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6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 63/02

R.A./C.P No.

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16. Counter Reply.....

SECTION OFFICER (Judl.)

Sahita

22/11/17

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

ORDER SHEET

Original No. 63/2002
Misc. Petition No.
Contempt Petition No.
Review Application No.

Applicant(s) Shri Vibha Dkhar 2 nos.

Respondent(s) Govt. 2 nos.

Advocate for Applicant(s) Mr. B.K. Sharma S. Sama,
L.K. Nair Miss V. Das.

Advocate for Respondent(s) ~~Mr. Chac~~ K.N. Choudhary
B.C. Das for Deptt. No. 2 & 3.

Notes of the Registry

Date

ORDER OF THE TRIBUNAL

26.2.02

Heard Mr. B.K. Sharma, learned Sr. counsel for the applicants.

The application is admitted. Call for the records.

Issue notice to show cause as to the interim order as prayed for shall not be granted. Returnable by four weeks. In the meantime, Respondents are directed not to make any recovery of SDA from the applicants on the strength of the order dated 28.1.2002 and 25.2.2002.

List on 28.3.2002 for order.

Member

Vice-Chairman

mb

This is application in form
C. P. for Rs. 50/- directed
vide No. 56550914
Dated 2.2.2002
Dr. Registrar 26/2/02

1. No steps has been
taken with original
application.

WB
20/2/02

Defe received. Notice
referred and sent to
K/s for filing the before
court No 1 to 3
Regd. Asst. 11/8/02

D/Nb 798-300

Dtd 13/3/03

① Show cause has not
been filed.

O.A. 63/2002

28.3.2002

put after receipt of service report
List the case on 2.5.2002.

① Service report are
still awaited.

Member

Vice-Chairman

bb

30
1.5.02.

2.5.02

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

No written statement
has been filed

Member

Vice-Chairman

1a

30
30.5.02.

31.5.02

On the prayer of Mr. B.C.Das, learned
counsel for the respondents further four
weeks time is allowed to file written
statement.

Order dtd 31/5/02
communicated to the
Kartier Council. 30
31/6

List on 1.7.2002 for orders. In the
meantime, interim order dated 26.2.2002
shall continue to operate.

No written statement
has been filed.

Vice-Chairman

mb

30
28.6.02

1.7.02

List again on 23.8.2002 to enable
the respondents to file written statement.

Member

Vice-Chairman

mb

23.8.02

Mr. I.Choudhury, learned counsel
appearing on behalf of Mr. K.N.Choudhury,
learned Sr.counsel for the Respondents
and Mr. B.C.Das, learned counsel for the
Respondents prayed for time to file written
statement. Prayer is allowed.

No. W/S has been
filed.

30
19.9.02.

List on 20.9.2002 for orders. In
the meantime, interim order dated 26.2.2002
shall remain operative until further order.

Member

Vice-Chairman

mb

Notes of the Registry	Date	Order of the Tribunal
<p>23.9.02</p> <p>WS Submitted by the Respondents.</p> <p>lm</p>	20.9.02	<p>Heard Mr.S.Sarma learned counsel for the applicant and Mr.R.Choudhury, learned counsel for the Respondents. Mrs.Choudhury, stated that the Respondents have not filed their written statement in this O.A. and will rely upon the written statement filed by the respondents in O.A.No.263 of 2002. Let this case be listed alongwith O.A.No. 263 of 2002 on 11.10.02 for hearing before Single Bench.</p> <p>Vice-Chairman</p>
<p>lm</p>	11.10.02	<p>Heard Mr.S.Sarma learned counsel for the applicant, prays for adjournment on the ground of his personal difficulty. Mr.A. Deb Roy, Sr.C.G.S.C. has no objection. List on 22.11.02.</p> <p>Member</p>
<p>13.11.02</p>	13.11.02	<p>The case is posted for hearing today. Since the learned counsel for the respondents are not present, the matter is adjourned.</p> <p>List the matter before Single Bench on 29.11.2002 alongwith O.A.71/2002 & O.A.263/2002.</p> <p>Member</p> <p>Vice-Chairman</p>
<p>29.11.02</p>	29.11.02	<p>Heard counsel for the parties. Hearing concluded. Judgment delivered in open Court.</p> <p>The application is disposed of in terms of the order. No order as to costs.</p> <p>Vice-Chairman</p>

16/12/2002

Copy of the Judgment has been sent to the Office for issuing the same to the L/Advocate for the parties.

pg

PUC-2

Memo No. HC. XXI. 6507-88/RM. Dtd. 4
22.11.06 from The Assn. Registrar (J),
Gauhati High Court.

The Judgment and order Dtd 1.11.06
passed in WP(c) No 1965 of 2003 may
kindly be seen at P.U.C..

The WP(c) No. 1965 of 2003 has
been filed by The Director General,
ICAR against the judgment Dtd
29.11.02 passed in OA Nos.
63/02 and 71/02 of this Tribunal.
The Hon'ble Gauhati High Court has
reversed the above mentioned judgment
vide judgment and order Dtd 1.11.06
passed in the above mentioned WP(c).

Reversed

Submitted for favour of kind
perusal.

AS
6/12

Submitted
18.12.06
So(J).

AR
20/12/06
Hon'ble V.C.

So(J)

20/12/06

2

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A.No.....63/2002.....and 71/2002.
OF

DATE OF DECISION.....29-11-2002.....

Victor Dikar & ors.

APPLICANT(S)

Sri S. Sarma.

ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Mrs R.S.Choudhury.


ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

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

Judgment delivered by Hon'ble Vice-Chairman



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Applications No.63/2002 & 71/2002.

Date of Order : This the 29th Day of November,2002.

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

O.A. NO. 63 of 2002.

Victor Dhkar & 199 others

..Applicant

O.A. No. 71 of 2002.

1. Sri D.Bhattacharjee, T-4
2. Sri A.R.Roy, T-4
3. Sri K.C.Bora T-3.
4. Sri Subir Chakraborty, T-4
5. P.S.Shyam T-3.

..Applicants

By Advocate Sri S.Sarma

- Versus -

1. Union of India,
represented by the Secretary,
Indian Council of Agricultural Research,
ICAR, Krishi Bhawan,
New Delhi.
2. The Director, General ICAR,
Krishi Bhawan, New Delhi.
3. The Director,
ICAR Research Complex, NEH Region,
Umroi road, Borapani, Meghalaya.

...Respondents

By Advocate Mrs R.S.Choudhury

O R D E R

CHOWDHURY J.(V.C)

Both the cases were taken up together for
for consideration since it involve similar facts as well
as question of law relating to payment of Special Duty
Allowance (SDA for short).

2. The applicants who are working under the
respondents were paid SDA. In view of the decision of the

contd..2


Supreme Court the concerned authority took steps not to make further payment of SDA to the employees concerned serving in the N.E.Region etc. By the order dated 28.1.2002 the competent authority referred the Government of India's policy including the communications sent by the various department and directed that the amount paid on account of SDA to the ineligible persons after 20.9.94 would be recovered and SDA is discontinued from February 2002. The applicants moved this Tribunal by filing application assailing the legitimacy of the action of the respondents in stopping payment of SDA to the applicants and also the steps taken for recovery of the SDA so far paid after 20.9.94.

