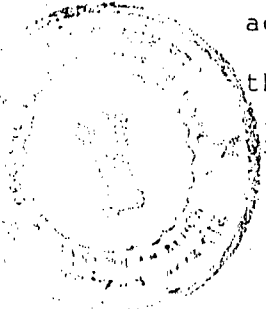
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recover Special Duty Allowance paid to them from September, 1994 to May, 1996. It has been alleged in the application that as payments were being made to the applicants on the basis of the judgment in O.A.137/90 which has become final the respondents are not entitled to recover the amount paid to the applicants even if in the case of similarly situated others, the Supreme Court had held that they were not entitled to the Special Duty Allowance.

2. The respondents seek to support the impugned orders on the ground that in view of the declaration by the Hon'ble Supreme Court that locally recruited persons though have all India transfer liability are not entitled to the Special Duty Allowance while they stand posted in North East area, the payments made to the applicants were erroneous and therefore in terms of the judgment the Government has rightly decided not to recover the SDA paid to them till September, 1994 and to recover only the payments made thereafter.

3. On a careful persual of the pleadings and documents and the judgment in the case of Union of India Vs. Vijaykumar and others and on hearing the arguments of the learned counsel for the parties, I am of the considered view that the respondents cannot be permitted to recover the Special Duty Allowance paid to the applicants from September, 1994 to May, 1996 for the following reasons:

a). The respondents did not chose to file an appeal against the order of the Tribunal in O.A.137/90 and therefore the judgment has become final. In accordance with the directions contained in the judgment, the



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-respondents were bound to pay to the applicants the Special Duty Allowance during the currency of the order of the ICAR dated 2/4-2-88 so long as they remain posted in the North East.

b). In Union of India and others Vs. Vijaykumar and others, the Hon'ble Supreme Court had held that whatever had been paid to the respondents in those cases as also to the similarly situated employees should not be recovered from them in so far as the allowance was concerned. The respondents should not have paid the allowance to ineligible persons thereafter. It took two years for the first respondent to take a decision to stop payment of SDA to ineligible persons and to recover the overpayments. The applicants were not responsible for the payments made from September, 1994 to May, 1996. Atleast in their cases the payments were made on the basis of an order which has binding on the parties. The applicants who received the SDA every month not on account of any misrepresentation by them may have spent the money as and when they received it as part of their salary. I am of the considered view that it will be very harsh on them to compel them to refund the money now.

4. The applicants have prayed for a declaration that they are still entitled to get the SDA; but that claim is untenable in view of the declaration by the Supreme Court that persons belonging to the North East and locally recruited are not entitled to the SDA just for the reasons that they have got all India transfer liability. Though there was no appeal filed against the order in O.A.137/90, the decision to stop payment of SDA to the applicants as

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also similarly situated by the impugned order at A2 in view of the declaration by the Supreme Court cannot be faulted.

5. In the result in view of what is stated above, the application is allowed in part. The part of the impugned order dated 6.8.94 directing recovery of the Special Duty Allowance paid to the applicants from September, 1994 to May, 1996 is set aside. The respondents are directed to not to make any recovery from the pay and allowances of the applicants on the ground of the alleged erroneous payments of the Special Duty Allowance to them from September, 1994 to May, 1996. The other reliefs prayed for are not granted. There is no order as to costs.

Dated the 21st day of July, 1997.

Sd/-
A.V. HARIDASAN
VICE CHAIRMAN

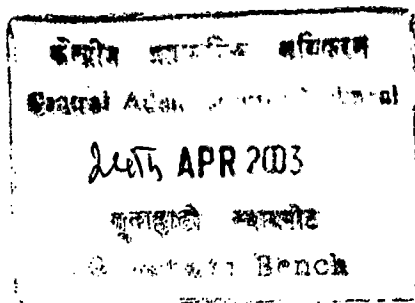
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CERTIFIED TRUE COPY

Date 31.7.97

[Signature]
Deputy Registrar



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH AT GUWAHATI.

ORIGINAL APPLICATION NO. 360 OF 2002.

B E T W E E N

Sri Bikash Choudhury - Applicant

-Versus-

The Union of India & Ors.

-Respondents.

IN THE MATTER OF:

Rejoinder submitted by the applicant
against written statement filed by
the Respondents.

The humble applicant above named
filed the rejoinder as follows:

- 1) That with regard to Paragraph No. 1 and 2
of the Written Statement the applicant begs to
state that he has no comment and beyond record
nothing is admitted by the applicant.
- Bhattacharya

2) That with regard to the statements made in paragraph No. 3 to 14 of the Written statement the applicant begs to state that after completion of his tenure at Andaman-Nicobar & Lakshdweep Group of island your applicant filed representation before the authority concerned to transfer him near his home state. Then after considering his representation the respondents have transferred him to Central Plantation Crops Research Institute (Research Centre) Kahikuchi, Assam. In the said transfer order dated 31st August 1999 (at Annexure-A of the instant Original Application) it has clearly mentioned in Paragraph 02 that "His Head Quarters will be at C.P.C.R.I. Research Centre, Kahikuchi, Assam for the present, but liable to work anywhere in the country under I.C.A.R. Hence, it clearly reflects that your applicant in practice has All India Transfer Liability. Moreover, without all India Transfer Liability your applicant cannot be transferred by the Respondents from Andaman-Nicobar & Lakshdweep Group of islands to Kahikuchi, Assam.

