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

(DESTRUCTION OF RECORD RULES, 1990)

**INDEX**

O.A./T.A No... 53/2002 .....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet. OA-53/2002 .....Pg. 1 ..... to 2 .....
2. Judgment/Order dtd. 02/07/2002 ..Pg. 2 ..... to 4 ..... dismissed
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A..... 53/02 .....Pg. 1 ..... to 12 .....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S. Submitted by the Respondents ..Pg. 1 ..... to 6 .....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....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.)



28.3.02 Written statement has not been filed so far. List again on 2.5.2002 for written statement.

No written statement has been filed.

*K. Ushary*  
Member

*[Signature]*  
Vice-Chairman

bb

30  
1.5.02

2.5.02 List on 31.5.02 to enable the respondents to file written statement.

*K. Ushary*  
Member

*[Signature]*  
Vice-Chairman

lm

31.5.02 Written statement has been filed. List the matter for hearing on 1.7.2002. The applicant may file rejoinder, if any, within two weeks from today.

13.5.2002

W/S submitted by the respondents.

*[Signature]*  
Vice-Chairman

mb

*[Signature]*

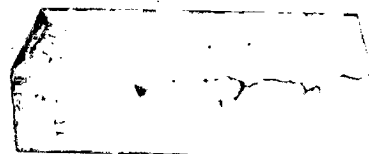
1.7.02 Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs.

Judgment & orders did 1/7/02 Communicate to the parties Counsel & the Adv. *[Signature]*

*K. Ushary*  
Member

*[Signature]*  
Vice-Chairman

mb



CENTRAL ADMINISTRATIVE TRIBUNAL ::  
GUWAHATI BENCH.

O.A./K.X. No. . . . 53. . . . of 2002.

DATE OF DECISION 1-7-2002.

Sri Khanendra Nath Deka and 49 others. APPLICANT(S)

Sri J.L.Sarkar. ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors. RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C. ADVOCATE FOR THE RESPONDENTS.

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

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER

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 ?

5.

Judgment delivered by Hon'ble Vice-Chairman.



4

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 53 of 2002.

Date of Order : This the 1st Day of July, 2002.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

1. Sri Khanendra Nath Deka,
  2. Md. Maniruddin Ahmed,
  3. Kamalakanta Deka,
  4. Paresh Ch. Dey Biswas,
  5. Basanta Kumar Talukdar,
  6. Bijoy Kishor Dey,
  7. Mrs Amiya Roy,
  8. Hgagendra Nath Deb Choudhury,
  9. Durlav Ch. Sarma,
  10. Prafulla Talukdar,
  11. Tarun Ch. Kalita,
  12. Md. Abdul Hafiz,
  13. Piyar Md. Talukdar,
  14. Ramakanta Baishya,
  15. Karuna Kanta Das (II)
  16. Satya Nath Sarma,
  17. Mrs Jamini Das,
  18. Malbhag Kalita,
  19. Mrs Hamida Khatoon,
  20. Mrs Dineswari Dutta,
  21. Parsu Ram Thakuria,
  22. Jibon Ch. Lasker,
  23. Maheswar K.
  24. Mrs Kaushal.
  25. M. Kalita,
  26. R. Kr. Sarma(II)
  27. Kamala Kanta Das,
  28. Rameswar Das (II)
  29. G. Buzarbarua,
  30. Lakshmi Prasad Bordoloi,
  31. Md Sayadur Rahman,
  32. Jamini Ram Das,
  33. Chitta Rn. Baruah,
  34. D.R.Malakar,
  35. Suresh Ch. Talukdar,
  36. Pani Ram Das,
  37. Tarani Ch. Deka,
  38. Bharat Ch. Deba Sarma,
  39. Maheswar Rabha,
  40. Subala Mazumdar,
  41. Harendra Nath Das,
  42. Bhabit Ram Kalita,
  43. Anandi Ram Das,
  44. Mrs Utpala Bhattacharjee,
  45. Mrs Jatila Baishya,
  46. Jay Charan B.
  47. Birendra Nath Mena,
  48. Hari Deb Das,
  49. Lankeshwar Das and
  50. Rabindra Nath Mishra
- . . . Applicants.

By Advocate Sri J.L.Sarkar.

- Versus -

1. Union of India,  
represented by the Secretary,  
Government of India,  
Ministry of Communication,  
Department of Telecommunication,  
New Delhi.
  2. The Director General Telecom,  
Department of Telecommunications,  
Sanchar Bhawan,  
20 Ashoka Road, New Delhi.
  3. The Chief General Manager,  
Telecom Assam Circle,  
S.R.Bora Road,  
Ulubari, Guwahati-7. . . . Respondents.
- By Sri A. Deb Roy, Sr.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C)

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking for the following reliefs :

- i) that the retired persons (the applicants) be paid SDA with effect from November, 1983 to the date of retirement.
- ii) Any other relief or reliefs as the Tribunal deem fit and proper.

