

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

1. Orders Sheet.....	DA	Pg. 1	to 2
2. Judgment/Order dtd/ 3.1.2003		Pg. 1	to 3
3. Judgment & Order dtd.....		Received from H.C/Supreme Court	
4. O.A.....	H 05/02	Pg. 1	to 16
5. E.P/M.P. 172/02.....		Pg. 1	to 5
6. R.A/C.P.....		Pg. 1	to
7. W.S. No. 1424.....		Pg. 1	to 62
8. Rejoinder.....		Pg. 1	to 12
9. Reply.....		Pg. 1	to
10. Any other Papers.....		Pg. 1	to
11. Memo of Appearance.....			
12. Additional Affidavit.....			
13. Written Arguments.....			
14. Amendment Reply by Respondents.....			
15. Amendment Reply filed by the Applicant.....			
16. Counter Reply.....			

SECTION OFFICER (Judl.)

Salil
4/12/17

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 405/02
Misc. Petition No.
Contempt Petition No.
Review Application No.

Applicant(s): Mr. A. K. Phukan & 27 Others

- Vs. -

Respondent(s): Union of India & Ors

Advocate for the Applicant(s): Mr. M. Chanda, S. Datta, S. Ghosh.

Advocate for the Respondent(s): C. G. S. C.

Notes of the Registry	Date	Order of the Tribunal
This application is in form but not in time Condonation Petition is filed / not filed C.P for Rs. 50/- deposited v.v. IFOID : No. 76-606014 Date 15/11/02 <i>By Register</i>	24.12.2002 bb	<p>NO steps taken. Issue notice of motion. List the case on 24.1.2003.</p> <p><i>CCU Member</i></p>
<i>Slips & Envelopes not taken.</i> <i>24/12.</i>	27.12.2002	<p>List the matter on 30.12.2002 alongwith M.P.172/2002 before the Hon'ble Member Administrative.</p> <p><i>Vice-Chairman</i></p>
<i>Slips taken. Notice prepared and sent to D/s for using the Respondent No. 1 to 4 by Regd. A.D.</i> <i>17/11/02</i> <i>D/No. 37 K 39 441. 8/1/03</i>	30.12.2002 bb	<p>Heard Mr. M. Chanda, learned counsel for the applicants. The application is admitted. The respondents may file written statement within one x 10 days.</p> <p>List on 10.1.2003 for order.</p> <p><i>CCU Member</i></p>

10.1.2002

Mr. B.C. Pathak, learned Addl. C.G.

S.C. prays for four weeks time to file written statement.

List the case on 7.2.2003 for filing of written statement.

Interim order dated 29.11.2002 passed in M.P.172/2002 shall continue.

No written statement has been filed.

9.1.03.

Order dtd 10/1/02 communicated to the parties concerned.

I.C.U.H.
Member

bb

7.2.2003

List the case on 7.3.2003 enabling the respondents to file written statement.

Interim order passed in M.P.172/02 shall continue.

No written statement has been filed.

Ep
6.2.03.

bb

No written statement has been filed.

NS
20/3/03.

Order dtd. 21/3/03. communicated to the parties concerned.

26/3.

No. wts has been filed.

Ep
13.5.03.

Order dtd 21/5/03 communicated to the parties concerned.

26/5

13.5.03
All documents filed by the defendant Nos. 1 to 4.
wts incomplete & taken back.
Refiled
20/5/03

mb.

11.6. Single bench did not sit today. The case is adjourned to 20.6.2003.

26/6
A.K. Jey

Vice-Chairman

On the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents further four weeks time is allowed to the respondents to file written statement.

List on 11.6.2003 for written statement. In the meantime, interim order dated 25.11.2002 shall continue.

Vice-Chairman

11.6. Single bench did not sit today. The case is adjourned to 20.6.2003.

Date

Notes of the Registry

Orders of the Tribunal

20.6.2003

It has been stated by Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents that written statement has been filed again after completion of formalities. The case may now be listed for hearing on 1.8.2003. The applicant may file rejoinder, if any, within two weeks from today.

Vice-Chairman

mb

23.6.03

WS filed by the Respondent Nos. 1 to 4.

24/6/03

Received rule No. F. 4/2003
J. I. dated 19.6.03
from the Dy. Registrar (I),
Bangalore Bench in
OA No. 405/2001 (Judgment)
with order Sheet 5 of
M.P. No. 273/02.

Pd. comply. The order
dated 28/5/03.

24/6/03

1.8.2003

On the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents the case is adjourned.
List on 13.8.2003 for hearing.

Vice-Chairman

mb

13.8.2003.

Heard Learned counsel for the parties. Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs.

Vice-Chairman

No rejoinder has
been filed.

28/8/03

Notes of the Registry

Date

Orders of the Tribunal

18.8.2013

copy of the judgment
has been sent to
the defense for
reading. It is sent to
the L/Advocates
for the parties

AS

Rec'd copy
Macarthur
22/8/2013

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / R.A. No. 405 . . . of 2002.

DATE OF DECISION 13-8-2003.

Sri Anil Kumar Phukan & Ors. APPLICANT(S).

Sri M.Chanda ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

Union of India & Ors. RESPONDENT(S).

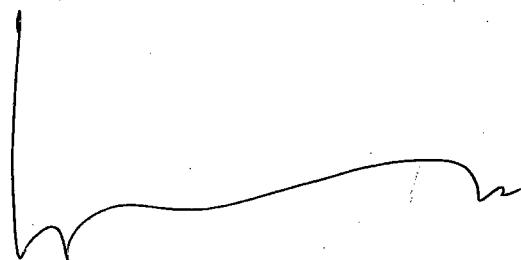
Sri B.C.Pathak, Addl.C.G.S.C. ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE

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

Judgment delivered by Ho'ble Vice-Chairman



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 405 of 2002.

Date of Order : This the 13th Day of August, 2003.

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

1. Sri Anil Kumar Phukan,
 2. Sri R.K.Kalita,
 3. Sri M.Konwar,
 4. Sri G.C.Kalita,
 5. Sri U.Gogoi,
 6. Sri P.Kalita,
 7. Sri M.Barpujari,
 8. Sri B.N.Gogoi,
 9. Sri B.C.Kalita,
 10. Sri R.K.Naik,
 11. Sri P.C.Nath,
 12. Sri A.Hazarika,
 13. Smti. V.Choudhury,
 14. Sri M.Rajak,
 15. Smti M.Barpujari,
 16. Smti B.B.Devi,
 17. Smti. S.Das, Draftsman
 18. Smti M.Dutta,
 19. Smti. S.Das, LDC
 20. Sri T.C.Mali,
 21. Sri R.Gupta,
 22. Sri D.Sarkar,
 23. Sri N.C.Sarkar,
 24. Sri S.R.Das,
 25. Sri S.P.Sinha,
 26. Sri B.N.Deka,
 27. Sri P.Sarma.

All are working in the office of the Central Ground Water Board, Ministry of Water Resources, N.E. Region, Tarun Nagar, Guwahati-5.

By Advocate Sri M.Chanda.

- Versus -

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

contd. 2

O R D E R (ORAL)

CHOWDHURY J.(V.C)

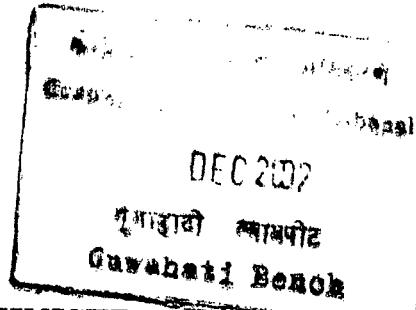
The core issue is as to the rationality of the recovery of Special Duty Allowance (SDA for short). According to the respondents the applicants were paid SDA though they were not eligible, hence the steps are taken for recovery.

2. The issue in respect of payment of SDA is already resolved by the Apex Court in Union of India & Ors. vs. S.Vijaykumar & Ors. reported in 1994 (Supp.3) SCC 649 followed by another decision of the Supreme Court in Union of India & Ors. vs. Executive Officers' Association Group 'C', 1995 (Supp.1) SCC 757. The above two decisions again followed in Union of India & Ors. vs. National Union of Telecom Engineering Employees Union. The authority now on the strength of the aforementioned decisions stopped payment of SDA and also took steps for recovery of the SDA paid from 6.10.2001 to 28.2.2002. The decision on S.Vijaykumar (supra) was rendered on 20.9.1994 and even thereafter the SDA was paid to the applicants till it was stopped from March 2002. The Finance Ministry issued the communication on 29.5.2002. By the said communication the Ministry directed not to make any recovery of the amount already paid on account of SDA to ineligible persons not qualifying on or before 5.10.2001 i.e. the date of the judgment of the Supreme Court rendered in Union of India & Ors. vs. National Union of Telecom Engineering Employees Union. The very undertaking given by the authority in that case indicated that the authority would not to make any recovery which was paid. Retrospective recovery is not favoured on the score of hardship and privation of the employees. The decision rendered in S.Vijaykumar as well as the decision rendered in National Union of Telecom Engineering Employees Union are the pointers on this issue.

3. Heard Mr M.Chanda, learned counsel appearing for the applicants and Mr B.C.Pathak, learned Addl.C.G.S.C for the respondents. In the light of the decisions rendered by this Bench in O.A.266/2003 and 115/2003, we hold that the steps for recovery of the SDA so far paid to these applicants from 6.10.2001 to 28.2.2002 is unsustainable. Accordingly the impugned order dated 25.11.2002 taking steps for recovery of the SDa already paid is liable to be quashed and accordingly quashed. The respondents are directed not to make any recovery of the amount already paid on account of SDA to the applicants.