2. The respondents contested the claim by filing written statement. The respondents asserted that they took the necessary steps in terms of law laid down by the Supreme Court and the instructions issued by the competent authority. The issue relating to payment of SDA to the employees of North Eastern Region is now settled in view of the consistent decision of the Supreme Court in this regard clarifying the legal position. The persons from N.E.Region are not entitled for SDA except those are mentioned in different notifications after posting and transfer. The action of the respondents in discontinuing the payment of SDA therefore cannot be faulted. At the same time it must be stated that the SDA was paid by the

contd..3

authority itself and in view of the instructions received by the concerned authority the respondents now took a decision to discontinue payment of SDA. The order can only be prospective considering the hardship of the persons affected it will not be appropriate to recover the SDA already paid to the applicants by the authority on their own. In the circumstances the respondents are directed not to make any recovery of the SDA so far paid. The order of discontinuance of SDA is since prospective, the respondents are directed not to make any recovery of SDA so far paid. It will be open to the applicants to make appropriate representation before the authority to show and establish that those people also entitled for SDA in view of the subsequent posting of N.E.Region after they were transferred out from N.E.Region. If such representation is made the authority shall consider the same in terms of law.

Subject to the observations made above, the application stands disposed of. There shall however be no order as to costs.


(D.N.CHOWDHURY)
VICE CHAIRMAN

9/10/03
④
F/12-11
URGENT

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

W. P (C) No. 1965 of 2003

The Director General, Indian council of
Agricultural research (ICAR),
Krishi Bhawan, New Delhi and another. Petitioners.

- Versus -

Victor Dhkar and others Respondents.

BEFORE
THE HON'BLE MR. JUSTICE D. BISWAS
THE HON'BLE MR. JUSTICE U.B. SAHA

For consideration of Hon'ble Mr. Justice D. Biswas.

JUDGE

I agree/I do not agree.

JUDGE

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IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

W. P (C) No. 1965 of 2003

PETITIONERS :

1. The Director General, Indian council of Agricultural research (ICAR), Krishi Bhawan, New Delhi.
2. The Director, Indian council of Agricultural research Complex, N.E.H. Region, Umroi Road, Barapani, Meghalaya.

By Advocates :

Mr. K. N. Chowdhury, Sr. Adv.
Mrs. R.S. Chowdhury, Advocate

RESPONDENTS:

APPLICANTS IN O.A No. 63 OF 2002

1. Victor Dhkar.
2. Parimal Ghosh.
3. Smt. D.M.Palumte.
4. Smt. C.L. Swer.
5. Smt. B.N. Rancee.
6. Smt. K. Dhkar.
7. Smt. T. Thamuit.
8. Jessy Thomas.
9. K.K.Das.
10. Smt. Arunima Bora.
11. Sharada Nanda Baitha
12. A. R. Das.
13. D. Khound.
14. Smti. C. Sohtun.
15. S. Hore.
16. Smti. Bidia Mawlong.
17. Smti. F.C. Nongkhlaw.
18. Smti. F.M.B. Lyngdoh.

19. Swapan Karamji.
20. K. Thomas.
21. Smti. Noralyne Pamwet
22. Smti. E. Pyngrope.
23. Smti. Nani Das.
24. Jagadish Chakraborty.
25. Smti. Rajina Duia
26. Smti. Rosalin Sohlang.
27. Smti. Ratna Das.
28. P.C. Sharma.
29. Pinak Pani Das.
30. Smti. J. Pathaw.
31. Smti. L.N.Kharhaujan.
32. Chester Khonglam.
33. Smti. Tapati Patnayak.
34. H. Chanda.
35. Bhakta Ram Bora.
36. Smti. Benolyney.
37. Smti. Amita Goswami.
38. Binod Rosaily.
39. Smti. Sankari Paul.
40. Smti. I. Hynnietw.
41. Rajani Das.
42. Smti. Dharmeswari Das.
43. M.K. Baruah.
44. Smti. Sulekha Banerjee.
45. Smti. F.B. Lyngser.
46. Sh. F.E. Diengeloh.
47. G. Sinha.
48. A.C. Deb.
49. Smti. June Dhar.
50. H.C. Joshi.
51. Smti. D. S. Dhkar.
52. M. Dhkar.
53. B. Chanda.
54. Marcus Kharpuli

55. A. K. Acharya.
56. R. K. Tarat.
57. Gulab Prasad.
58. Papia Purkauyastha.
59. Avinash, T-5.
60. H. Bareh, T-5.
61. S. K. Biswas.
62. D. K. Sonowal, T.O.
63. D. Paul, T.O.
64. R. K. Das.
65. P. Nath, T.O.
66. N. R. Roy.
67. K. K. Dutta.
68. Chandan Adhikari.
69. A. V. Ranjah, T.O.
70. Prasanta Nayak, T.O.
71. Ramesh Singh,
72. Moloy C. Sharma, T-5.
73. A. K. Khound.
74. L. K. Mishra.
75. J. L. Singh, T.O.
76. D. Medhi.
77. S. Purkayastha.
78. P. K. Phukan, T-3.
79. Kaushalendra Prasad.
80. Laxmanlal Srivastaba,
81. Rameswar Rai.
82. Pranab Kumar Barman.
83. A. Phukan.
84. Drauna Sarma.
85. P. R. Neog.
86. Bankim Choudhury.
87. W. Kharsati.
88. Surendra Nath.
89. D. B. Roy.
90. H. Ahmed.

91. A. Haque.
92. B. Pygrope.
93. Gopal Nath.
94. Ajit Kr. Dey.
95. D. C. Deka.
96. T. P. Pradhan.
97. P. C. Choudhury.
98. P. K. Bvarman.
99. S. G. Ahmed.
100. Sanjit Dutta.
101. S.K. Sen.
102. Anisur Rahman.
103. Rajen Ch. Baoshya.
104. Nabindra Nath Paith.
105. A.K.Deka.
106. Dilip Ch. Barman.
107. S.K. Phukan.
108. Khitendra Barman.
109. H. Majaew.
110. P.M. Farien.
111. K. Suting.
112. B.N. Singh.
113. N.P. Chetri.
114. S.K. Lama.
115. B.N. Saha.
116. N. Rai.
117. L. Malchein.
118. N. Lyndoh.
119. S.K. Bazmir.
120. M. Malwong.
121. Upen Deka.
122. D.Das.
123. Lumi.
124. Madey Rai.
125. Smt. Rupa Devi.
126. S. Bargohain.

127. A. P. Dutta.
128. M.D. Shyam.
129. B. Thabah.
130. P.C.Das.
131. A.B. Choudhury.
132. Rakesh Kumar.
133. C. Lama.
134. R.C. Bhuyan.
135. R. K. Das.
136. Anil Kumar Deka.
137. B.K. Basumatary.
138. Pranab Kr. Dey.
139. Minindra Kr. Das.
140. Utpal Chakrabarty.
141. Sikandar Singh.
142. Chakra Bora.
143. H. Hiliman Barah.
144. H.S. Nonghyurih.
145. S. Nongneng.
146. Smt. A. Nongbri.
147. Ersing.
148. H. J.S. Bukhey.
149. Smt. K. Mowkheiw.
150. Jadu Ram Borah.
151. A.J. Deka.
152. S.N. Talukdar.
153. J.K. Bharali.
154. Drulson Rangslang.
155. Sregery Kharkonger.
156. M.N. Borah.
157. S.K. Dwivedi.
158. F.M.B. Lyngdoh.
159. K.C.Handuque.
160. Deben Ch. Das.
161. D.B. Roy.
162. Balen kalita.