2. The applicants are 50 in number who had retired from the Telecom department. The main grievance of the applicants as pleaded in the application relates to Special Duty Allowance (SDA) payable to the employees of the North Eastern Region. Numerous applications were filed before this Tribunal seeking for a direction for payment of SDA. The matter was finally resolved by a decision of the Supreme Court in Civil Appeal No. 3251 of 1993 disposed of on 20.9.1994 (Union of India & ors. vs. S.Vijayakumar & Ors. ) reported in (1994) 3 SCC 649. In the aforementioned


decision the Supreme Court held that SDA was meant to attract persons outside the North Eastern Region to work in that Region. Such allowance was not admissible to the persons from North Eastern Region. By the aforementioned judgment the Supreme Court set aside the judgment and orders of the Tribunal but ordered that amount already paid to the respondents or for that matter to other similarly situated employees was not to be recovered from them insofar as the allowance was concerned. In this application the applicants contended that the respondents already took a conscious decision to pay SDA to the employees of the postal and Telecom Department from the period from November 1983. The payment was made on their own. The employees were paid arrears from November 1983 and disbursement of arrears had been made on 1.4.1991. Thereafter the allowance were paid every month. In spite of such payment the respondents did not pay SDA to these employees who had retired between November 1983 to April 1999. The respondents discriminated these employees in not paying SDA from November 1983 to till they attained superannuation.

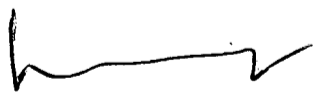
3. The respondents submitted its written statement and referred to the decision of S.Vijay Kumar (supra). It also stated that decision for payment of SDA was made on provisional basis as per U.O. dated 7.5.91. It was made clear to the staff members that the implementation of CAT judgment was provisional and subject to the outcome of the SLP which was pending in Supreme Court. Accordingly the staff members furnished individual undertaking that they would refund the amount paid to them if the verdict of the Supreme Court went against them. Since the payment of SDA was provisional and there was possibility that the

amount could be recovered at a later date on the basis of the out come of the SLP. The same was paid to the staff in service on the date of provisional implementation of the CAT order i.e. 17.5.91. The employees who had retired or died before the date were not considered for any provisional payment as it would not be possible to recover the amount from them even if the SLP was decided in favour of the Government of India. The Apex Court finally held that Central Government civilian employees who have all India Transfer Liability would be granted the allowance "on posting to any station to the North Eastern Region." SDA would not be payable merely because of the clause in the appointment letter relating to All India Transfer Liability.

4. We have heard Mr J.L.Sarkar, learned counsel for the applicants and also Mr A.Deb Roy, learned Sr.C.G.S.C for the respondents. Admittedly these applicants belong to North Eastern Region and as per the decision of Vijay Kumar (supra) such persons were not eligible for the SDA. On the face of the Supreme Court judgment it would not be appropriate for the Tribunal to issue a direction on the respondents to pay SDA to the applicants for the period from November 1983 to the date of their retirement.

The application is accordingly dismissed. There shall, however, be no order as to costs.

  
( K.K.SHARMA )  
ADMINISTRATIVE MEMBER

  
( D.N.CHOWDHURY )  
VICE CHAIRMAN

a

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

Title of the Case : O.A. NO. 53/2002

Sri Khanendra Nath Deka & Ors.

.....APPLICANTS

- Versus -

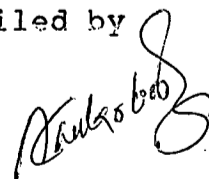
Union of India & Ors.

.....RESPONDENTS

I N D E X

<u>SilNo.</u>	<u>Annexure</u>	<u>Particulars of Documents</u>	<u>Page No.</u>
1.	-	Application	1-10
2.	-	Verification	11
3.	'A'	Copy of News Item	12

Filed by



Advocate.