4. The application is accordingly disposed of. There shall, however, be no order as to costs.

(D.N.CHOWDHURY)
VICE CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No. /2002

Sri Anil Kumar Phukan and others : **Applicant**

- Versus -

Union of India & Others : **Respondents.**

INDEX

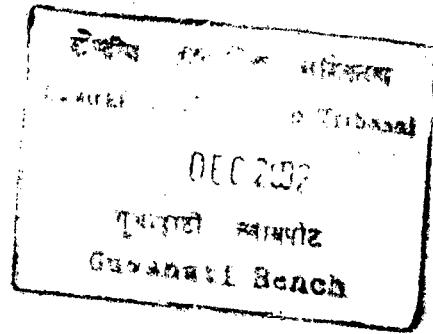
SL. No.	Annexure	Particulars	Page No.
01.	----	Application	1 - 11
02.	----	Verification	12
03.	I	Office Memorandum dated 29.05.02	13 - 14
04.	II	Circular dated 25.11.02	15
05.	III	Order of the Supreme Court dated 05.10.01	16

Filed by

Swagat Dutta
Advocate

Date 24.12.02

Anil Kumar Phukan



11
Filed by: _____
The Petitioner
Through: _____
Swagat Datta
Advocate
24.12.02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. _____ /2002

BETWEEN

1. Sri Anil Kumar Phukan, Assistant Hydro Geologist
2. Sri R. K. Kalita, Assistant Hydro Geologist
3. Sri M. Konwar, Assistant Hydro Geologist
4. Sri G. C. Saha, Scientist - D
5. U. Gogoi, Scientist - C
6. Sri P. Kalita, Scientist - C
7. Sri M. Barpujari, Scientist - B
8. Sri B. N. Gogoi, Scientist - B
9. Sri B. C. Kalita, Scientist - B
10. Sri R. K. Naik, Scientist - B
11. Sri P. C. Nath, Office Assistant
12. Sri A. Hazarika, Chief Draftsman
13. Smti. V. Choudhury, Stenographer
14. Sri M. Rajak, Stenographer
15. Smti. M. Barpujari, Draftsman
16. Smti. B. B. Devi, Draftsman
17. Smti. S. Das, Draftsman
18. Smti. M. Dutta, Draftsman
19. Smti. S. Das, Lower Division Clerk
20. Sri T. C. Mali, Surveyor
21. Sri R. Gupta, Hindi Translator
22. Sri D. Sarkar, Driver
23. Sri N. C. Sarkar, Driver
24. Sri S. R. Das, Driver

Anil Kumar Phukan

25. Sri S. P. Sinha, Driver
26. Sri B. N. Deka, Lab Assistant
27. Sri P. Sarma, Field Assistant

..... All are working in the Office of the Central Ground Water Board, Ministry of Water Resources, NE Region, Tarun Nagar, Guwahati-5.

...Applicants

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India, Ministry of Water Resources
New Delhi.
2. The Director (Admn.),
Central Ground Water Board,
N. H. IV, Faridabad.
3. The Regional Director,
Central Ground Water Board, Ministry of Water Resources,
NE Region, Tarun Nagar, Guwahati-5.
4. The Superintending Hydro Geologist & Head of Office.
Central Ground Water Board, Ministry of Water Resources,
NE Region, Tarun Nagar, Guwahati-5.

...Respondents

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned Office Memorandum bearing letter no. F. No. 11(5)/97-E. II. (B) dated 29.05.02 (Annexure - 1) as well as against

the impugned circular no. 3410/CGWB/NER/ACCTS/SDA/2002 dated 25.11.02 (Annexure - 2) issued by the respondent no. (which has been issued in terms of MOWR letter no. 22/31/98-GW.I. dated 18.09.02 and CHQ, Faridabad letter no. 14-17/98-(E)/LIT.Cell.Vol.II 7878, dated 27.09.02), whereby the payment of SDA made to the applicants with effect from 06.10.01 to 28.02.02 is now sought to be recovered in 10 (ten) installments.

2. Jurisdiction of the Tribunal.

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

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1 That the applicants are citizens of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the present applicants are working in different capacities in the office of the Central Ground Water Board, Ministry of Water Resources, NE Region, Guwahati under the administrative control of the Regional

4

Director, Central Ground Water Board (in short, CGWB)
in the cadre of Group A, B, C and D.

- 4.3 That the applicants are approaching this Hon'ble Tribunal against the impugned action of the respondent in making recovery on account of Special (Duty) Allowance already paid to them. Since the applicants have common grievances and pray for common relief, they have common cause of action and therefore crave leave of this Hon'ble Tribunal to join together in the instant petition.
- 4.4 That the applicants state that by O. M. No. II. 20014/3/83/E. IV dated 14.12.1983 Special Duty Allowance (for short, SDA) was introduced by the Government of India, and it was decided there under to provide incentive to the civilian employees working in the States and Union Territories of the N. E. Region. The said allowance was granted with a maximum limit of Rs. 400/- per month. It was decided under the said memorandum dated 14.12.1983 that the SDA would be granted to the Central Govt. Civilian Employees (who are saddled with All India Transfer Liability) on being posted to N.E. Region. The said rate of Rs. 400/- was, however, subsequently revised from time to time by the Govt. of India vide O. M. dated 1.12.1988, and O. M. dated 22.7.1998.
- 4.5 That the applicants state that they being the Civilian Central Government employees having All India Transfer

Anil Kumar Phukan

Liability were granted SDA by the respondents in terms of the OM dated 14.12.1983. Be it stated that the applicants have been continuously paid SDA by the respondents till 28.02.2002 on being found eligible to receive such payment. However, after issuance of impugned Office Memorandum bearing letter no. F. No. 11(5)/97-E. II. (B) dated 29.05.02 and also in pursuance of the impugned circular no. 3410/CGWB/NER/ACCTS/SDA/2002 dated 25.11.02 (which has been issued in terms of MOWR letter no. 22/31/98-GW.I. dated 18.09.02 and CHQ. Faridabad letter no. 14-17/98-(E)/LIT.Cell.Vol.II 7878. dated 27.09.02), the payment of SDA made to the applicants with effect from 06.10.01 to 28.02.02 is now sought to be recovered in 10 (ten) installments.

Copies of the office memorandum dated 29.05.02 and circular dated 25.11.2002 are annexed hereto as Annexure - 1 and 2 respectively.

- 4.6 That it is stated that the payment of SDA to the applicants, in fact, is discontinued from the month of March, 2002 by the respondents.
- 4.7 That the applicants state that the Govt. of India. Ministry of Finance has issued an Office Memorandum dated 29.05.02 as mentioned above. subsequent to a recent decision of the Hon'ble Supreme Court in Civil Appeal No. 7000 of 2001 arising out of SLP No. 5455 of 1999 wherein the Supreme Court ordered that whatever

amount had been paid to the employees by way of SDA would not, in any event, be recovered from them in spite of the fact that the appeal had been allowed. However, by the said memorandum, the Govt. of India directed for making recovery of the amount paid towards SDA after 05.10.01 which is the date of the aforementioned Judgment of the Supreme Court.

- 4.8 That it has also been further directed by the above mentioned office memorandum that the amount paid prior to 05.10.01 would be waived. The aforesaid decision of the Govt. of India for effecting recovery of the amount that have been paid towards SDA to the applicants on or after 05.10.01 is contrary to the direction passed by the Hon'ble Supreme Court in the case above mentioned and on that score alone, the clause 6(ii) of the OM dated 29.05.02 is liable to be set aside and quashed.

A copy of the order of the Hon'ble Supreme Court dated 05.10.01 passed in Civil Appeal No. 7000/2001 arising out of SLP (C) No. 5455/1999 is annexed hereto as Annexure - 3.

- 4.9 That the applicants state that the aforesaid decision of the respondents to recover the amount paid towards the SDA from the salary/pay due to them is illegal, arbitrary and unfair in as much as no opportunity/notice whatsoever has been afforded to them against such an illegal action. It is stated that this Hon'ble Tribunal in a catena of decision has held that

the action in making recovery so far as the SDA is concerned is illegal and unfair. It is further stated that the applicants have already drawn the SDA that have been paid to them by the respondents on their own and in such a circumstance the decision for recovery of the amount of SDA already paid to them is arbitrary, whimsical and against the settled law. The impugned circular dated 25.11.02 as well as the memorandum dated 29.05.02 are therefore liable to be set aside and quashed.

4.10 That the applicants state that the respondents are going to recover the proposed installments on account of SDA already paid to them from the pay bill of December 2002 and as such this Hon'ble Tribunal be pleased to pass an appropriate interim order restraining the respondents from making any recovery as proposed. It is stated that the action of the respondents is patently arbitrary and illegal and as such if an appropriate interim order, as prayed for in this application is not passed, it will cause irreparable loss and injury to the applicants more so, in view of the fact that they have already spent the amounts paid to them on account of SDA.

4.11 That the applicants state that the salary is due to them against their services rendered to the respondents and they have a legal right to draw the same. The respondents are therefore under the legal obligation to pay the same to the applicants but they have

surprisingly taken an action in making adjustment against the said salary towards the payment of SDA without affording any opportunity whatsoever. The said action of the respondents in making adjustments is liable to be declared illegal and without jurisdiction and they are liable to an appropriate direction from this Hon'ble Tribunal to make payment of the salary to the applicants without any deduction.

4.12 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

- 5.1 For that, the action of the respondents in proposing to make recovery of the amount already paid to the applicants towards SDA is glaringly arbitrary and the same cuts at the throat of Article 14 of the Constitution of India and as such, the impugned order of making recovery is liable to be struck down.
- 5.2 For that, the action of the respondents in making recovery from the salary of the applicants that too, without any notice is in violation of the Principles of Natural Justice and the same suffers from colourable exercise of power.
- 5.3 For that, in view of the decision of the Supreme Court passed in Civil Appeal No. 7000 of 2001, the respondents are not entitled to make any recovery on

910

account of SDA already paid to the applicants, from their salary.

5.4 For that, the impugned memorandum dated 29.05.02 as well as the circular dated 25.11.02 are contrary to the decision of the Supreme Court referred to above.

5.5 For that, in any view of the matter, the impugned memorandum dated 29.05.02 as well as the circular dated 25.11.02 are bad in law and liable to be set aside.

6. Details of remedies exhausted.

That the applicants state that they have exhausted all the remedies available to them and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Tribunal.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit before any Tribunal or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicants humbly pray that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application

shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the impugned memorandum dated 29.05.02 as well as the circular dated 25.11.02 be declared illegal and set aside.
- 8.2 That the action of the respondents in making recovery on account of SDA already paid to the applicants for the period from/on or after 06.10.01, be declared illegal and without jurisdiction.
- 8.3 That the applicants be declared entitled to the amount of SDA already paid to them for the period from/on or after 06.10.01.
- 8.4 Costs of the application.
- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During subsistence of this application, the applicants pray for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to stay/suspend operation of the impugned circular (Annexure - 2) to this application and be further pleased to restrain the

respondents from making any recovery on account of SDA already paid to the applicants for the period from/on or after 06.10.01 from their salary.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I. P. O. No.: 7G 606014 dated 15.11.02
- ii) Issued from & Payable at: GPO, Guwahati.