163. S.K. Phukan.
164. Upen Deka.
165. Jagdish Lal.
166. Banga Saw.
167. Sumarlong satphoh.
168. P.S. Gurung.
169. P.S. Gurung.
170. Tamas Sheinherr.
171. Norisda Lakhiat.
172. A. Majaw.
173. Bhagnayayan Rai.
174. Jogeswar Deka.
175. Dristina Khyreim.
176. D.R.Bhandari.
177. Shomtimai Khamkhonger.
178. D.M. Gazmer Dhoj.
179. Jadav ch. Das.
180. Donald Wahlang.
181. Allen Nongkhlaw.
182. Slikshen Shabeng.
183. M. Mawrie.
184. P. Dkhar.
185. D.S. Shapa.
186. K.N. Kalita.
187. Smt. Rupa Devi Chettri.
188. Made Rai.
189. Themlin Dkhar.
190. Mores Wahlang.
191. Smt. Leomora Shabelong.
192. R. Babu Rai.
193. Ajit Singh.
194. D.B. Lama.
195. K.N. Baruah.
196. Arjun Rai.
197. Inder Singh.
198. H. J. Buhroy.

199. Manik Ch. Das.
200. Haladhar Thakuria.

APPLICANTS IN O.A No. 71 OF 2002

201. Sri D. Bhattacharya.
202. Sri A.R. Roy.
203. Sri K.C. Bora.
204. Sri Subir Chakrabarty.
205. Sri P.S. Shyam.

By Advocate :

Mr. M. Chanda, Amicus Curiae

BEFORE
THE HON'BLE MR. JUSTICE D. BISWAS.
THE HON'BLE MR. JUSTICE U. B. SAHA.

Date of hearing : 27th October, 2006.

Date of Judgment : 1-11-2006

JUDGMENT & ORDER

Saha. J.

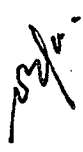
The present writ petition under Article 226/227 of the Constitution is directed against the common order dated 29.11.2002 passed by the learned Central Administrative Tribunal (CAT) in Original Application No. 63 of 2002 and Original Application No. 71 of 2002.

2. We have heard Mr. K.N. Chowdhury, learned senior Counsel assisted by Mrs R.S. Chowdhury, learned Counsel for the writ petitioners. None appears for the respondents when the case was called for hearing. On

request of this Court, Mr. M. Chanda, learned Counsel readily agreed to assist the Court in this matter as Amicus Curiae. Accordingly, we have heard Mr. M. Chanda, learned Counsel.

3. The facts, in brief, necessary for disposal of this writ petition are as follows:

The applicants of the above mentioned Original Applications are working under the writ petitioners who are presently holding various posts in the office of the writ petitioner No.2. The grievances of the applicants, the respondents herein, are basically against the orders dated 28.1.2002 (Annexure- E) and 25.2.2002 (Annexure- F) by which the payment of the Special Duty Allowance (in short, hereinafter referred to as SDA) has been stopped and also a decision has been taken for making recovery of SDA paid to them in excess contrary to the policy. Government of India, Ministry of Finance, Deptt. Of Expdt. vide office memorandum No. 20014/3/83-E.IV dated 14.12.1983 granted certain incentives to the Central Govt. Civilian Employees serving in the North East Region. In the said memorandum, it has been stated that the SDA would be paid to those who have " All India Transfer Liability". Subsequent to the aforesaid office memorandum, another



office memorandum dated 28.4.1987 was issued, wherein it was clarified that all the officers with all India transfer liability would get the benefit of SDA if transferred to North Eastern States. The said benefit would be provided considering their recruitment, promotional zone etc. Being aggrieved by the aforesaid memorandums, some officers approached the Central Administrative Tribunal, (for short hereinafter referred to as Tribunal) and the Tribunal upheld the prayer of those officers, applicants in the aforementioned Original Applications, and directed the writ petitioners, respondents therein, to allow SDA to the applicants.

Thereafter a few special leave petitions were filed before the Hon'ble Supreme Court against the order of the Tribunal and the Hon'ble Supreme Court vide its judgment passed on 20.9.1994 in Civil Appeal No. 3251 of 1993 (Union of India v. S. Vijayakumar) along with Civil Appeal Nos 6163-81 of 1994 reported in 1994 (Suppl) 3 SCC 649 upheld the submissions of the Union of India with its observation that the respondents were not entitled to the SDA, and the impugned judgments of the Tribunal were set aside. The Hon'ble Apex Court in S Vijayakumar's case (supra) further observed that in view of the fair stand taken

by the Additional Solicitor General, whatever amount has been paid to the respondents, or for that matter to other similarly situated employees, would not be recovered from them insofar the allowance is concerned. The Hon'ble Apex Court also observed 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. In view of the above judgment of the Hon'ble Apex Court, the Government of India, Ministry of Finance, Department of Expenditure issued another office memorandum No. 11(3)/95-E.II (B) dated 12.1.1996 (Annexure-B) wherein it has been mentioned that the amount already paid on account of SDA to the ineligible persons on or before 20.9.1994 will be waived and the amount paid on account of SDA to the ineligible persons after 20.9.1994 (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. The aforementioned office memorandum dated 12.1.1996 was duly endorsed and communicated by the Dy Director (Finance), Indian Council of Agricultural Research, Krishi Bhavan, New Delhi

(hereinafter referred to as ICAR for short) to the respective authorities of the ICAR for information, guidance and necessary action vide endorsement dated 26.4.1996 (Annexure-C). On 4.12.1996, the Administrative Officer of the ICAR issued a letter (Annexure-D) to the Senior Audit Officer, camp at Barapani wrongly clarifying the aforesaid order dtd. 12.1.1996 i.e. the office memorandum issued by the Ministry of Finance, Govt. of India and as a result of such wrong interpretation, some ineligible staffs of the ICAR, Barapani Insitutute continued to receive payment of SDA on the plea that the ICAR is an autonomous body having its own rules and bye-laws ignoring the facts that the aforesaid office memorandum dtd. 12.1.1996 was not only fully applicable to the ICAR, but also binding to it. After detection of such mistake/ wrong committed by the Administrative Officer of the ICAR, Barapani Insitutte, the Under Secretary (NRM), ICAR clarified the stand of the ICAR vide its letter/order dated 28.1.2002 (Annexure- E) informing the Director, ICAR, Research Complex for NER Region, Barapani that the direction issued in the office memorandum dated 12.1.1996 would be strictly followed and any payment made on SDA to the ineligible staff subsequent to 20.9.1994 would be recovered. The said

letter/order dated 28.1.2002 was duly forwarded to other ICAR Research Complex for NER regions vide letter/order dtd.25.2.2002 (Annexure-F).

4. Having grievance to the aforesaid discontinuation of the SDA from February, 2002, the applicants employees, respondents herein, approached the Tribunal, Guwahati Bench by filing the aforementioned original applications for quashing the impugned letters/orders dtd. 28.1.2002 and 25.2.2002 with all consequential benefits with further direction to the writ petitioners i.e. the respondents therein, to allow applicants to draw SDA and not to make any recovery from them towards the payment of SDA already paid to them. In reply to the original applications, the writ petitioners as well as the Union of India filed their written statements denying the allegations of the applicants-respondents.