*H.N. Deka*

IN THE COURT OF GUWAHATI TRIBUNAL  
GUWAHATI BENCH : GUWAHATI

O.A. NO. 53/2002

BETWEEN

1. Sri Khanendra Nath Deka
2. Md. Maniruddin Ahmed
3. Kamalakanta Deka
4. Parash Ch. Dey Biswash.
5. Basanta Kumar Talukdar
6. Bijoy Kishor Dey.
7. Mrs. Amiya Roy.
8. Kheagendra Nath Deb Choudhury
9. Durlav Ch. Sarma.
10. Profulla Talukdar.
11. Tarun Ch. Kalita.
- ~~12. Khagendra Nath Deka (I)~~
- ~~13. Md. Abdul Hafiz.~~
- ~~14. Piyar Md. Talukdar.~~
- ~~15. Ramakanta Baishya.~~
- ~~16. Karuna Kanta Das (II)~~
- ~~17. Satya Nath Sarma.~~
- ~~18. Mrs. Jamini Das.~~
- ~~19. Malbhag Kalita.~~
- ~~20. Mrs. Hamida Khatoon.~~
- ~~21. Mrs. Dineswari Dutta~~

*Filed by the applicant's  
through A. Chakrabarti, P.O. Deka  
18/2/02*

21. Parsu Ram Thakuria.
22. Jiban Ch. Laskar.
23. Maheswar Kalita.
24. Mrs. Kaushalya Das.
25. M. Kalita.
26. R. Kr. Sarma (II)
27. Kamala Kanta Das.
28. Rameswar Das (II)
29. G. Buzarbarua.
30. Lakshmi Prasad Bordoloi.
31. Md. Sayadur Rahaman.
32. Jamini Ram Das.
33. Chitta Rn. Baruah.
34. D. R. Malakar.
35. Suresh Ch. Talukdar.
36. Pani Ram Das
37. Tarani Ch. Deka.
38. Bharat Ch. Deba Sarma.
39. Maheswar Rava.
40. Subala Mazumdar.
41. Harendra Nath Das
42. Bhabit Ram kalita.
43. Anandi Ram Das
44. Mrs. Utpala Bhattacharjee
45. Mrs. Jatila Baishya.
46. Jay Charan B.

K. N. Deka

12  
K. N. Das

48. Birendra Nath Mena.

49. Hari Deb Das.

49. Lankeshwar Das.

50. Rabindra Nath Mishra.

.....APPLICANTS

- AND -

1. Union of India

Represented by the Secretary,

Government of India,

Ministry of Communication,

Department of Telecommunication

New Delhi.

2. The Director General Telecom,

Department of Telecommunications

Sanchar Bhawan.

20 Ashoka Road, New Delhi.

3. The Chief General Manager,

Telecom Assam Circle,

S. R. Bora Road,

Ulubari, Guwahati-7.

.....RESPONDENTS.

DETAILS OF THE APPLICATION:

1. Particulars of the Order against which the application is made :

Contd...p/4



H.N. Deka

allowance during the period before the retirement of the  applicants.

4.3 The Government of India decided to pay special (duty) allowance to its employees posted in North Eastern Region with effect from November 1983 at different rates. There have been controversies regarding the entitlement of the said allowance to the employees and there have been number of cases in the Hon'ble Tribunal and Hon'ble Supreme Court. Applicants state that the present application is not intended to raise any question regarding the entitlement under the scheme of the Government of India. They humbly state that their case is a case of discrimination and denial as a result of their retirement on superannuation.

4.4 That the applicants beg to state that the respondents have taken conscious decision to pay SDA to the employees of the postal and Telecom Department from the period from November 1983. This payment have been made without any nexus to and independent of the judicial decisions. The employees have been paid arrears from November, 1983 and disbursement of arrears have been made on 1/4/1991. Thereafter the allowance is being paid (called as SDA) every month at present. It is reiterated that the payment of arrears and the current payment of the said allowance is conscious decision.

15  
H.N. Deka

4.5 That inspite of the considered and conscious decision to pay the allowance called SDA to the employees with effect from November, 1983 as explained above, the employees who retired between November, 1983 to April, 1999 have not been paid the amounts of the aowances. While paying the arears for the said period as explained above such person have been denied the payment of the said allowance on the ground that their names are not appearing in the roll of the department after their retirement even though the employers with whom they worked and have been equally situated during the period from November, 1983 to their retirement have been paid the amount. The decision of payment to telecom employees appeared as news item also in newspaper.

Copy of a news item is enclosed as Annexure - 'A'.

4.6 That the applicants                      have been representing for the payment of arrears of the said allowance. It is also stated that the DCRG of the employees who retired after receipt of the allowances were notpaid and they have also represented against that. It is stated that the cause of action of the employees of Telecom department and Postal Department is same and the grievences of the retired employees are also same . Both the departments have paid arrears to the employees except the retired employees, and have been continuing payment of SDA currently to the serving employees.

contd....p/7

H. N. Deka

4.7 That the CPMS Assam Circle, Guwahati-1 by his letter dated 20.3.2001 circulated judgment dated 22.12.2000 in O.A. No.296/98 of the Hon'ble Central administrative Tribunal, Guwahati Bench for necessary action. It is stated that this O.A. No. 296/98 has been decided with O.A.No.149/99.