12. List of enclosures.

As given in the index.

VERIFICATION

I, Sri Anil Kumar Phukan, son of Late Nagendra Nath Phukan, aged about 46 years, resident of Parijat Path, Hatigaon, Guwahati -5, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 24th day of December, 2002.

Anil Kumar Phukan

F.NO.11(5)/97-E.11.(B)

Government of India

Ministry of Finance

Department of Expenditure.

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 NORTHEASTERN REGION INCLUDING SIKKIM.

The undersigned is directed to refer to this Department's OM NO.2001473/8 E.IV dated 14.12.83 and 20.4.88 1987 read with OI NO20014/16/86-EIV/E.11 (I) date 1.22.88, and O.M.NO.11 (3)/95--/95-E.11 (I) dt.12.1.1996 on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted 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 the members of any service/cadre or incumbents of any post/ group of posts has to be determined by applying the tests of recruitment None, promotion zone etc, i.e. whether recruitment to service/cadre/post has been made on All India basis or 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 judgement delivered on 20.9.94 (in Civil Appeal NO.3251 of 1993 in the of UOI and CAT V/S Sh. S. V. Jay 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 in the appointment order relating to All India Transfer Liability.

20.9.94.

True up

Savitosh
Advocate

4. In a recent appeal filed by Telecom Department (Civil Appeal NO.7000 2001-arising out of SLP NO.5455 of 22 1999) Supreme Court of India has ordered 5.10.2001 that this appeal is covered by the judgement of this Court in the case of UOL & Ors vs. S. Vijayakumar & Ors reported as 1994 (Supp.3)SCC,649 and following the case of UOL & Ors v.s Executive officer'Association'Group C'1995(Supp.1) SCC,757. Therefore, this appeal is to be allowed in favour of the UOL. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that 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 Civil duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.2001, which is the date of judgement of the Supreme Court, will be waived. However, recoveries, if any, already made need not be refunded.

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

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

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

(N.P.SINGH)

Under Secretary to the Government of India)

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

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

NO. 3410/CGWB/NER/ACCTS/SDA/2002

24

Government of India
Ministry of Water Resources
Central Ground Water Board
North Eastern Region
Guwahati - 781 005.

Dated: 25th November 2002.

C I R C U L A R

The amount paid on account of S.D.A. to the ineligible persons not qualifying for getting S.D.A have to be recovered as per Govt. order vide Ministry of Finance O.M. No.11(5)/97-E.II(B), dated 29.5.2002 & MOWR letter No. 22/31/98-GW.I, dated 18.9.2002 and CHQ, Faridabad letter No. 14-17/98-(E)/Lit.Cell.Vol.II 7878, dated 27.9.2002.

This office is effecting the order from November 2002. The S.D.A. paid to the ineligible officers/officials from 6.10.2001 to 28.2.2002 will be recovered in 10 (Ten) instalments.

This order is also to be implemented invariably by the SUO Shillong & Division VII, Guwahati.

recd 25/11/02
(K. KEERTHISEELAN)
SUPERINTENDING HYDROGEOLOGIST
& HEAD OF OFFICE

DISTRIBUTION:

1. The Executive Engineer, CGWB, Div. VII, Guwahati
2. The Officer in Charge, CGWB, SUO, Shillong.

6.16.1

Received
D. J. Dube
DRAFTSPEECH
GOVT. OF INDIA
Central Ground Water Board
Division VII, 2/1, Road
Gauhati-24

To the U.P.
Syjithash
Advocate

Recd 25/11/02

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7000 OF 2001

(Arising out of S.L.P.(C) No. 5455 of 1999)

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. Bijaykumar & Ors reported as 1994 (Supp.3) SCC 649 and followed in the case of Union of India & Ors vs. Executive Officers' Association Group 'C' 1995 (Supp. 1) SCC, 757. Therefore, this appeal is to be allowed in favour of the Union of India. It is ordered accordingly.

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

Sd/- 4 N. SANTOSH HEGDE

Sd/- K.G. BALAKRISHNAN

New Delhi
October 05, 2001

True copy
Bijaykumar
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO. 405/2002

Shri Anil Kumar Phukan & others ...Applicants

-versus-

Union of India & others ...Respondents

(Written statements filed by the respondent No.1 to 4)

The written statements of the above noted respondents are as follows:

1. That the copies of the O.A.No.405/2002 (referred to as the "application") have been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being common and similar, the written statements as common for all of them are hereby filed for them.
2. That the statements made in the application which are not specifically admitted by the respondents are hereby denied by them.
3. That the application is not maintainable and is liable to be dismissed as the same has been filed by more than one person joining together in a single application and without taking the due permission from this Hon'ble court as required under the rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

Filed by
B.C. Pathak (17/10/05)
(B.C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

4. That before traversing the various statements made in the application, the respondents give a brief resume to the facts and circumstances of the case as under:

(a) That the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi, vide Office Memorandum No. 20014/3/83-E.IV dt.14.12.1983 brought out a scheme thereby extending certain facilities and allowances including the SDA for the civilian employees of the Central Govt. serving in the North-Eastern States and Union Territories etc. This was done to attract and retain the services of officers in the region due to inaccessibility and difficult terrain. A bare reading of the provisions of the said O.M. it is clear that these facilities and allowances are made available only to those who are posted in the region from outside on transfer.

A 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.

- (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. Vijaykumar & 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 persons posted from outside to the North-Eastern Region, not for the local residents

of the said defined reason. 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. While passing the said judgment the Hon'ble Supreme court relied upon its earlier decisions held in "Chief General Manager (Telecom)-vs- Shri Rajendra Ch. Bhattachrjee & others and also the "S.Vijaykumar case".

A true copy of the said judgment dt.23.2.95 is annexed as ANNEXURE-5.

- (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. Vijaykumar case and held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D

and there is no distinction. By the said judgment, the said Hon'ble court also held that the SDA paid to the ineligible employees after 20.9.94 be recovered.

A 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. Hence, the applicants 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 clinched on the vexed question of grant of SDA to the central govt. employees and by relying on the earlier decision of "S.Vijaykumar" and the "Executive Officers' Association Group C" was pleased to allow the appeal in favour of the Union of India and 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.

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

- (I) That out of the total 27 no. of applicants, except G.C. Saha, R. Naik, Mrs. S. Das and Sri Rakesh Gupta, all the applicants are local residents of N E Region and serving in the N E Region from the very beginning upto now without any transfer outside the N E Region. So far the other above named persons are concerned, they had been posted in the N E Region on recruitment as initial posting and they have not been transferred outside the N E Region from the date of their initial posting upto now. Therefore, under the settled provisions of law, none of the applicants are entitled to grant of SDA under the provisions of the aforesaid office memoranda. A statement compiled and prepared in a tabular form by the respondents showing the initial posting and subsequent transfer, if any, with regard to all the officers and employees including the applicants under the respondents serving in the N E Region had been prepared and the same is annexed to this written statement which may kindly be treated as a part of this written statement. This statement is prepared on the basis of the respective service books and the personal files of the officers and employees maintained by the government.

A copy of the aforesaid statement compiled and prepared by the respondents is annexed as ANNEXURE-R₁₂.

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 fulfill the criteria as underlined in O.M. dt. 20.4.87 and the law laid down by the Hon'ble Supreme court as

stated above and only in case when such employees are in fact posted in the North-Eastern Region on transfer from outside. 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.

5. That with regard to the statements made in para 1, 2 and 3 of the application, the answering respondents state that in view of the above settled provisions of law, there is no cause of action whatsoever justifying the filing of this application. The impugned order dated 25.11.2002 has been rightly issued by the respondents in conformity with the Hon'ble Supreme Court's decisions. Therefore, the application is liable to be dismissed with cost.
6. That with regard to the statements made in para 4.1, 4.2 and 4.3 of the application, the answering respondents have no comment to offer.
7. That with regard to the statements made in para 4.4, 4.5 and 4.6 of the application, the answering respondents state that as analyzed herein above the various legal provisions with regard to the grant of SDA, it is very much clear now that the respondents by wrong interpretation of the provisions of the aforesaid Office Memoranda had to pay SDA to the ineligible employees which was lately realized when the latest clarification came vide office memorandum F.NO.11(5)/97-E.II.(B) dated 29.5.2002 as explained hereinabove and accordingly the SDA paid to the ineligible employees had to be recovered w.e.f. 6.10.2001 to 28.2.2002. It may be mentioned here that the payment of SDA has already been stopped/ withdrawn after 28.2.2002. The respondents instead of recovering the whole amount of SDA at a time from the ineligible employees decided to recover the same in 10 (ten) easy installments so that there may not be any hardship to the employees.