5. The points arose before the Tribunal for determination was whether the applicants-respondents were entitled to the SDA even after the issuance of the aforesaid letters/orders dated 28.1.2002 and 25.2.2002 if the applicants respondents are the residents of the North-eastern region merely because of the fact that the posts to which they were appointed were of all India transfer

liability and whether the writ petitioners have the right to recover the payments of SDA already made to the applicant-respondents by way of mistake after the judgment of the Apex Court and the payments for the period prior to the judgment not paid in time but paid after the judgment of the Apex Court; and also whether the applicants-respondents are entitled to retain the public money paid to them due to wrong interpretation and clarification of the office memorandum, and/or payments made to them in excess, which they were not actually entitled to according to administrative circular are recoverable or not.

6. The Tribunal after hearing the parties disposed of the applications directing the respondents-writ petitioners not to make any recovery of SDA so far paid, without setting aside the impugned letters/ orders (Annexure E and F). The Tribunal also observed that it will be open to the applicants-respondents to make representations before the authority to show and establish that they are entitled for SDA in view of the subsequent posting of N.E. Region after they were transferred out from N.E. region and if such representation is made, the authority shall consider the same in terms of law.

7. Being aggrieved and dissatisfied with the order of the Tribunal, the present writ petitioners filed this writ petition and impugned the said order of the Tribunal.

8. Mr. Choudhury, learned Sr. Counsel for the petitioners strenuously argued that the order of the Tribunal is per se illegal and contrary to the decision of the Hon'ble Apex Court, and the Tribunal also failed to apply its mind on the fact that the Hon'ble Apex Court after upholding the office memorandums dated 14.12.83 and 20.4.83 and allowing the appeal preferred by the Union of India directed the authority not to recover the SDA already paid on the basis of an undertaking given by the learned Additional Solicitor General. The said direction was actually on the basis of the concession given by the Union of India which cannot be a precedent to the Tribunal for decision of the case in hand. Mr. Choudhury, learned senior Counsel has placed the written statements filed by the respondents -writ petitioners before the Tribunal, particularly referred to paragraph- 9 and 10 of the written statements wherein it has been specifically mentioned that the issue has been clarified by the Hon'ble Supreme Court vide judgment dtd. 20.9.1994 in the case of S. Vijayakumar (supra) which was duly communicated by the Govt of

India, Ministry of Finance, Department of Expenditure vide office Memorandum dtd. 12.1.1996 and endorsement of the same was made vide letter dtd. 26.4.1996 and so far as the order dtd. 10/11.10.1985 is deemed to have been nullified on the basis of the verdict by the Hon'ble Supreme Court on 20.9.1994 in Civil appeal No. 3251 of 1993 reported in 1994 (Suppl3) SCC 649 (Union of India V S. Vijoyakumar). He further argued that when the original Application was pending, the Govt. of India in Finance Department issued another office memorandum dtd. 29.5.2002 (Annexure-G to the writ petition), wherein it has been specifically stated that the amount already paid on account of SDA to the ineligible persons not qualifying to the criteria as mentioned in the paragraph-5 on or before before 5.10.2001, the date of judgment of the Hon'ble Supreme Court, will be waived and recoveries, if any, already made need not be refunded and the amount paid on account of SDA to inelligible persons after the date of judgment i.e. 5.10.2001 will be recovered. The applicants-respondents did not challenge the said office Memorandum dtd. 29.5.2002 before the Tribunal and since the said office memorandum is covering the field after the judgment of the Supreme Court in the case of Union of India & ors vs

National Union of Telecom Engineering Employees Union & others in Civil Appeal No. 7000 of 2001 (arising out of the SLP (c) 5455 of 1999) and as the said Tribunal did not discuss anything about the said office memorandum and also did not quash the impugned order dated 28.1.2002 and 25.2.2002, the order of the Tribunal is erroneous and liable to be set aside.

9. None appears for the applicants-respondents as stated above. Mr. Chanda learned Counsel has assisted the Court on request, as amicus curiae and has submitted that the order of the Tribunal is in conformity with the judgment of the Apex Court in S. Vijoyakumar's case (supra). He also relied and placed the judgment and order dated 5.3.2002 passed by the Division Bench of this Court in Civil rule No. 5674 of 1998 and Civil Rule No. 5408 of 1998 whereby this Court dismissed the aforesaid Civil Rules and upheld the order of the Tribunal and the authorities were directed not to recover any amount of SDA already paid to the respondents. Mr. Chanda also placed reliance on the order passed by the Apex Court in the case of National Union of Telecom Engineering Employees Union (supra) and the order passed in Union of India & others -vs- Geological Survey of India

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Employees' Association & ors in Civil Appeal No. 8208-8213 (arising out of SLP Nos 12450-55/92). Relying upon the aforesaid cases, Mr. Chanda, learned Counsel tried to convince this court that there is no infirmity in the said order of the Tribunal which passed the order considering the hardship of the applicant-respondents keeping in mind the ratio of the Hon'ble Apex Court's decision in S. Vijayakumar's case (supra) and the case of Geological Survey of India Employees' Association (supra).

10. In the writ petition in hand, the question of law that arises for decision is whether the order of the Tribunal is reasoned one or not and whether the writ petitioners-authorities have the right to recover the amount already paid to the employees after the judgment of the Apex Court in National Union of Telecom Engineering Employees Union (supra) i.e after 5.10.2001 by way of mistake contrary to its administrative circular by its officers and/or wrong interpretation of the office Memorandum of the Finance Department and whether the applicant-employees have the right to retain the amount paid to them on the ground of hardship wrongly by the authority contrary to administrative circular already upheld by the Apex Court.

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11. We have given our thoughtful consideration to the facts as they emerge from the order of the Tribunal and rival contention of the learned Counsel for the parties as well as documents and citation relied on by the learned Counsel for the parties. For better appreciation of the argument of the learned Counsel of the parties, it would be appropriate to discuss the relevant facts and the ratio of the decision of the Apex Court and this Court as mentioned hereinabove.

12. In S. Vijayakumar's case (supra), the Apex Court observed thus:

“4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 29.10.1986 which has been quoted in the memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1983 memorandum starts by saying that the need for the allowance was felt for ‘attracting and retaining’ the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made

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because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Government civilian employees who have All India transfer Liability would be granted the allowance 'on posting to any station to the North-Eastern Region'. This aspect is made clear beyond doubt by the 1987 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1983 the subject was mentioned as quoted above is not enough to concede to the submission of Dr. Ghosh.

6. 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 insofar as the allowance is concerned.