4.8 That the applicants most humbly begs to state that the equully situated employees with whom the pensioners (retired employees) have worked have been paid SDA during the period when the pensioners were in service and are being paid SDA at present and this payment is the result of concious decision. The pesioners should also be paid the amount of said allowance for the period of their service after November, 1983. The treatment of the payment to all the employees should be decided equally. The retired employees are agreeable to give any undertaking if called for on equal footing.

*[Faint, illegible text]*

*[Faint, illegible text]*

H. N. Deka

4.09 That it is stated that the persons who ~~retired~~ after November, 1983 but before ~~May~~ 1999 have ~~not~~ not been paid the allowance.

4.10 That a similar case has been filed before this Hon'ble Tribunal which has been registered as O.A. NO. 303/2001. The Hon'ble Tribunal has been pleased to admit the said OA and the case is pending.

5. Grounds for reliefs with legal provisions:

5.1 For that the retired persons are entitled to the allowances for the period of their service under law of equality.

5.2 For that the retired persons can not be denied the payment of the amounts only on the ground that they have retired where as those who have not retired have been paid.

5.3 For that non-payment of the allowances in the facts and circumstances of the case is violation of Article 14 and 16 of the constitution of India.

5.4 For that the non-payment of the allowance for the period of service, circumstances remaining equal with those in service, is denial of Article 21.

18  
K.N. Deka

5.5 For that denial of the payments in the facts and circumstances is humiliation and victimisation of old ex-employees on the ground of retirement on superannuation i.e. attaining old age.

6. Details of remedy exhausted :

The applicants have represented without any result. There is no other remedy under any rule.

7. Matter not pending before any other Court:  
The applicants declare that O.A. NO.303/2001 and 373/2001 on a similar subject is pending before this Hon'ble Tribunal for the retired employees of the Postal Department.

8. Relief sought for:

Under the facts and circumstances of the case the applicants pray for the following reliefs.

8.1 [ That the retired                      persons (2001/153 Applicants) be paid SDA with effect from November, 1983 to the date of retirement                     

8.2 Any other relief or reliefs as the Hon'ble Tribunal deem fit and proper.

The above reliefs are prayed for on the grounds stated in paragraph 5 above.

contd....p/10

19  
H. N. Debn

9. Interim relief ;

May be granted as the Hon'ble Tribunal deem just and as proper.

10. This application has been filed through Advocate.

11. Particulars of the Postal Order:

1. IPO No. :
2. Date of Issue :
3. Issued from :
4. Payable at :

12. Particulars of Enclosures :

As stated in the Index.

Continued to Verification.....

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

I, Sri Khanendra Nath Deka, Son of Late L.R.Deka, aged about 62 years, resident of Guwahati, say that I have been authorised to sign this Verification on behalf of all the applicants. I do hereby verify that the statements made in paragraphs 1, 4, 6 to 12 are true to my knowledge and those made in paragraphs 2, 3 and 5 are true to my legal advice and that I have not suppressed any material facts.

And I sign this Verification on this the 16 th day of *February* 2002 at Guwahati.

*K. N. Deka*

SIGNATURE

(3) **Special (Duty) Allowance :-** The much awaited and much talked Special (Duty) Allowance to Telecom Employees of North East Region was finally

TEI

settled and Telecom Directorate issued orders to this effect vide their No. 9-21/OAT/(Pt) dated 27-5-91 granting Special (Duty) Allowance @ 25% of pay from 1-11-83 to 30-11-88 and @ 12.5% of pay from 1-12-88 onwards to all Telecom Employees of N.E. Region. With the settlement of this, FNTO won the most prestigious heroic battle on this issue over others.

*Charan Singh*  
*Secretary*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI Bench :: GUWAHATI.

Filed by

(A. DEB ROY)

Sr. C. G. S. C.

C. A. T., Guwahati Bench

CA NO. 53 OF 2002

Shri Khanendra Nath Deka and Ors.

-vs-

Union of India & Ors.

-and -

In the matter of ::

written statement submitted by the  
respondents.

The respondents beg to submit written statement  
as follows :-

1. That with regard to para - 1 of O.A., the  
respondents beg to state that according to the Govt. of  
India O.M. No- 20014/3/83 B.IV dated 14/12/1983, 1/12/1988  
Central Govt. Employees having all India transfer liability  
and posted in N.E. region from outside are entitled for  
SDA.