8. That with regard to the statements made in para 4.7, 4.8 and 4.9 of the application, the answering respondents state that by the O.M. dated 29.5.2002 (communicated through circular dated 25.11.2002 so far the respondents are concerned) the Govt. of India rightly took a decision in compliance to the Hon'ble Supreme Court's decision passed in C.A. No.7000/2001 and decided to not to recover any SDA paid to the ineligible employees upto 5.10.2001 i.e. the date on which the aforesaid judgment was passed. The decision taken for recovery of SDA w.e.f. 6.10.2001 to 28.2.2002 was strictly in conformity with the decision of the Hon'ble Supreme Court as stated above. It is pertinent to mention here that in similar circumstances, while the Govt. of India took a decision to recover the amount of SDA paid to the ineligible employees after the judgment dated 20.9.94 passed in S. Vijoykumar Case for the period after 20.9.94 i.e. the date on which the Hon'ble Supreme Court passed the said judgment, some employees challenged the legality and validity of such order of recovery by a writ petition directly filed in the Hon'ble Supreme Court which was registered as writ petition No. 794/1996 (Sadhan Kr. Goswami & others -vs- Union of India & others). The Hon'ble Supreme Court was pleased to pass the final judgment on 25.10.96. Putting reliance on the earlier decision passed in "S. Vijoykumar & others" it was held that as the Government limited the payment upto the date of judgment in that case upto 20.9.94 and ordered recovery only thereafter vide memorandum dated 12.1.96, the Hon'ble Supreme Court also held that there was no justification to direct the respondents not to recover the amount from the petitioners after the day of judgment of the said Hon'ble court. So law was clearly laid down by the Hon'ble Supreme Court that any amount of SDA paid to the ineligible employees after the date of the judgment are liable to be recovered. The same analogy is also to be drawn to the instant case also as the Hon'ble Supreme Court has limited the scope to not to recover SDA only upto the date of the judgment and not thereafter in infinity. After the judgment of Vijoykumar's Case (20.9.94), the similar situation occurred when SDA was paid even after the judgment and the Govt. of India issued the order of recovery belatedly only on 12 January 1996 with retrospective effect. In the instant case also the judgment in C.A. No. 7000/2001 was passed on 5.10.2001 allowing the appeal filed by the Government, whereas the office memorandum dated 29.5.2001 was issued at a much later date from the date of judgment thereby directing the various departments to recover SDA w.e.f. 6.10.2001 which has been paid to ineligible

employees. So there is no illegality in issuing the aforesaid memorandum dated 29.5.2001 and the circular dated 25.11.2002 by the respondents to recover the SDA from the aforesaid date and the period from the ineligible employees. The Hon'ble Supreme Court in the order dated 5.10.2001 in C.A. No. 7000/2001 once again put reliance and emphasis on the earlier decision in the subject passed in **Union of India & others -vs- S. Vijoykumar & others** and also **Union of India & others -vs- Executive Officers Association, Group C**. It is need less to mention here that in **Union of India & others -vs- Executive Officers Association Group C**, the Hon'ble Supreme Court once again referred to and relied upon its own earlier decision passed in **Chief General Manager, Telecom -vs- Sri R C Bhattacharjee & others** and also the **Union of India & others -vs- S. Vijoykumar & others**. In these decisions, the Hon'ble Supreme Court clearly held that the incentives including SDA is only meant for attracting and retaining the services of the officers transferred and posted from outside to the N E Region and the payment of this incentives to the officers and employees who are local residents of the region does not arise. Law is also well settled that such incentives are not available to any such officer or employee who has been posted in the N.E. Region from outside as a matter of his first and initial posting. Under these circumstances, the interpretation perceived by the applicants with regard to the latest decision of the Hon'ble Supreme Court dated 5.10.2001 is not correct and is a misconceived one.

9. That with regard to the statements made in para 4.10 of the application, the answering respondents state that under the facts and circumstances of the case and the provisions of law the applicants are not entitled to grant of SDA and the order for recovery of SDA w.e.f. 6.10.2001 to 28.2.2002 does not suffer from any illegality and infirmity as alleged by the applicants. Therefore the interim order passed by this Hon'ble Tribunal on ^{25.11.2002} ~~30.12.2002~~ to not to recover the SDA from the applicants is liable to be vacated immediately.
10. That with regard to the statements made in para 4.11 and 4.12 of the application, the answering respondents state that the allegation made in these paras are not correct and therefore the same are denied. The respondents initiated their actions as

provided by law laid down by the Hon'ble Supreme Court and the O.M issued by the Govt. of India and therefore there has not been any illegality or arbitrariness.

11. That with regard to the statements made in para 5.1 to 5.5 of the application, the answering respondents state that in view of the facts and circumstances of the case and the provisions of law as cited hereinabove, the grounds shown by the applicants cannot sustain in law and the application is liable to be dismissed with cost.
12. That the answering respondents have no comment to offer to the statements made in para 6 and 7 of the application.
13. That with regard to the statements made in para 8.1 to 8.5 of the application, the answering respondents state that under the facts and circumstances of the case and considering the settled provisions of law, the application does not merit any relief whatsoever as prayed for. Hence, the application is liable to be dismissed with cost.

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 be pleased to dismiss the application with cost and also to vacate the interim order passed on 30.12.2002 in M.P. No.172/2002.

VERIFICATION.....

VERIFICATION

I, Shri Arya Ratna Baskhi, at present working as Regional Director in the office of the NER C G W B at Guwahati, being competent and duly authorized to sign this verification do hereby solemnly affirm and state that the statements made in para 1, 2, 3, 5 to 12 and 13 are true to my knowledge and belief, those made in para _____ 4 _____ being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 12th day of May, 2003 at Guwahati.



DEPONENT

Regional Director,
Central Ground Water Board
W. B. B., Guwahati.

New Delhi, the 14th December, 1965.

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. Themissible deputation allowance will also continue to be paid during the period of deputation so extended.

(11) Weightage for Central deputation/training abroad and special mention to Confidential records.

Satisfactory performance of outlets for the

...²/=...

Constituted
Society 1/1/69
Regd. Director (V16)
Office: 23, K.L.U.
Kozhikode

12-13

29-
38

Tenure in the North East shall be given due recognition in the case of eligible officers in the matter of 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 resting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs.400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance

1. Assam and Meghalaya

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

2. Manipur

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

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

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

.....3....

1982
1.7.82

-12-

13

-13-14

12-30

3

3. Tripura

The rates of the allowance will be as follows:-

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

(b) Other Areas

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

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

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

(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 100 kms. for the Government servant himself and his family will be admissible.

(vi) Travelling Allowance for journey on transfer

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

Contd....4.....

15

123 14 31

(vii) Road Allowance 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 16 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 if 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...

- 14 - 32
15
16

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

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

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

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

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

SD/-

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

TO:

All Ministries/Departments of the Government of India,
etc. etc.
Copy (with spare copies) to C. & A.G., U.P.S.C. etc.

6 - 18 - 2 - 17 - 34 - 11

Financial Advisors of the Administrative Ministries/Departments are requested to review all such cases where specific 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.

To

Q.D.U. - 1
(A.N. SINHA)
DIRECTOR (EG)
TELE: 3011819

Financial Advisors of all Ministries/Departments.

J.K.

18-19
F. No. 20014/16/06/E.17/
Government of India
Ministry of Finance
Department of Expenditure

Shri Jawaharlal Nehru, the 1 December, 1964
Office Memorandum

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

The undersigned is directed to refer to this Ministry's
O.M. No. 20014/3/73-E.IV dt. 14th December, 1953 w.e.f. 30th 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 the North-Eastern and Lakshadweep
States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal
Pradesh and Mizoram has been enquiring the attention of the Govt.
Accordingly, the President is now pleased to decide as follows:-

(i) Review of Deputation/Deputation

The existing provisions as contained in this Ministry's
O.M. dated 11.12.03 will continue.

(ii) Deputation for Central Deputation and Deputation abroad

The existing provisions as contained in this Ministry's
O.M. dated 11.12.03 will continue. Cadre authorities are advised
to give due weightage for satisfactory performance of duties for
the prolonged tenure in the North-East in the matter of promotion
in the cadre posts, deputation to Central tenure posts and occurrence
of training abroad.

(iii) Special (Duty) Allowance

Central Govt. civilian employees who have All India
transferability 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 in any station in the North-Eastern Region.
Special (Duty) Allowance will be in addition to any special duty
or/ or deputation (duty) allowance already being drawn subject to
a condition that the total of such Special (Duty) Allowance plus
Basic pay/ Deputation (Duty) Allowance will not exceed Rs. 1000/- p.m.
Special allowances like, Special Conveyancy (Rugby Isosity) Allowance,
Construction Allowance and Project Allowance will be
dealt separately.

ANNEXURE - A.3

ANNEXURE : 3

ANNEXURE : R3

19-20

Central Govt. Civilian employees who are members of
Salaried Civil Servants, eligible for the grant of
allowances under this para and who are exempted from
income-tax under the Income-Tax Act will also draw
allowances.

Special Supplementary Allowances:-

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

36

(v) Travelling Allowance on First appointment:-

The present concessions as contained in this Ministry's
O.M. dt. 14.12.63 will continue with the exception that on
first appointment, T.A. should be admissible for the total distance
instead of 100 kms. distance in excess of first 100 kms. only.

(vi) Travelling Allowances for journey on transfer:-

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

(vii) Allowances for preparation of overseas effect:-

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

(viii) Joining Allowance:-

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

(ix) Journey Expenses:-

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

Concessions arising out of Rs. 500/- or above, are as follows:-
i) Allowance to dependents and the dependent children (Upto 18 years) for
travelling by air, ship, road, rail or hire car will be admissible air:trips between
Mysore/Chennai/Visakhapatnam/Visakhapatnam/Mumbai and Calcutta and via
Samskruti, Bhopal, Port Blair, and Calcutta/Madras and via Madras in
case of postings in Andaman & Nicobar Islands and between Kavaratti and
Cochin and vice versa in case of postings in Lakshadweep.

(x) Children Education Allowance/Hotel Allowance:-

Where the children do not accompany the Government servant
to the North-Eastern Frontier, Children Education Allowance upto
Rs. 100/- will be admissible in respect of children studying at
the institution of posting of the employee concerned or any
other institution where the children posted. If children studying
in hospitals or in any other institution in the fact of station of posting
on any other station, the Government servant concerned will be
given marks authority without which restriction.

- 20 -
21

of Children Education Allowance/House subsidy will be
D.O.P.G.L. O.M. 10011/1/07-H.O.C. (Allow. con). dt. 31.12.07.
and from time to time.

Concession regarding grant of House Rent Allowance to
officers posted in the states of North Eastern Region,
Andaman & Nicobar Islands and Lakshadweep Islands.

The present concession so contained in this Ministry's
O.M. No. 11016/1/B, II(1)/G.I. dt. 29.3.04 on account from time to
time will continue to be applicable.

(xii) Telephone facility

The officers who are eligible to have residential telephone
may be allowed to retain their telephone at their residences in
their free time 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 Islands. These orders will also apply
mutatis mutandis to officers posted to H.E. Council, when they
are stationed in the H.E. Region.

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

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

4. Final version of this Memorandum is enclosed.

(A. S. SAWARAKH)

JOINT SECRETARY TO THE GOVT. OF INDIA.

To

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

Copy (with serial number of spare copies) forwarded to
C.S.A.O., U.P.G.S., OIC, etc., pp: per standard endorsement
list.