7. The appeals are allowed accordingly. There will be no order as to costs."

13. It is clear from the decision of the Apex Court rendered in S. Vijoyakumar's case (supra) that the Apex Court upheld the contention of the Union of India and rejected the prayer of the respondents and directed for no recovery of the excess payment made to the ineligible persons on the basis of the submissions of the learned Additional Solicitor General and the said direction of the Apex Court cannot be precedent for decision of the case in hand. In the aforesaid decision, the Apex Court referred to its earlier decision in Reserve Bank of India v. Reserve Bank of India Staff Officers Assn, reported in (1991) 4 SCC 132 wherein it was held that 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 violative of article 14 of the Constitution. In this case also, the respondents were local officers recruited from the North-eastern Region of the Country in the ICAR and hence they are not eligible to get the benefit of SDA as provided by the authority by office memorandum dated 10/11.10.1985 which they have also accepted. We have also gone through the order dated 5.3.2002 passed by the Division Bench of

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this Court in Civil Rule No. 5674 of 1998 (supra) wherein it was observed that the writ petitioners will not be entitled to recover any part of payment of SDA already made to the concerned employees before the Court and not the employees in general, which is clear from the words "concerned employees". In the case of Geological survey of India Employees' Association (supra), the Apex Court after considering the rival contentions of the parties and referring to the earlier decision held in S. Vijayakumar's case (supra) set aside the impugned order and directed the appellants- Union of India not to recover any part of the payment of SDA already made to the concerned employees. It is clear from the aforesaid decision that the Hon'ble Apex Court upheld the contention of the appellants- Union of India. The Apex Court in its order dated 5.10.2001 passed in National Union of Telecom Engineering Employees Union (supra) observed that the appellants-Union of India shall not be entitled to recover any amount paid as SDA in respect of the fact that the appeal was allowed. The said order was passed on the basis of an undertaking given by the learned Additional Solicitor General. Therefore, that case cannot also be considered as precedent for the decision of the case in hand. An observation of the Court in

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judgment cannot be read divorced from the context (See the case reported in 2004 AIR SCW 3665). The order not to recover was passed by the Apex Court in the context of concession given by the learned Additional Solicitor General. The decisions relied upon by Mr. Chanda, learned Counsel do not lay down any law in **rem**. Hence, those decisions of the Apex Court and the Division Bench of this court cannot be treated as precedent. A decision can be considered as precedent only when it decides a question of law. In the case of Mr. S. Vijoykumar and National Union of Telecom Engineering Employees Union (supra), the Apex Court did not decide any law relating to recovery of excess payment due to wrong interpretation of any Rule, policy and/or office memorandum or due to bona fide mistake of the Government and/or its officer. The Government even extended protection to the ineligible employees who were paid wrongly after 5.10.2001 from recovery based on the date of judgment in National Union of Telecom Engineering Employees Union (supra). Thus it is clear that in any way the authority is not debarred from recovering the amount paid illegally as SDA to its employees prior to 5.10.2001. but it is within the power of the authority including the present petitioners to recover

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any amount paid as SDA to the ineligible persons/ employees after 5.10.2001 due to wrong clarification/ mis-interpretation of office memorandum by an officer of the ICAR. Mere hardship of the employees like the applicants cannot override lawful orders of administrative authority when entitlement of SDA to the employees like applicants was deprecated by the Apex Court. Hence the impugned letters/ orders can not be termed violative of Article 14 of the Constitution as well as the doctrine of equal pay. Excess SDA paid to the ineligible employees is, therefore, recoverable. In various decisions, the Apex Court laid down the law relating to recovery of excess amount/ payment made by the authority either due to mistake or due to wrong interpretation of the Rule/ statute or office memorandum. In the case of Chandigarh Administrations and ors vs. Naurang Singh & ors reported in (1997) 2 SLR 230, the Hon'ble Apex Court observed that an evident mistake cannot constitute a valid basis for compelling the administration to keep on repeating that mistake and in the case of V. Gangaram vs Regional Joint Director reported in (1997) 6 SCC 139, the Hon'ble Apex Court allowed the authority to recover the excess payment from the pension and in U.P. Sugar Corporation Ltd. vs. Sant

Raj Singh in Appeal (Civil) 6588 of 2003, the Apex Court allowed the authority to recover the excess payment from salary. At best an employee can ask for recovery of such excess payment made to him by easy instalments, as the money paid in excess are not his own, rather public money.

14. After giving anxious consideration to the aforementioned decisions of the Apex Court and the records relating to the case in hand, we are of the opinion that the Government and the Council like ICAR is an impersonal body i.e. having no personal reference, it can not act by itself, it has to act/work through its officers and employees, who represent it, to fulfill its policy decision. If any employee or officer allowed some benefits to other ineligible employees/ officers or workers to get such benefits due to wrong interpretation of the policy/ office memorandum and/or order due to bona fide mistake, then the Government or the Council has the right to rectify the said bona fide mistake of its employee/ officer as and when such wrong / mistake came to its knowledge. As a Court of equity we cannot deprive a citizen and/or an employee from his legal entitlement provided by any law/ statute or any order issued by the competent authority, but at the same time we cannot also allow a person/an employee to retain

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public money paid to him in excess to his lawful entitlement wrongly by another public officer, giving wrong interpretation of Govt. policy/ order. Here the case in hand, it is an admitted position that the respondents applicants were not entitled to SDA as per the decision of the Apex Court and office memorandum by the Finance Department of the Government of India as well as the orders of the ICAR, they were paid the said SDA due to wrong interpretation of the order of the authority. We are of the view that the amount paid to the applicants on SDA in excess, due to wrong interpretation/ clarification/ mistake committed by another officer of the ICAR are recoverable, as the said amount was paid due to wrong interpretation of the office memorandum issued by the Ministry of Finance, Govt. of India and the authority of the ICAR. The Hon'ble Apex Court in the case of V. Gangaram & U.P. Sugar Corporation Ltd. (supra) allowed the authority to recover the excess amount by way of instalments. We find from the impugned order that the Tribunal did not consider the office memorandum dated 29.5.2002 ((Annexure- G) which were issued after the decision in the case of National Union of Telecom Engineering Employees Union ((Supra) on 5.10.2001, when the aforementioned Original

Applications were pending before it. The Tribunal also not set aside the impugned orders dated 28.1.2002 and 25.2.2002, rather directed the respondent- petitioners not to recover the excess payment from the applicant on the lone ground of hardship. Hardship cannot be a ground for providing certain benefits to the ineligible persons/ employees contrary to the rights provided by law or policy. (See the case of State of Tamil Nadu vs. St. Joseph Teachers Training College reported in (1991) 3 SCC 87).

15. In view of the above discussion and observation, we hold that the respondents are not entitled to the payment of SDA as already paid to them in excess due to mistake/wrong interpretation of the office memorandum.

The impugned order of the Tribunal is, therefore, set aside.

The excess amount paid to the applicant-respondents to be recovered from them in easy installments.

16. Writ petition stands disposed of. No cost.

Sd/- U.B. Saha.
JUDGE

Sd/- D. Biswas.
JUDGE

Memo No. HC. XXI. 6587-88 /R.M. Dtd. 22/11/06

Copy forwarded for information and necessary action to :-

1. The Director General, Indian Council of Agricultural Reserch (ICAR),
Krishi Bhawan, New Delhi.
2. The Director, Indian Council of Agricultural Research Complex,
N E H Region, Umroi Road, Barapani, Meghalaya.

By order

[Signature] 21.11.06

Asstt. Registrar(J)

Gauhati High Court, Guwahati

केन्द्रीय प्रशासनिक न्यायकरण
Central Administrative Tribunal
26 FEB 2002
गुवाहाटी न्यायपीठ
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No....63...of 2002

BETWEEN

Shri Victor Dkhar & Ors Applicants.