3) That your applicant begs to state that he is now working as Group-B Gazetted Officer and posted as Technical Officer (T 5). As regards to Combine Cadre Post your applicant begs to state that as per their service condition their assessment Reports/Proforma and their works are reviewed

Shourbhury

after five years by the Respondents and on the basis of their performance, works their seniority has been fixed and on that basis their promotion is also made. So, there are no permanent seniority list on Combine Cadre, hence, the question of Combine Cadre does not arise. For kind perusal of this Hon'ble Tribunal your applicant submitted the modification in the existing Technical Service Rules of the I.C.A.R. as per Notification No. 18-01-97. Estt.-IV dated 3rd February 2000 are annexed herewith as Annexure-X.

In view of the above, the written statements submitted by the Respondents are not correct and also misleading to the Hon'ble Tribunal. The applicant begs to state that he is entitled for getting Special Duty Allowance as per existing Rules and also as per clarification issued by the Cabinet Secretariat (E A. I Section) dated -02-05-2000 (at Annexure-F of the instant Original Application.)

Bhaskar

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VERIFICATION

I, Sri Bikash Choudhury, ^{For} ~~Technical Officer~~ (T-5), Central Plantation Crop Research Institute, (RC) (Indian Council of Agricultural Research) Kahikuchi, Guwahati-781017, Assam do hereby solemnly verify that the statements made in the above paragraphs No. 1 to 3 are true to my knowledge, belief and information.

And I sign this verification today on this the day of 2003 at Guwahati.

Bikash Choudhury
Declarant.

- 5 -

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAVAN NEW DELHI

ANNEXURE-X

97

No.18-1/97.Est.IV

Dated the 3rd February, 2000

To

All the Directors/Project Directors of ICAR Research Institutes/NRCs/Projects Directorates.

Subject: Modifications in the existing Technical Service Rules of the ICAR – Notification regarding.

Sir,

As you are aware, a proposal for revision of some of the provisions of existing Technical Service Rules has been under detailed consideration of the Council for the past quite sometime to remove the anomalies and to improve and update the qualifications.

2. The matter was considered by the Governing Body in its meeting held on 18th November, 1999 and based upon the decision of the Governing Body, the competent authority has approved the following changes in the existing technical service rules:

(i) On account of two overlapping grades of T-I-3 and T-II-3, the assessment promotion has become redundant and therefore, grade structure in Cat. I and II has been modified as hereunder:-

Existing	Revised
CATEGORY – I	
T-1 RS. 3200-85-4900	T-1 RS. 3200-85-4900
T-2 RS. 4000-100-6000	T-2 RS. 4000-100-6000
T-1-3 RS. 4500-125-7000	
CATEGORY – II	
T-II-3 RS. 4500-125-7000	T-3 RS. 4500-125-7000
T-4 RS. 5500-175-9000	T-4 RS. 5500-175-9000
T-5 RS. 6500-200-10500	T-5 RS. 6500-200-10500

As per the revised grade structure, the entrants of Category I at T-1 grade would continue to be regulated for assessment from T-1 to T-2 after five years of service as at present. However, from T-2 grade such personnel possessing the qualifications as prescribed herein further under this order for Category- II for direct recruitment, would be eligible for assessment promotion to T-3 grade after five years of

Dr. K.K. Pathak

137
10/4/2000

AAO (A)
lease circulate
to all concerned
11/2/2000
Admin E

K. M. S.
11/2/2000

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service, while those not possessing such qualifications shall become eligible for assessment promotion to T-3 grade only after 10 years of service in the T-2 grade. The assessment promotions from T-3 onwards to T-4 and T-4 to T-5 shall continue to be regulated at five years interval as at present.

(ii) The provisions relating to Category barrier for assessment promotions from T-5 grade of Category II to T-6 grade of Cat. III has been revised as under:

(a) The technical personnel in T-5 grade (RS.6500-10500) and possessing the essential qualifications prescribed as hereinafter under this order for Category III for direct recruitment, shall be eligible for assessment promotion to T-6 (RS. 8000-13,500) grade after completing five years of service in T-5 grade, while:

(b) The T-5 Technical Personnel who do not possess the essential qualifications as for direct recruitment prescribed hereinafter under this order for Cat. III shall be eligible for assessment promotion to T-6 grade after completing 10 years of service in T-5 grade provided such technical personnel are possessing the qualifications prescribed under this order for direct recruitment to Category III (T-3). However, such Technical Personnel in T-5 grade who do not possess the qualifications proscribed under this order for direct recruitment to Category II (T-3) shall not be eligible for further assessment promotion to Category III of the Technical Services.