— 20 — 21 —

ANNEXURE-IV 38

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NUMBER 48

Union of India and others

... Appellants

Versus

Si Vijayakumar and others

... Respondents

With Civil Appeal No. 6103-81 of 1981 (arising out of
SLF(C) Nos. 116784/81, 116785/81, 116786/81, 116787/81,
10461/83, 9210/83).

JUDGEMENT

HANSARIA J.

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

21 22 23

39
48

... the respondents are entitled to specific
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 observed the same in sufficiency,
Three appeals have been preferred by the Union of India.

2. The Tribunal took the aforesaid view because
the Office Memorandum dated 17.4.1905, which is the
subject of "Allowances and facilities for civilian
employees of the Central Government serving in the
States and Union Territories or the North-Eastern
Region, improvement thereof" had stated that, "allowance
shall be payable in the posts be those which have "All
India Transfer Liability". The view 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 with it a peculiar condition and not to
those who were residents of this region. The Office
Memorandum of 1907 has clearly stated that the allowance

22-23-24...
-40-
inability and difficult terrain
because even the 1983 memorandum states that
there is no need for the allowance in the
service of the competent
officers for service in the North-Eastern Region.
mention about retention has been made because it was
found that incumbents going to that Region on deputation
used to come back after joining thereby taking leave
and, therefore, the memorandum stated that this period
of leave would be excluded while counting the period of
tenure of posting which was required to be of 2/3 years
to claim the allowance depending upon the period of
service of the incumbent. The 1983 memorandum makes the
position clear by stating that "Central Government
employees who have All India Transfer Liability
would be granted the allowance "on posting to a
station to the North-Eastern Region". Thus, effect is
made clear beyond doubt by the 1983 memorandum which
stated that allowance would not become payable merely
because of the clause in the appointment order relating
to All India Transfer Liability. Merely because in the
Office memoranda of 1983 the subject was mentioned
quoted above is not be enough to conclude that
submission of Dr. Ghosh.

— 23 — 24 — 25

become payable merely because of the change 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 1907, it is to be added to the former that the allowance relating to 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 the principle of "equal pay for equal work" and an infringement 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 Tulsidas for two reasons. The first is that a close perusal of the two aforesaid memoranda, in conjunction with what was stated in the memorandum dated 12.6.1905 which has been quoted in the memorandum of 26.4.1907, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region.

24

25

26

The submission of Dr. Ghosh that the denial of allowance to the respondents would violate the equal protection doctrine is adequately met by what was held in State Bank of India vs. Reserve Bank of India Staff Officers Association and others, 1991 (1992) 1 CLT 100 to which an observation has been invited by the learned Additional Solicitor General in which grant of special compensatory allowance or remote locality allowances 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.

E. 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.

P-12 27

P-12 27

49

۱۴۹

...fixed to be 2104 copy

Assistant Registrar (Judi)

11/3 8

11/3/93 95

Supreme Court of India

IN THE SUPREME COURT OF INDIA

579905

CIVIL APPELLATE JURISDICTION

ANNEXURE E : 5

CIVIL APPEAL NO. 3034

(Appealing out of S.L.P. (C) NO. 16717 of 1994;

Union of India & Orgs.

.....Appellants

Executive Officers Association

.....Respondents.....

1-11-10 11-11-11

Faizan Uddin. 3

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, Guwahati Bench (hereinafter referred to as Tribunal) in O.A. No.

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/B3-E.IV dated December 14, 1983 and the Office Memorandum No. 20014/16/B6.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 transferability 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 Shillong 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/E/83.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 as in the Recruitment Rules/Appointment Order, 1979, all India transfer liability does not make eligible for grant of Special Duty Allowance as per the Office Memorandum dated December 14, 1983.

Appended
already
New Delhi
September 7, 1989

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, 1952 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 whom 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

30

31

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

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."

.....

✓ 8. 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

-32-

33

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 competent 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. [J.T. 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 Memoranda 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) 443 - Union of India Vs. S. Vinaya Kumar & Ors. In Vinaya Kumar (Suor) the point for consideration was exactly identical, with regard to the entitlement to Special Duty Allowance to those employees/officers who

—33—
34
R-79

—50—
9

are residents of North-Eastern Region itself. After considering the memorandum dated December 14, 1993 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.

sd/-

.....
(S.C. Agrawal)

sd/-

.....
(Faizan Uddin)

New Delhi:

February 23, 1995.

25-35
34-
R-5

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

ANNEXURE 5

51-
6

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 the Central Government employees having All India Transfer liability is not to be paid to such Group C and Group D employees of Geological Survey of India who are residents of the region in which they are posted. We may also indicate that such question has been considered by this Court in Union of India & others vs. S. Vijay Kumar & others (1994) (J) SCC 649.

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

New Delhi
September 7, 1995.

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

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

12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this
OM No. 20014/3/83-E. IV dated 14.12.83 and
20.4.1987, read with OM No. 20011/10/80-E. IV/E.11(B) dt.

1.12.88 on the subject mentioned above.

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

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

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

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.

Ref: 10

10/1/1
DAP/46

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 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 CAG, 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"

Appendix (X-7) (b)
No. 3366/96/X
SUPREME COURT
INDIA

37
38 - 39 -

Dated New Delhi, the 28th November, 1996

FROM: ASSISTANT REGISTRAR (JUDG)

- TO : 1. The Union of India,
represented by the Cabinet Secretary,
Government of India, North Block,
NEW DELHI.
2. The Director, SSB,
Office of the Director, SSB,
East Block-V, R.K. Puram,
New Delhi - 110 065
3. The Divisional Organiser,
SSB Shillong Division,
A.P. Secretariat building,
Shillong, Meghalaya.
4. Commandant, Group Centre, SSB,
Tripura, Salbagan, Kartala,
Tripura West.

ANNEXURE

RE

Writ Petition No. 724 of 1996
(Under Article 32 of the Constitution of India)

WITH
Life Duration Application No. 1
(Application for ex parte stay)

Sadan Kumar Goswami & Ors.

.. PETITIONERS

vs. CUS

10/ Union of India & Ors.

.. RESPONDENTS

Sir,

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

11/12
11/11/1996
Petition and application for stay.
Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR (JUDG)

133728

RECEIVED
SACramento County
RECEIVED - 12/16/95
F INDIA
CTION
OF 1995
133728

29

RECEIVED
SUPREME COURT
RECEIPT NUMBER 7271
IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
CIVIL PETITION NO. 724 OF 1961
Article 32 of the Constitution of India
Indian K...

Sub-Suspector Sadhan Kumar Goswami & O/S.

...Petitioners

... Respondents

THE 25TH DAY OF OCTOBER, 1996

Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice S. P. Kurduwala
Adv. and Am.

153
Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice S. P. Kurduwala
Sankar Ghosh, Sr. Adv. and Amalan Ghosh, Adv. with him for
the Petitioners.

O - R - D - E - R

O_R_D_E_R

The following Order of the Court was delivered:

— 30 — — 39 —
— 29 — 40

66
66

56

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WIT PETITION NO. 784 OF 1996

Sub-Inspector Sadiq Kumar Goswami & Ors.

... Petitioners

VERSUS

The Union of India & Ors.

... Respondents

22 P E 2

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 added facts are that the petitioners who joined service under the Special Security Bureau (SSB) in North Eastern Region of India, claimed special duty allowances as per order of the Central Government. The question was considered by this Court in Union of India vs. S. Vilay Khan [CA No. 325 of 1991] decided on September 20, 1994; wherein this Court had held thus:

"Petitioners, 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 closer perusal of the two aforesaid memoranda, along with what was stated in the memorandum, is 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 1963 memorandum starts by saying that the need for the allowance has arisen for attracting and retaining the services of the competent officers for service in the North-Eastern Region. Rebuttal about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there, taking leave and therefore, the memorandum stated that this period of leave should be excluded while counting the period of tenure of posting which was required to be of 253 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 civil servants who have All India Transfer Liability would be granted the allowance on posting to any station to the North-Eastern Region. This aspect is made clear beyond doubt by the 1967 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memorandum of 1963 the subject was mentioned as quoted above is not enough to concord to the submission of Dr. Ghosh.

The submission of Dr. Ghosh that the denial of the allowance to him residents of Assam violate the equal pay doctrine is completely set by law as held in

Reserve Bank of India vs. Reserve Bank of India Staff Officers Association [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 has been paid upto the date of the judgment, was directed not to be recovered from them. The petitioners are relying upon the Office Memorandum dated July 11, 1986 which provided that T11 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 which amounts 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 of part with Group A and B officers under the above Memorandum dated July 11, 1996, apart from the fact that Group A and B employees are entitled to special duty allowance contrary to the law declared by this Court in the above judgment, they too are bound by it. Whether or not they are entitled to the above benefit due to this Court's judgment, the petitioners are not entitled to the benefits of the allowances as claimed by them. The judgment of this Court should indicate that it did not make any distinction between Group C and D and Group A and B officers. All are governed by the law under Article 141. The petitioners are not entitled to the payment of the special duty allowance irrespective of whether or not they were parties to the judgment rendered in Virendra 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.

At late, we have been coming across this type

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 petitioner's 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 should 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 has 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 12, 1986 the amount paid which is contrary to the direction issued

34-44-45

(10)

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.RAMASHRAY)

(S.P.KUPUKAR)

NEW DELHI,
OCTOBER 25, 1976.

SEALED IN MY PRESENCE
1/2-11/11

45 (90) 62
- 36 - 46
No. ARC/Coord/4/99- 4
Directorate General of Security
(Cabinet Secretariat)
O/o The Director, ARC
East Block-V, R K Puram
New Delhi - 110 066.

Dated, the 05/05/2000

Doom Dooma

MEMORANDUM

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

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

Enclosure as above.