AND

Union of India & ors. Respondents.

I N D E X

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Filed by : Miss U.Das. Advocate.

Regn.No.:

File : SDA.ICAR

Date : 26.2.02.

Filed by.
Legal Dr. Advocate
26-2-2002

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central Administrative
Tribunal Act.1985)

O.A.No.63..... of 2002

BETWEEN

1. Victor Dhkar.
2. Parimal Ghosh.
3. Smt. D.M.Pakytien.
4. Smti. C.L. Swer.
5. Smti. B.N. Ramee.
6. Smti. K. Dkhar.
7. Smti. T. Thamuit.
8. Jessy Thomas.
9. K.K. Das.
10. Smti. Arunima Bora.
11. Sharada Nanda Baitha.
12. A.R. das.
13. D. Khound.
14. Smti. C. Sohtun.
15. S. Hore.
16. Smti. Bidia Mawlong.
17. Smti.T.C. Nongkhlaw.
18. Smti.F.M.B. Lyngdoh.
19. Swapan Karamji.
20. K. Thomas.
21. Smti. Noralyne Paswet.
22. Smti. E. Pyngrope.
23. Smti.Nani Das.
24. Jagodihs Chakraborty.
25. Smti. Regina Duia.
26. Smti.Rosalin Sohlang.
27. Smti. Ratna Das.
28. P.C. Sharma.
29. Pinak Pani Das,
30. Smti J.Pathaw
31. Smti L.M.Kharhujan
32. Chester Khonglam
33. Smti Tapati Patnayak
34. H.Chanda
35. Bhakta Ram Bora
36. Smti Benolyncy
37. Smti Amita Goswami
38. Binod Rosaily
39. Smti Sankari Paul
40. Smti I.Hynnietw
41. Rajani Das
42. Smti. Dharmeswari Das
43. M.K.Baruah
44. Smti Sulekha Banerjee
45. Smti F.B.Lyngser
46. Sh.F.E. Diengeloh
47. G.Sinha

48. A.C. Deb
49. Smti June Dhar
50. H.C. Joshi
51. Smti D.S. Dkhar
52. M. Dkhar
53. B. Chanda
54. Marcus Kharphuli
55. A.K. Acharya
56. R.K. Tarat
57. Gulab Prasad
58. Papiya Purkayastha
59. Avinash, T-5
60. H. Bareh, T-5
61. S.K. Biswas
62. D.K. Sonowal, T.O.
63. D. Paul, T.O.
64. R.K. Das
65. P. Nath, T.O.
66. N.R. Roy
67. K.K. Dutta
68. Chandan Adhikari
69. A.V. Rynjah, T.O.
70. Prasanta Nayak, T.O.
71. Ramesh Singh
72. Moloy C. Sharma, T-5
73. A.K. Khound
74. L.K. Mishra
75. J.L. Singh, T.O.
76. D. Medhi
77. S. Purkayastha
78. K. Phukan, T-3
79. Kaushalendra Prasad
80. Laxmanlal Srivastaba.
81. Rameswar Rai
82. Pranab Kr Barman.
83. A. Phukan.
84. Druna Sarma.
85. P.R. Neog.
86. Bankim Choudhury.
87. W. Kharsati.
88. Surendra Nath.
89. D.B. Roy.
90. H. Ahmed.
91. A. Haque.
92. O. Pygrope.
93. Gopal Nath.
94. Ajit Karmadey. 1
95. D.C. Deka.
96. T.P. Pradhan.
97. P.C. Choudhury.
98. P.K. Barman.
99. S.G. Ahmed.
100. Sanjit Dutta.
101. S.K. Sen.
102. Anisur Rahman.
103. Rajen Ch Baishya.
104. Rabinrda Nath Paith.
105. A.K. Deka.
106. Dilip Ch Barman.
107. S.K. Phukan.
108. Khitendra Barman.
109. H. Majaew.

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110. P.M.Farlon.
 111. K.Suting.
 112. G.N.Singh.
 113. N.P.Chettri.
 114. S.K.Lama.
 115. B.N.Saha
 116. N.Rai.
 117. L.Malchein.
 118. N.Lindoh.
 119. S.K.Gazmir.
 120. M.Malwong.
 121. Upen Deka.
 122. D.Das.
 123. Lumi.
 124. ~~Maday Rai~~ *12*
 125. Smt. Rupa Devi.
 126. S.Bargohain.
 127. A.P.Dutta.
 128. M.D.Shyam
 129. B.Thabah
 130. P.C.das.
 131. A.D.Choudhury.
 132. Rakesh Kumar.
 133. C.Lana.
 134. R.C.Bhuyan.
 135. R.K.Das.
 136. Anil Kumar Deka.
 137. G.K.Basumatary.
 138. Pranab Kr Dey.
 139. Munindra Kr Das.
 140. Utpal Chakraborty.
 141. Sikandar Singh.
 142. Chakra Bora.
 143. H.Hillman Bareh.
 144. H.S.Nonghyurih
 145. S.Nongnen *6*
 146. Smt A.Nongbri.
 147. Ersing.
 148. ~~H.J.S.Bukhey~~ *1*
 149. Smt K.Mowkheiw.
 150. Jadu Ram Borah.
 151. A.J.Deka.
 152. S.N.Talukdar.
 153. J.K.Bharali.
 154. Drulson Rangslang.
 155. Gregory Kharkongor.
 156. M.N.Borah.
 157. S.K.Dwivedi.
 158. F.M.B.Lyngdoh.
 159. K.C Handique.
 160. Deben Ch Das.
 161. D.B.Roy.
 162. Balen Kalita.
 163. S.K.Phukan.
 164. ~~Upen Deka~~ *u*
 165. Jagdish Lal.
 166. Ganga Saw.
 167. Sumarlong Gatpha *Ok 2*
 168. Buta Singh.
 169. P.S.Gurung.
 170. Tamas Steinherr.
 171. Norisda Lakhiat.
- 1

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172. A. Majau.
 173. Bhagnarayan Rai.
 174. Jogeswar Deka.
 175. Dristina Khyreim.
 176. D.R. Bhandari.
 177. Shomtimai Khaokonger.
 178. D.M. Gazmer Dhoj.
 179. Jadu Ch Das.
 180. Donald Wahlang.
 181. Allen Nongkhaw.
 182. Slikshon Shabong.
 183. M. Mawrie.
 184. P. Dkhar.
 185. D.B. Thapa.
 186. K.N. Kalita.
 187. Smt. Rupa Devi Chettri.
 188. Made Rai.
 189. Thomlin Dkhar.
 190. Nores Wahlang.
 191. Smt. Leonora Shabolong.
 192. R. Babu Rai.
 193. Ajit Singh.
 194. D.D. Lama.
 195. K.N. Baruah.
 196. Arjun Rai.
 197. Inder Singh.
 198. H.J. Buhroy.
 199. Manik Ch Des.
 200. Haladhar Thakuria.
 201. S. Purkayastha.

..... Applicants.

VERSUS

1. Union of India,
 Represented by the Secretary Indian Council of Agricultural
 Research, ICAR, Krishi Bhawan, New Delhi.
2. The Director General ICAR,
 Krishi Bhawan, New Delhi.
3. The Director,
 ICAR Research Complex, NEH Region,
 Umroi Road, Borapani, Meghalaya.