(iii) Since a revised single pay scale of RS.10000-15200 by way of replacement of their erstwhile pre-revised pay scales as per the VIth Central Pay Commission, has been attached to the existing technical grades of T-7 and T-8, these two grades have been redesignated as uniform and single grade as T(7-8) in the given pay scale of RS.10000-15200 and the movement of technical personnel existing in these grades has been approved to be regulated under the assessment system to the next higher grade of T-9 of Technical Service (Pay scale of RS.12000-16500) in the following manner:

(a) Those technical personnel who are working in T-7 grade (RS.10000-15200) and have not been assessed for T-8 grade would be eligible for assessment to T-9 (RS.12000-16500) grade after completion of 7 years of service in T-7 grade.

(b) Those technical personnel who have already been placed in T-8 grade (RS.10000-15200) will be

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assessed for T-9 (RS.12,000-16500) after completion of 5 years of service in this grade of T-8.

(iv) The minimum essential qualifications for direct recruitment of technical personnel in Category I, II and III at the entry grades thereto would be as per the following model qualifications irrespective of the functional group:

(a) Category-I, Matriculate with atleast one year Certificate from recognized institution in the relevant field;

(b) Category -II, Bachelor's degree in the relevant field or equivalent qualifications from a recognized university;

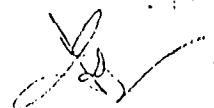
(c) Category-III, Master's degree in the relevant field or equivalent qualifications from a recognized university.

Based upon the above minimum essential model qualifications prescribed for different categories, the specific qualifications covering the relevant fields, location-specific requirements of posts as well as desirable specialization wherever required in case of posts of different functional groups should be finalized in case of direct recruitment in consultation with the concerned subject matter Divisions.

(v) The existing assessment system based upon the CCR gradings and records of performance of personnel as reflected in the assessment reports/proforma as well as the prescribed benchmark for assessment/promotions of 'Good' for Cat. I and II and 'Very Good' for Cat. III respectively would continue as such, but for the sake of uniformity, it has been decided that the assessment committees should determine the benchmark for the relevant period only in accordance to the instructions of the Department of Personnel and Training for determination of benchmark as under selection method, issued from time to time.

3. The modifications, as set out under para 2 foregoing, would take immediate effect from **the date of issuance of this Notification**. Any existing technical employees who may like to be governed only as per the existing technical service rules may do so by specifically exercising an individual option in writing to the Director of the Institute within a period of 30 days from the date of issue of this Notification. **Option once exercised shall be irrevocable and final.** With the introduction of these modifications in the existing technical service rules, the 33 1/3% promotion quota will be operative only in Cat. I at the level of T-1. As under the existing procedure in force, the vacancy in the event of retirement/death/resignation of the technical personnel carrying

Atty. T-1
Sd/-
Advocate
Ramesh Chandra



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whatever personal grade through assessment promotion in the technical service shall occur only in the initial grade of his appointment under the service. This will continue to be regulated accordingly. However, in the meanwhile no post/grade of post under the Category III of technical service should be filled up by Direct recruitment until further instructions from the Council.

4. Kindly acknowledge receipt of this Notification and immediate necessary action as per rules be expedited for its implementation.

5. While circulating the Notification at their respective institutes, the Directors may also endorse a copy to IJSC staff representatives.

6. Hindi version of this Notification follows.

Yours faithfully,

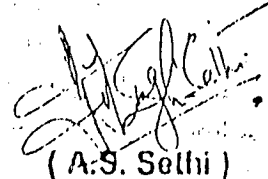


(N.S. Randhawa)

Deputy Secretary(Admin.)

Copy to :

1. All the DDGs ICAR at KB and KAB/National Director, NATP.
2. The Additional Secretary, Department of Expenditure, Ministry of Finance & Member(Finance), ICAR, North Block, New Delhi-1, with reference to his D.O. letter No.L-236/AS(E)/2000 dated 24th January, 2000.
3. Special Assistant to Chairman, ASRB with reference to D.O. No.56-4/99-R.II dated the 24th January, 2000.
4. PS to Hon'ble AM/PS to Hon'ble MOS(DAH&D).
5. All the ADGs/Director (P)/Director (Finance)/Director (DARE)/Director (Works)/Director(Hindi), ICAR at KB and KAB.
6. Sr.PPS to Secy.(DARE) & DG, ICAR/Staff Officer to DG ICAR/PS to Secretary, ICAR/PS to FA, DARE/ICAR.
7. All Deputy Secretaries including Secretary ASRB/ All Deputy Directors/All Under Secretaries.
8. All the F&AOs of ICAR Institutes.
9. Secretary (Staff side), CJSC.
10. Guard File/Spare Copies.



(A.S. Selhi)

Under Secretary(Technical)

No. RC(R)20/99

Dated Uniam the 11th Feb., 2000

Copy to :-

1. All the Joint Director of the centres/ All KVK, I/c.
2. All Head of the Divisions/ FAO/ AAO(E)/Medical Officer/ Sr. Farm Manager/ Estate Officer/ Notice Board with a request to bring to the notice of the Technical staff working under them.
3. Secretary(Staff side) IJSC.

Handwritten notes:
A.H. E1
Jil
Asst. Secy

Handwritten notes:
(A.S. Selhi)
Asst. Secy. (Admin.) (A.S. Selhi)