(V. DORNIBRAY)
ASSTT DIRECTOR (RLO)

To

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

No. ESTT/DEPM/SDR/98-11-16-1
ARC, Doom Dooma

Dated the, 01/6/2000

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

2. All Unit Heads.

(Sd/-, C.R., A.O.O., MDCY, DPM, D.R.,
ATC(O), MDCY, MDCY, MDCY, MDCY)

(R.N. CHAKRABORTY)
SECTION OFFICER

63
X
47
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(10)-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(10)5202 dated 2.2.1999 have been examined in
consultation with our Integrated Finance and Ministry of Finance
(Dept. 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 appoint-
ment posted in the N.E. Region after
selection through direct recruitment
based on the recruitment made on All
India basis and having a common/central-
ised seniority list and All India
Transfer Liability.
- (b) An employee hailing from the N.E. region
selected on the basis of an All India
recruitment test and borne on the Central-
ised 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 an 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

NO

DD(B)

— BT 48-47 —

20.4.97 read with O.M. 70014/16/96 E.11(B) dated 1.12.96 but, notwithstanding 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-ported to NE Region after sometime serving in non-NE Region.

YES

v) The MoF, Deptt. of Expt. vide their O.O. 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 tenth (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 SSR/PGS, 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/tenth 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 posted within NE Region he is not entitled to SDA till he is once transferred out of that Region.

-38-

48

49

(25)
94

65

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

It has already been clarified by MoF that a new 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.

66-

-49-

50

-4-

3. This issued with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1042 dated 11.10.99 and Ministry of Finance (Expenditure) I.D. No. 1204/E-11(1)/99 dated 30.3.2000.

10000

11000

12000

13000

14000

15000

16000

17000

18000

19000

20000

21000

22000

23000

24000

25000

26000

27000

28000

29000

30000

31000

32000

33000

34000

35000

36000

37000

38000

39000

40000

41000

42000

43000

44000

45000

46000

47000

48000

49000

50000

51000

52000

53000

54000

55000

56000

57000

58000

59000

60000

61000

62000

63000

64000

65000

66000

67000

68000

69000

70000

71000

72000

73000

74000

75000

76000

77000

78000

79000

80000

81000

82000

83000

84000

85000

86000

87000

88000

89000

90000

91000

92000

93000

94000

95000

96000

97000

98000

99000

100000

101000

102000

103000

104000

105000

106000

107000

108000

109000

110000

111000

112000

113000

114000

115000

116000

117000

118000

119000

120000

121000

122000

123000

124000

125000

126000

127000

128000

129000

130000

131000

132000

133000

134000

135000

136000

137000

138000

139000

140000

141000

142000

143000

144000

145000

146000

147000

148000

149000

150000

151000

152000

153000

154000

155000

156000

157000

158000

159000

160000

161000

162000

163000

164000

165000

166000

167000

168000

169000

170000

171000

172000

173000

174000

175000

176000

177000

178000

179000

180000

181000

182000

183000

184000

185000

186000

187000

188000

189000

190000

191000

192000

193000

194000

195000

196000

197000

198000

199000

200000

201000

202000

203000

204000

205000

206000

207000

208000

209000

210000

211000

212000

213000

214000

215000

216000

217000

218000

219000

220000

221000

222000

223000

224000

225000

226000

227000

228000

229000

230000

231000

232000

233000

234000

235000

236000

237000

238000

239000

240000

241000

242000

243000

244000

245000

246000

247000

248000

249000

250000

251000

252000

253000

254000

255000

256000

257000

258000

259000

260000

261000

262000

263000

264000

265000

266000

267000

268000

269000

270000

271000

272000

273000

274000

275000

276000

277000

278000

279000

280000

281000

282000

283000

284000

285000

286000

287000

288000

289000

290000

291000

292000

293000

294000

295000

296000

297000

298000

299000

300000

301000

302000

303000

304000

305000

306000

307000

308000

309000

310000

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7020 OF 2001
(Arising out of S.L.P. (C) NO. 6165 OF 1999)

67-
ANNEXURE : 10
51-50-
Solicitor to the Court
Assistant Registrar (J.V.U.I.)
Supreme Court of India

ANNEXURE : 10

ANNEXURE : 10

564783

R 10

Union of India & Anr. vs.

Appellants

versus

National Union of Telecom Engineering
Employees Union vs.

Respondents

ORDER

Leave granted.

It is stated on behalf of the respondents that this appeal of the Union of India is covered by the judgment of this Court in the case of Union of India & Ors. vs. S. V. Jayakumar & Ors. reported 30.12.1994 (Supp. 3), SCC, 649 and

followed in the case of Union of India & Ors. vs. Executive Officers' Association Group 'C' 1995 (Supp. 1), SCC, 757.

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

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

47-52-51-68
X

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)

(A.G. BALAKRISHNAI)

New Delhi,
October 06, 2001

- 43 -

- 52 -

- 52 -

New Delhi, dated the 29th May, 2001OFFICE 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 20014/3/8.1-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)Y95-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.

A-R

OPR/12

b/b

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

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

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

All cases for grant of Special Duty Allowance including those of All India Service Officers may be 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.

R/S/

(N.P. Singh)

Under Secretary to the Government of India.

For distribution to All Ministries/Departments of the Government of India, etc.

For distribution to C&AG, UPSC etc. as per standard endorsement
format.

-71-

55

Statement of Officers & Staff of C.G.W.B. (NER) showing their transfer and posting in the NE Region since their initial appointment.
 (OA No.405/2002 filed by A.K.Phukan and others Vs UOI)

Sl. No.	Name & Designation	Initial Appointment		If transferred from outside to NER			If transferred from NER to outside & retransferred			Whether resident of NER	Remarks
		Date	Place	Date	Place	Retransferred	Retransferred Place				
1	2	3	4	5	6.From	7.To	8.Date	9.From	10.To	11.Yes/N	12
1.	Sri A. R. Bakshi, Regional Director	30.10.69	Jammu	03.12.01	N. Delhi	Guwahati	----	----	----	No	
2.	Dr. B.S.R.N. Rao, Superintending Hg	02.09.74	Guwahati	----	----	----	23.12.02	Bhuban- swar	Guwahati	No	
3.	Sri G. C. Saha, Sr. Hg (Sc-D)	04.05.78	Shillong	----	----	----	----	----	----	No	
4.	Sri V.K. Bharadwaj, Sr. Chemist	01.07.69	Nagpur	20.02.02	Nagpur	Guwahati	----	----	----	No	
5.	Sri S. Bhattacharya, Sr. Hg (Sc-C)	14.09.87	Nagpur	10.01.00	Kolkata	Guwahati	----	----	----	No	
6.	Sri U. Gogoi, Sr. Hg (Sc-C)	23.03.87	Guwahati	----	----	----	----	----	----	Yes	
7.	Sri P. Kalita, Sr. Hg (Sc-C)	10.01.83	Guwahati	----	----	----	----	----	----	Yes	
8.	Sri B. N. Gogoi, Jr. Hg (Sc-B)	15.03.76	Guwahati	----	----	----	----	----	----	Yes	
9.	Dr. Swapna Devi, Jr. Hg (Sc-B)	28.02.75	Guwahati	----	----	----	----	----	----	Yes	
10	Sri B. C. Kalita, Jr. Hg (Sc-B)	18.03.76	Guwahati	----	----	----	----	----	----	Yes	
11	Sri M. Borpujari, Jr. Hg (Sc-B)	20.05.77	Guwahati	----	----	----	----	----	----	Yes	

1	2	3	4	5	6	7	8	9	10	11	12
12	Sri R. Nayak, Jr. Hg (Sc-B)	02.11.00	Guwahati	----	----	----	----	----	----	No	
13	Sri R. R. Shukla, Jr. Hg (Sc-B)	18.09.00	Guwahati	----	----	----	----	----	----	No	
14	Sri Thammu Rajababu, Jr. GP.	03.09.90	Kolkata	04.07.02	Kolkata	Guwahati	----	----	----	No	
15	Sri S.K. Adhikari, Asstt GP	27.01.87	Bhubane- swar	10.01.01	Kolkata	Guwahati	----	----	----	No	
16	Sri M. Konwar, Asstt Hg	10.01.83	Guwahati	----	----	----	----	----	----	Yes	
17	Sri A.K. Phukan, Asstt Hg	08.10.84	Guwahati	----	----	----	----	----	----	Yes	
18	Sri R. K. Kalita, Asstt Hg	25.08.89	Guwahati	----	----	----	----	----	----	Yes	
19	Sri S. Chakraborty, Asstt Hg	25.09.00	Guwahati	----	----	----	----	----	----	No	
20	Sri N. Majumder, Asstt Hg	28.11.00	Guwahati	----	----	----	----	----	----	No	
21	Sri A. K. Patre, Asstt. Hg.	18.05.01	Guwahati	----	----	----	----	----	----	No	
22	Sri S. S. Singh, Asstt Hg	31.07.02	Guwahati	----	----	----	----	----	----	Yes	
23	Sri P. K. Konwar, Asstt. Chemist	05.02.71	----	17.06.74	Kolkata	Guwahati	----	----	----	Yes	
24	Sri M. B. Reddy, Asstt. Chemist	01.02.88	Hyderabad	22.01.01	Hyderabad	Guwahati	----	----	----	No	
25	Sri B. Roy, Jr. Hg (Sc-B)	06.09.00	Itanagar	----	----	----	----	----	----	Yes	
26	Sri T. Chakraborty, Jr. Hg (Sc-B)	01.11.00	Agartala	----	----	----	----	----	----	Yes	

57

73

1	2	3	4	5	6	7	8	9	10	11	12
27	Sri A. K. Mishra, Sr. Hg (Sc-C)	24.02.75	Kolkata	21.02.03	Kolkata	Guwahati	----	----	----	No	
28	Sri S. Sudarshan, Sr. Hg (Sc-D)	31.12.74	Nagpur	24.12.01	Bangalore	Shillong	----	----	----	No	
29	Sri A. K. Biswal, Jr. Hg (Sc-B)	14.08.00	Shillong	----	----	----	----	----	----	No	
30	Mrs Sangita P. Bhattacharya, AHG	06.06.01	Shillong	----	----	----	----	----	----	Yes	
31	Sri D. Khanikar, Asstt Hg.	26.02.01	Agartala	----	----	----	----	----	----	Yes	
32	Ms. D. Rabha, Asstt Hg.	09.10.01	Itanagar	----	----	----	----	----	----	Yes	
33	Sri S.D. Waghmare, STA (Hg)	10.06.99	Itanagar	----	----	----	----	----	----	No	
34	Sri A.C. Hazarika, Chief D/Man	17.10.75	Guwahati	----	----	----	----	----	----	Yes	
35	Mrs. B.B. Devi, D/Man-I	06.09.76	Guwahati	----	----	----	----	----	----	Yes	
36	Mrs. M. Borpujari, D/Man-I	06.11.74	Guwahati	----	----	----	----	----	----	Yes	
37	Mrs. Supriti Das, D/Man-II	21.03.77	Guwahati	----	----	----	----	----	----	Yes	
38	Mrs. Manjula Dutta, D/Man-II	01.02.84	Guwahati	----	----	----	----	----	----	Yes	
39	Sri A. P. Saikia D/Man-II	04.09.86	Guwahati	----	----	----	----	----	----	Yes	
40	Sri N. B. Debbarma, D/Man-II	18.06.91	Agartala	----	----	----	----	----	----	Yes	
41	Sri R. Dasgupta, D/Man-II	23.06.86	Guwahati	----	----	----	----	----	----	Yes	