..... Respondents.

PARTICULARS OF THE APPLICATION

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

The present Original Application is directed against
 the orders dated 28.1.2002 and 25.2.2002 issued by the
 respondents by which payment of SDA has been stopped and a
 decision has been conveyed for recovery of amount already paid on

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account of SDA w,e,f, 20.9.94.

2. LIMITATION:

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

3. JURISDICTION:

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

4. FACTS OF THE CASE:

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

4.2. That the present applicants are working under the respondents and presently they are posted in the office of the respondent No 3 and they are holding various posts Al mentioned above.

The Cause of action and the relief sought for is similar and hence the applicants pray for join together in a single application invoking Rule 4(5)(a) CAT(P), 1987

4.3. That the grievances of the applicants are basically against the orders dated 28.1.2002 and 25.2.2002 by which the payment of Special Duty Allowance (SDA) has been stopped and the respondents have taken a decision for making recovery of the said amount already paid on account of SDA to them . The Govt of India issued an O.M dated 14.12.83 by which the benefit of SDA has been extended to the Central Govt Civilian employees serving in the

W.E Region. The respondents however, did not agree to the contention of the said O.M dated 14.12.83 and same led to submission of numbers of representations. It is pertinent to mention here that like others, one Sri J. Lal preferred a representation dated 23.4.1984 to the respondents No 2, the Director General ICAR New Delhi praying for payment of SDA, as was granted to the ARS Scientists posted at ICAR Borapani. The copy of said representation was also forwarded to the Secretary/Member, Staff Joint Council ICAR Research Complex for NEH Region for taking up necessary action in this regard. Taking clue from the said representations the Joint Council took up the matter with the respondents. The respondents taking into consideration the representation issued an order bearing No F.No 3(14)84 EE.V dated 10/11-10-1985 by which benefit of SDA has been extended to all the employees of ICAR Borapani.

Copies of the said representation dated 23.4.1984 and the order dated 10.11/10.1985 are annexed herewith and marked as ANNEXURE-1 and 2.

4.4. That the applicants state that in terms of aforesaid order dated 10.11/10/1985 (Annexure-2), they are in receipt of the payment of SDA till date. It is pertinent to mention here that in the mean time the matter pertaining to payment of SDA subjected to various clarifications. The Ministry of finance issued an O.M dated 12.1.1996 clarifying the stand regarding payment of SDA. The respondents have issued an order dated 26.4.1996 by which the aforesaid O.M dated 12.1.1996 has been forwarded for necessary action.

A copy of the said order dated 26.4.1996 is annexed herewith and marked as ANNEXURE-3.

4.5. That the respondents after issuance of O.M dated 12.1.1996 took up the matter at its various level and put up the note that the contention of the O.M Dated 12.1.1996 will not be applicable in case of ICAR employees. In fact the ICAR is an autonomous body having its own rules and bye laws. Finally the respondents have issued an order dated 4.12.1996 by which it was clarified that the O.M dated 12.1.1996 is not applicable in case of ICAR employees taking into consideration the order dated 10.11-10.1985.

A copy of the said order dated 4.12.1996 is annexed herewith and marked as ANNEXURE -4.

4.6. That the applicants beg to state that Govt of India has issued the O.M dated 14.12.1983 specifying the eligibility criteria for payment of such allowance. Basically the said OM dated 14.12.83 was the initial guidelines by which the terms and conditions regarding the payment of SDA has been started. The basic foundation of granting SDA was to meet the hardship being faced by the people of N.E. Region compare to other region in all respect including essential commodities because of it's peculiar geographical position as well as the unstable political situations. The N.E. Region comprises of seven States covering Assam, Meghalaya, Manipur, Nagaland, Mizoram, Tripura and Arunachal Pradesh. The major percentage of the land area is covered by hilly areas and same creates obvious disadvantages in road transportation and other communications resulting higher price of essential commodities. Noticing the aforementioned hardship the Govt.of India considering all the inconvenience and disadvantages faced by the employees of Central Govt. and on acting on the demand raised by the various levels/forums, issued an OM dated 14.12.83 granting an allowance namely special duty

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allowance (SDA). The said allowance was made applicable to the employees working in the NE region specifying certain eligibility criteria for the same. It is noteworthy to mention here that the respondents did not allow the present applicants to draw SDA in terms of O.M dated 14.12.83 but the respondents later on taking into consideration the representations filed by the employees respondents issued an independent order (Annexure-2) granting SDA to all the employees of ICAR.

The applicants crave leave of the Hon'ble Tribunal to produce the copy of O.M dated 14.12.1983 at the time of hearing of the case.

4.7. That the applicants beg to state that they fulfill all the required qualification as well as eligibility criteria laid down in the OM dated 14.12.83 and order dated 10.11-10-1985 towards payment of SDA. In fact the order granting SDA dated 10/11.10.1985 still operative and on the strength of said order the applicants are still drawing SDA at the applicable rate. Now to the utter surprise of the applicants the respondents have issued an order dated 28.1.2002 by which secession has been conveyed for stoppage of payment of SDA to the applicants and to recover the amount of SDA already paid to them w,e,f, 20.9.1994.

A copy of the said order dated 28.1.2002 is annexed herewith and marked as ANNEXURE-5.

4.8. That after the issuance of Annexure-5 impugned order dated 28.1.2002, the Administrative Officer of ICAR Borapani has issued an order dated 25.2.2002 conveying the decision of the said order dated 28.1.2002.

A copy of the said order dated 25.2.02 is annexed herewith and marked as Annexure-6.

4.9. That the applicants have been drawing SDA in the light of aforesaid order dated 10.11-10.1985 and since the said order is still in existence the respondents can not stop the payment of SDA. It is noteworthy to mention here that in case of present applicants there has been a separate set of guidelines for grant of SDA and now the respondents can not withhold the benefit without any basis. The applicants made representations to the respondents highlighting their grievances, however, because of urgent relief the applicants without waiting for the result have come before this Hon'ble Tribunal seeking urgent relief.

A copy of the said representation is annexed

herewith and marked as ANNEXURE-7.

4.10. That the applicants beg to state that the respondents themselves have clarified the issue regarding payment of SDA and draw a conclusion that they are entitled to draw SDA taking into consideration their peculiar service condition. Even the respondents after issuance of the O.M dated 12.1.1996, clarified the matter that theses O.Ms will not be applicable to the ICAR employees and taking into consideration the said clarifications the benefit of SDA is still admissible to the present applicants. Now the respondents taking into consideration the above facts can not curtail the said benefit by issuing the impugned orders.

4.11. That the respondents have acted illegally in issuing the impugned orders dated 28.2.2002 and 25.2.2002 disallowing the present applicants to draw their due SDA. The respondents of their own made the payment of SDA to the present applicants and now misinterpreting the entire matter, they have issued the impugned which is not sustainable in the eye of law and liable to be set aside and quashed. The respondents have not yet issued any

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prior notice to the applicants regarding the stoppage and recovery of SDA. In fact the similarly situated employees like that of the applicants are still drawing SDA and in their case no such order has been issued.

4.12. That this application has been filed bonafide and to secure ends of justice.

5. GROUND'S FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action of the respondents in issuing the impugned orders dated 28.1.2002 and 25.2.2002 is illegal arbitrary and same has been issued with an ulterior motive only to deprive the legitimate claim of the applicants and hence same is liable to be set aside and quashed.