The Applicants hail from the N.E. Region and they  
were the local recruit of the Department. They are not  
entitled for the SDA as the conditions for grant of  
such allowance are not satisfied.

Contd...1/2.

2. That with regard to para - 2 of O.A., the respondents beg to state that Group 'C' and 'D' staff of the Department working in N.E. Region are being paid SDA on a provisional basis towards implementation of Judgment dtd. 22/12/89 passed by Tribunal Guwahati Bench in OA No.124/89 Subject to the result filed against the Judgment and order.

The decision for payment of SDA on provisional basis was taken as per the advice of the Ministry of Law vide their U.O. dated 7/5/91. It was made clear to the staff members that the implementation of CAT, Guwahati judgment is provisional and subject to the outcome of the SLP which was pending in Supreme Court at, the point of time. Accordingly the staff members & furnished individual undertaking that they would refund the amount paid to them if the verdict of the Supreme Court goes against them.

Since the payment of SDA was provisional and there was possibility that the amount could be recovered at a later date on the basis of the out come of the SLP the same was paid to the staff in service on the date of provisional implementation of the CAT order i.e. 17/5/91.

The ~~employment~~ employees who had retired died before the date were not considered for any provisional payment as it would be impossible to recover the amount from the pensioners even if the SLP is decided in favour of the GOVT. Of India.

Contd....F/3

3. That with regard to para - 3 of O.A., the respondents beg to state that the dispute about the eligibility SDA was settled by the Supreme Court of India in their judgment delivered on 20.9.94 ( in Civil Appeal No 3251/1993). The Apex Court upheld the submission of the Govt. of India that central Govt. 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 and that 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 the SDA only to the officers transferred from outside the region would not be violative of the provision of Art.14 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 other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

4. That with regard to para - 4 of O.A. , the respondents beg to state that the Govt. of India examine the above order and in pursuance thereto issued the OM No- 11 (3)/95 - E II (B) dtd. 12/1/96 by the Mof.Deptt. of Expenditure. It inter alia contained the decision that amount of SDA already paid to ineligible person on or before 20/9/94 would be waived. It also conveyed the decision that the amount paid on SDA to ineligible person after 20/9/94 (which also includes prior to 20/9/94) will be recovered.

5. That with regard to para - 5 of C.A. the respondents beg to state that according to the judgment delivered by the Supreme Court of India and the follow up decision/order of the Govt. of India (MOF) the applicants are not eligible for the ~~grant~~ grant of SDA as they were locally recruited employees of the Department.

As regards the payment of SDA to the applicants or other ineligible civilian employees it is the decision of the Govt. of India in tune with the Apex Court of India that the amount of SDA paid to ineligible employees after 20/9/94 including those cases relating to period prior to 20/9/94 should be recovered. In other words any amount of SDA to ineligible employees should not be paid even if it relates to period prior to 20/9/94.

Since the SDA was not paid to the applicants it cannot be paid after the pronouncement of the Apex Court Judgment dtd 20/9/94 that the amount already paid to the ineligible employees has been waived by the Govt. of India does not give the similarly situated ineligible employees who were not actually paid the allowance for any reason any right for payment of SDA for the period prior to 20/9/94.

Contd...P/5

6. That with regard to para - 6 of O.A., the respondents beg to state that the Govt. of India also filed the SLP against the CAT Guwahati Judgment and orders dtd.22/12/89 passed in O.A. No-124/89. The ~~Employment~~ Apex Court disposed the SLP vide their order dtd.5/10/01 holding that the ratio of the order passed Civil Appeal No- 3251 of 1993 surely applies in the case.

It is now well settled by law that the applicants are not entitled for SDA and no payment on this account is payable to them.

It is therefore prayed that Your Lordships be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records, shall further be pleased to dismiss the application with cost.

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

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

I, Shri Shankar Chandra Das presently working as Asst Director Telecom (Legal) be duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 2, 3, 5 and 6 are true to my knowledge and belief, those made in para 1, 2 and 3 being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Honble Tribunal, I have not suppressed any material facts.

And I sign this verification on this 6 th day of May 2002 at Guwahati.

Shankar Chandra Das

Declarant.

Assam Telecom Circle, Guwahati.  
 ১০১০ The Chief General, Assam Telecom.  
 Assistant Director Telecom (Legal)  
 (বিদ্যক নিবেশক দূরসংসার (বিদ্যক))  
 Assistant Director Telecom (Legal)  
 কার্যালয়, মধ্য বঙ্গ বর্ধক দূরসংসার,  
 ০১০ The Chief General, Assam Telecom.  
 অসম দূরসংসার পরিমন্ডল, গুৱাহাটী-৭  
 Assam Telecom Circle, Guwahati.