-74-

58

1	2	3	4	5	6	7	8	9	10	11	12
42	Sri K.M. Debbarma, Sr. Surveyor	09.04.91	Agartala	----	----	----	----	----	----	Yes	
43	Sri T.C. Mali, Jr. Surveyor	26.05.87	Guwahati	----	----	----	----	----	----	Yes	
44	Sri A.C. Namasudra Jr. Surveyor	27.03.91	Guwahati	----	----	----	----	----	----	Yes	
45	Mrs. V. Chowdhury Steno Gr-I	14.06.78	Guwahati	----	----	----	----	----	----	Yes	
46	Sri M. Rajak, Steno Gr-II	21.09.89	Shillong	----	----	----	----	----	----	Yes	
47	Sri N.K. Basumatari Office Supdt.	23.06.73	Tezpur	----	----	----	----	----	----	Yes	
48	Mrs. K. Das, Asstt.	21.04.75	Guwahati	----	----	----	----	----	----	Yes	
49	Sri U.C. Barman, Asstt	18.04.75	Guwahati	----	----	----	15.11.99	Bhuban- swar	Guwahati	Yes	
50	Sri P. C. Nath, Asstt	16.09.74	Guwahati	----	----	----	----	----	----	Yes	
51	Sri B.C. Rajbongshi UDC	26.04.76	Guwahati	----	----	----	----	----	----	Yes	
52	Sri A. K. Gohain, UDC	01.11.77	Guwahati	----	----	----	06.12.99	Bhuban- swar	Guwahati	Yes	
53	Sri J. C. Das, UDC	30.11.88	Guwahati	----	----	----	----	----	----	Yes	
54	Ms. P. Das, UDC	31.08.87	Guwahati	----	----	----	----	----	----	No	
55	Sri M. Nongkhlaw, LDC	28.01.00	Guwahati	----	----	----	----	----	----	Yes	
56	Sri D.K. Ramchiary, LDC	21.07.00	Itanagar	----	----	----	----	----	----	Yes	

83

1	2	3	4	5	6	7	8	9	10	11	12
57	Mrs. S. Das, LDC	22.05.98	Guwahati	-----	-----	-----	-----	-----	-----	No	
58	Md. Wahidur Rahman, LDC	30.09.97	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
59	Sri M.K. Das, Store Supdt.	26.04.76	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
60	Sri Jayashree Devi, LDC.	01.04.91	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
61	Sri Rakesh Gupta, Sr. Hindi Translator	17.01.96	Guwahati	-----	-----	-----	-----	-----	-----	No	
62	Sri S. R. Das, Driver-I	24.12.74	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
63	Sri Sripati Sinha Driver-I	25.10.75	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
64	Rajendra Singh Driver-I	20.12.76	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
65	Sri J. Chakraborty, Driver-II	27.08.76	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
66	Sri P. C. Paul Driver-I	01.07.77	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
67	Sri D. C. Sarkar Driver-II	10.01.77	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
68	Sri N. C. Sarkar Driver-II	01.04.86	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
69	Sri L. Rabha Driver-II	14.08.89	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
70	Sri F. Sebastian, Driver-(OG)	17.01.74	-----	15.01.85	-----	-----	-----	-----	-----	No	
71	Sri Ganesh Ch Das, Driver-II	01.12.86	Guwahati	-----	-----	-----	-----	-----	-----	Yes	

1	2	3	4	5	6	7	8	9	10	11	12
72	Sri S. K. Mondal, Driver-(OG)	25.08.89	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
73	Sri S. Senapati, Driver-(OG)	23.8.89	Guwahati	-----	-----	-----				Yes	
74	Sri Uday Boro Driver-(OG)	08.08.96	Guwahati	-----	-----	-----				Yes	
75	Sri Jangila Boro Driver-(OG)	19.08.96	Itanagar	-----	-----	-----				Yes	
76	Sri H. L. Saha Driver Gr-I	06.07.77	Guwahati	-----	-----	-----				Yes	
77	Sri Sukumar Das Driver- (OG)	16.08.95	Agartala	-----	-----	-----	-----	-----	-----	Yes	
78	Sri B. Mawkiew, Driver Gr-II	30.09.86	Shillong	-----	-----	-----	-----	-----	-----	Yes	
79	Sri Ketstar S. Nongdhar, Driver- (OG)	18.10.94	Shillong	-----	-----	-----	-----	-----	-----	Yes	
80	Sri K. R. Das, Lab Attendant	01.04.74	Shillong	-----	-----	-----		Kolkata	Shillong	Yes	
81	Md. R. Ali, Lab Attendant	20.10.75	Guwahati	-----	-----	-----	06.09.96	Patna	Guwahati	Yes	
82	Sri K. C. Nath Lab Attendant	28.11.75	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
83	Sri H. Boro, Lab Attendant	28.11.75	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
84	Sri P. Barman, Lab Attendant	28.11.75	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
85	Sri B. N. Deka, Lab Attendant	03.12.75	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
86	Sri P. Sharma, F/A	05.03.87	Guwahati	-----	-----	-----	-----	-----	-----	Yes	

1	2	3	4	5	6	7	8	9	10	11	12
87	Sri A. C. Das, F/A	29.10.90	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
88	Sri B. Boro, F/A	22.08.89	Agartala	-----	-----	-----	-----	-----	-----	Yes	
89	Sri R. Singh Kharmawlong, F/A	16.04.98	Shillong	-----	-----	-----	-----	-----	-----	Yes	
90	Sri P. L. Mizor, Daftary	20.07.73	Tezpur	-----	-----	-----	-----	-----	-----	Yes	
91	Sri Parai Pait, Daftary	01.09.83	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
92	Sri D. K. Das, Binder	20.10.86	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
93	Sri K. K. Kakoti, Peon	26.10.83	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
94	Sri P. Boro, Peon	01.09.83	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
95	Sri Rabi Malakar, Peon	12.06.86	Trivandrum	22.09.89	Trivan- drum	Guwahati	-----	-----	-----	Yes	
96	Sri H. Boro, Peon	05.04.97	Raipur	10.01.02	Raipur	Guwahati	-----	-----	-----	Yes	
97	Sri S. Chakma, Peon	30.03.88	Agartala	-----	-----	-----	-----	-----	-----	Yes	
98	Sri Tarson Singh, Peon	04.06.86	Shillong	-----	-----	-----	-----	-----	-----	No	
99	Sri A. C. Kalita, Chowkidar	22.06.89	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
100	Sri N. N. Bhuyan, Chowkidar	01.01.91	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
101	Sri S. Barman, Chowkidar	06.07.98	Raipur	05.07.99	Raipur	Guwahati	-----	-----	-----	Yes	

62

- 78 -

1	2	3	4	5	6	7	8	9	10	11	12
102	Sri Sanatan Das, Chowkidar	29.05.86	Guwahati	-----	-----	-----	-----	-----	-----	Yes	
103	Sri N. C. Nath, Chowkidar	06.10.98	Itanagar	-----	-----	-----	-----	-----	-----	Yes	
104	Sri K. Nath, Chowkidar	12.10.98	Itanagar	-----	-----	-----	-----	-----	-----	Yes	
105	Sri N. Sonowal, Chowkidar	30.09.98	Itanagar	-----	-----	-----	-----	-----	-----	Yes	
106	Sri S. C. Gabil, Chowkidar	23.03.88	Agartala	-----	-----	-----	-----	-----	-----	Yes	
107	Sri S. Mondal, Chowkidar	23.03.88	Agartala	-----	-----	-----	-----	-----	-----	Yes	
108	Sri S. C. Das, Chowkidar	23.03.88	Agartala	-----	-----	-----	-----	-----	-----	Yes	
109	Sri B.B.K. Magar, Chowkidar	08.02.74	Shillong	-----	-----	-----	-----	-----	-----	Yes	
110	Sri Manoj Harizon, Chowkidar	03.11.92	Guwahati	-----	-----	-----	-----	-----	-----	No	
111	Sri Dinu Harizon, Safaiwala	20.12.96	Guwahati	-----	-----	-----	-----	-----	-----	No	

21

1
88

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O. A. No. 405 of 2002

Sri Anil Kumar Phukan & others
... Applicants
Vs.

Union of India & others
... Respondents

IN THE MATTER OF: -

Rejoinder submitted by the applicants in
reply to the written statement filed by the
respondents;

The applicants above named-

MOST RESPECTFULLY STATES: -

1. That the applicants categorically deny the statement made in paragraphs 3 and 4(a) to 4(l) of the written statement and beg to state that it has been unequivocally held by different Courts, including the Apex Court, in number of occasions that the amounts already paid to the employees as Special Duty Allowance cannot be recovered and such decisions have been rendered even in the year 2002 which is holding the field now. The Office Memoranda issued from time to time, as referred to by the respondents, are administrative instructions only which have misconstrued and misinterpreted the decisions rendered by the Hon'ble Courts. The respondents are in no way entitled to recover the amounts already paid to the applicants as Special Duty Allowance (SDA).

2. That the applicants emphatically deny the contentions made in paragraphs 5, 7 and 8 of the written statement and beg to say that the settled position of law is that the SDA already paid to the employees cannot be recovered in any way and as such the impugned Circular No. 3410/CGWB/NER/ACCTS/SDA/2002 dated 25.11.2002 and letter number F. NO. 11(5)/97-E. II (B) dated 29.05.2002 issued by the respondents are contrary to law and hence not sustainable in the eye of law.

Filed by the Applic
Hoongi, Subrata Sen
Advoc
Date: 13-05-03

Different Courts have dealt with this matter at length and in all the cases it has been held that SDA, already paid, cannot be recovered.

3. That this Hon'ble Tribunal in its judgment and order dated 08.11.2002 in OA No. 266/2002 (CPWD Junior Engineers Association Vs. Union of India & others) has ordered in the following manner -

“..... the respondents are directed not to recover the amount already paid as SDA to the concerned applicants.”

This Hon'ble Tribunal has reiterated the same view in its judgment and order dated 13.11.2002 in OA No. 115/2002 (Sri Lalthansanga & others Vs. Union of India & others) and has held that –

“..... the action of the respondents in recovering the amount already paid to the applicants is unlawful and accordingly direct the respondents to refund the amount to the applicants already recovered from them.”

4. That the Hon'ble Gauhati High Court in its judgment passed on 05.03.2002 in CR No. 5674/1998 and CR No. 5408/1998 has clearly held that the direction given by the Apex Court on 07.09.1995 is still holding the field on the matter. The Apex Court in its orders passed on 07.09.1995 in Civil Appeal No. 8208-8213, arising out of SLP Nos. 12450-55/1992 (UOI Vs. Geological Survey of India Employees' Association & others) laid down the law by holding that -

“We however direct that the appellant will not be entitled to recover any part of payment of Special Duty Allowance made to the concerned employees.”

Copies of the judgments dated 08.11.2002 and 13.11.2002 passed by this Hon'ble Tribunal and the judgment dated 05.03.2002 of the Hon'ble Gauhati High Court and also the judgment dated 07.09.1995 of the Apex Court are annexed herewith as Annexure - 1 series.

5. That in view of the above decisions, the respondents in the instant case are in no way entitled to recover any part of payment of SDA already made to the applicants.

- a10
6. That the applicants categorically deny the statement made in paragraphs 9, 10, 11 and 13 of the written statement and beg to submit that under the facts and circumstances of the case and the settled provision of law as stated above, the action of the respondents are contrary to the law and suffers from illegality on the grounds shown in the instant original application and as such the applicants are entitled to the relieves as prayed for.
 7. That under the facts and circumstances stated hereinabove; the instant original application deserves to be allowed with costs.

VERIFICATION

I, Sri Anil Kumar Phukan, son of Late Nagendra Nath Phukan, aged about 46 years, resident of Parijat Path, Hatigaon, Guwahati -5, one of the applicants in O.A. No. 405/2002, having been authorized by the other application to sign this verification on their behalf, do hereby verify that the statements made in paragraphs 1, 2, 3 and 4 of this Rejoinder to be true to my knowledge and those made in Paragraphs 5, 6 and 7 are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 12th day of August 2003.

Anil Kumar Phukan

ORDER SHEET

Original Application No. 266/2002
 Case Petition No. /
 Contempt Petition No. /
 Review Application No. /

Applicant(s) CPWD J.E. Noss

-Vs-

Respondent(s) CCO1 & ONSAdvocate for the Applicant(s) A/DIL AHMED

Mr. A. Deb Roy,

Advocate for the Respondent(s) Sr.C.G.S.C.

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

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

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

Accordingly, respondents are directed not to recover the amount paid already as SDA to the concerned applicants.

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

C.A.T. GUWAHATI BENCH

Guwahati/2002

2 NOV 2002

Section Officer (I)

6/10/02

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

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

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

GV

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

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

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

- Versus -

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

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

ORDER

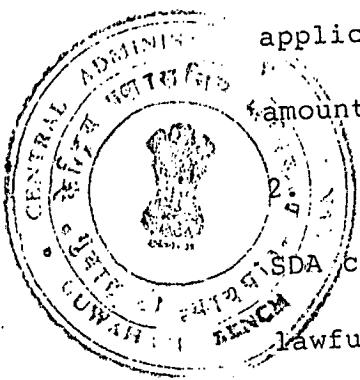
CHOWDHURY J. (V.C.):

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

Contd./2

Attn'd
Smti
Rewati
13-08-04

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



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

Contd./3

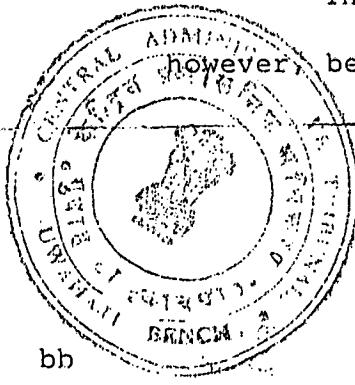
Atul
Sarkar
Advocate
(B.Sc. LL.B.)

recovery already made, is not to be refunded and any payment made is not to be recovered. 94

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

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

Sd/ VICE CHAIRMAN



bb

Certified to be true copy
by Section Officer (J)

Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

Attested
Rabu
Advocate
12-08-07

At the time of filing Date	8 - 21/5/2002 Date of delivery of the original stamp and folios.	21/5/2002 Date on which the copy was ready for delivery.	21/5/2002 Date of making over the copy to the applicant.
15/5/2002	21/5/2002	21/5/2002	21/5/2002 AS

-22-

THE GUARANI HIGH COURT
(THE HIGH COURT OF ASSAM : NAGALAND : MEGHALAYA : MANIPUR :
TRIPURA : MIZORAM & ARUNACHAL PRADESH)

ANNEXURE-I (Series)

CIVIL RULE NO. 5674 of 1998

1. Union of India

Represented by the Secretary,
Ministry of Defence,
New Delhi.

2. Garrison Engineer,

Umroi Cantonment,
Borapani Post,
Meghalaya.

Petitioners

-Versus-

1. Shri Kailash Prasad.
2. Shri Tapán Kumar Dhar.
3. Shri Karuna Kanta Nath.
4. Shri Md. Israil.
5. Shri B.M. Sharma.
6. Shri Kosheswar Sharma.
7. Shri Banraptor.
8. Shri Bhagawan Choudhury.
9. Shri Chandra Bahadur Thapa.
10. Shri B.N. Das
11. Shri Ram Sahal Rai.
12. Shri Bimal Thapa.
13. Shri Gora Bahadur.
14. Shri Sukhi Bahadur.
15. Shri K.M. Mukherjee.
16. Shri Daibir Kor.
17. Shri Sarup Singh

C/o Garrison Engineer,
Umroi Cantonment,
Borapani post,
Meghalaya.

Respondents

After
Recd
12/5/02

CIVIL RULE NO. 5408/1998

1. The Union of India
represented by the
 - i) Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.
 - ii) Secretary to the Govt. of India,
Ministry of Finance,
New Delhi.
2. Area Accounts Officer,
C.W.E. (Army), Shillong,
S.E. Falls, Shillong.
3. C.W.E. (Air Force),
Santi pur, Guwahati
4. The Garrison Engineer,
Narengi Division,
Narengi, Guwahati.
5. The Controller of Defence Accounts,
Satgaon, Guwahati.

..... Petitioners.

-versus-

1. M.E.S. Workers Union
Headquarter C.W.E. Guwahati Area,
Guwahati- 20, represented by its
president- Shri Debendra Nath Das,
Duftry, in the office of the Garrison Engineer,
Narengi, Guwahati.
2. Shri Dharjya Nath,
working in the Skilled Category,
in the office of the Garrison Engineer,
Narengi Division, Narengi, Guwahati.

..... Respondents.

Attested
Rab. Arvind
13-6-63

contd...3

-24-

P R E S E N T

THE HON'BLE MR. JUSTICE J.N.SARMA

THE HON'BLE MR. JUSTICE S.K.KAR

For the petitioner : Mr. K.N.Choudhury

Mr. P.Bhowmick. Advocates.

For the respondents: Mr. B.Banerjee

Mr. M.Chanda

Mr. S. Dutta

Mr. S.K.Ghose Advocates.

Date of Hearing & Judgement : 5.3.2002

O R D E R

This Writ Applications have been filed against the common judgement and order dated 5.12.97, passed by the Central Administrative Tribunal, Guwahati in a large number of cases, by a common judgement relying on a Supreme Court decision. The learned Tribunal passed the following order :

Heard Mr. J.L.Sarkar, M.Chanda, S. Sarma and Mr. A.Ahmed, learned Counsel appearing on behalf of the applicants. Learned counsel for the applicants submit that the observation of the Apex Court giving direction to the respondents not to recover the amount which have already been paid to them is also applicable to the present case. Mr. S.Ali, learned Sr. C.G.S.C. Mr. G.Sarma, learned Addl. C.G.S.C. and Mr. A.K.Choudhury, learned Addl. C.G.S.C. do not dispute this submission. Considering the submissions of the learned counsel for the

Appellate
Court
Advocate
13-05-02

parties, I am of the opinion that though the present applicants are not entitled to get SDA as held by the Apex Court, the SDA which had already been paid to the applicants shall not be recovered. Mr. S. Ali, however, points out that in those cases it was ordered not to recover the payment which were earlier to 17.2.1995. The present applicants were not parties to the said decision. In my view applicants were not parties to the said decision. In my view the same principle will apply to the present applicants also. Therefore, following the decision of the Apex Court as held in Civil Appeal No. 1572 of 1997 arising out of SLP(C) No. 14088 of 1996, the respondents are directed not to recover the SDA paid prior to the date of issue of notice in each case. Applicants are disposed of accordingly.

We have also looked to the decision of the Civil Appeal No.5205 and a large number of cases of 1995 date of Judgement 7.9.95 wherein also the same direction was given by the Appellate Court.

"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."

The same direction shall hold field in this case also.
The Civil Rules Application stands dismissed.

Heard Sri B. Banerjee for the respondents. None has appeared for the petitioner.

CERTIFIED TO BE TRUE COPY
of the original Keweenaw Miners
Date 21st (A.D. of May 28)
Superintendent (Copying Section)
Gowball High Court
Authored U.S. 95, Oct 1, 1873

Affected
trans.
Advocate
13-05-03

R-5

ANNEXURE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8208 - 8213

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

Union of India & Others - Appellants

- versus -

Geological Survey of India
Employees' Association & Others. - Respondants

ORDER

Delay condoned

Leave granted

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

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

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

New Delhi

September 7, 1995

Sd/- G.N.Ray,

Sd/- S.B.Majumdar

*Abdul Rahim
13-08-95*