5.2. For that the respondents have acted illegally in issuing the impugned orders which are basically based on irrational and unreasonable classification in the name of outsider and insider is illegal, arbitrary and violating of Article 14, 16 of the constitution of India and hence same are liable to be set aside and quashed.

5.3. For that the impugned action on the part of the respondents are opposed to the constitutional mandates as the same differentiates the present applicants in the same of insider and outsider. In fact similarly situated employees like that of the present applicants are presently drawing SDA ignoring the claim of the present applicants. In this score alone the applicant is entitled to all the reliefs as prayed for in the present application.

5.4. For that there being no difference between the applicant as well as the employees who are receipt of SDA so far it relates to duties and responsibilities are concerned, the respondents ought

not to have issued impugned order which based on such criteria.

5.5 For that the respondents have issued the impugned orders without consulting their own OMs issued from time to time as well as its subsequent clarification issued from time to time and same has been issued without applying their mind. Hence the aforesaid impugned orders are liable to be set aside and quashed.

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

The applicants crave leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

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

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of

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records, be grant the following reliefs to the applicant:-

8.1. To set aside and quash the impugned orders dated 28.1.2002 and 25.2.2002 with all consequential benefits with a further direction to the respondents to allow them to draw SDA, and not to make any recovery from the applicants towards the payment of SDA already made to them.

8.2. To set aside and quash any such orders and/or OMs by which the applicants have been deprived the applicants from drawing SDA.

8.3. Cost of the application.

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

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicant prays before this Hon'ble Tribunal for an interim order, directing the respondents not to make any recovery from the applicant in respect of SDA already paid to them and to allow them to draw current SDA by suspending the operation of the impugned order dated 28.1.2002 and 25.2.2002.

10.

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

1. I.P.O. No. : 79 550914
2. Date : 7-2-2002
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES: As stated in the Index.

VERIFICATION

I, Shri Victor Dkhar, son of late Solin aged about 59 years, at present working as Technical Officer, in the office of the Directorate ICAR, Umiam, Meghalaya, do hereby solemnly affirm and verify that the statements made in paragraphs 1-3, 4-42, 46, 410-412 and 54-12..... are true to my knowledge and those made in paragraphs 43, 44, 45, 47, 48 & 49 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

I am the applicant No 1 in this O.A and I have been authorised by the other applicants to swear this verification and I sign this the Verification on this the 29th day of Feb... of 2002.

Victor Dkhar

The Director General
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi - 110 001

Sub :- Anomalies regarding decision on Special Duty Allowance granted to ICAR employees posted in North Eastern Region - appeal thereof

LHI-1

Sir,

Most respectfully, I beg to submit that the Council vide its endorsement No.9-1/84-Cdn(A&A) dated 5.4.84 has ruled out extending the benefit of Special Duty Allowance @ 25% of pay to me as sanctioned by the Govt of India, Min of Fin. OM No.20014/2/83-B.IV dated 14.12.83. In this connection certain salient features that came up to my knowledge are explained as under :-

- 1) Para (iii) of the above cited order dated 14.12.83 illustrates that "all categories of Central Govt civilian employees who have all India transfer liability" are entitled for a Special Duty Allowance at the rate 25% of pay. This term, does not however, actually specify as to who should have issued appointment orders and on what basis, as has now been clarified by the Council. My appointing authority, i.e. Director of the Institute, is authorised to carry out appointments on behalf of the ICAR within the frame-work of rules set up by the Council/A.S.R.B. Thus appointment made by the Director is to be treated at par with those done by the A.S.R.B. for the benefit of pay and allowances payable to the employees as a whole. In fact the term of transfer liability mentioned in the offer of appointments, is perhaps based on statutory requirements, hence the same is generally used in the cases of central Govt services.
- 2) It is clearly stipulated in my offer of appointment that I am liable to be transferred to any Institute and/or office of the ICAR located any-where in India, as has been done all other cases of employees in the categories of Scientific, Technical, Administrative, and Supporting cadres. It has further evidenced that the staff appointed in this Institute on permanent as well as deputation basis from the Council HQrs, IARI, New Delhi and other Research Institutes were all paid TA/DA and other benefits as applicable under rules, thereby incurring liabilities.
- 3) All ARS Scientists posted in this Region were selected to particular posts for an indefinite period and they are also not transferred automatically, as contented by the Council. Hence the term of transfer liability stipulated in their offer of appointments does not specify any particular importance in nature higher than that of the clause shown in the offer of appointments issued by my appointing authority.

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Attested

Advocate.

- 4) Normally Duty Allowance is to be treated as pay for all other purposes of benefits under pay rules (for example, Deputation (Duty) Allowance). In the instant case it is not an incentive grantable by ICAR of its own to a particular class of employees, but a benefit granted by the Govt of India for the hazardous nature of duties and other difficulties faced by all categories of Central Govt. employees posted in North Eastern Region.
- 5) According to reliable sources all categories of employees belonging to many of the Central Govt departments in North Eastern Region are already being paid Special Duty Allowance on the strength of similar term in their offer of appointments.
- 6) It will ~~be~~ not be out of order to mention that at present while the employees of Class III grade appointed by ASRB (Scientist 'S') is drawing Special Duty Allowance, the officers of Class I & II grades in whose case the Director of the Institute (Asstt. Admn Officer, Farm Manager, Manager (Operation & Maintenance), Technical Officer etc.) are not ~~for~~ given the benefit.
- 7) In case of calamities arising out of natural and any terrorist like activities in the North Eastern Region, I am also equally responsible for facing the consequences thereof.

In view of the foregoing it will be evident that the provision of Special Duty Allowance mentioned in the Govt of India order has not been interpreted in its true perspectiveness, thereby causing resentments as well as financial hardships to me.

It is, therefore, earnestly requested that the case may kindly be re-considered and necessary orders issued early so as to grant the Special Duty Allowance to me as well.

Thanking you,

Yours faithfully,

Jagdish Lal
23/4/84

Copy to :-

Secretary/Member, Staff Joint Council, ICAR Research Complex for NEH Region, Shillong for taking up the case with the Authorities with strong appeal for redressal of the grievances.

Attested

Advocate.



TELEGRAM : 'AGRISEC'
TELEX : 031 - 62249 ICAR IN

भारतीय कृषि अनुसंधान परिषद्, कृषि भवन, डा० राजेन्द्र प्रसाद मार्ग, नई दिल्ली-११०००१
COUNCIL OF AGRICULTURAL RESEARCH, KRISHI BHAWAN, Dr. RAJENDRA PRASAD ROAD, NEW DELHI-1

F.No.3(14)84 EE V

Dated the 10th Oct. 1985.

To

The Director,
ICAR Research Complex for NEH Region,
Shillong.

Sub:

Allowances and facilities for Civilian
Employees of the Central Government serving in
the States and Union Territories of North
Eastern Region- Improvement thereof.

Sir,

With reference to your letter No.RC(E)10(A)/84
dt. 12.3.85, on the subject cited above, I am directed to say
that the question relating to the grant of 25% Special (Duty)
allowances to the staff of ICAR Research Complex for NEH
Region, Shillong other than ARS Scientists and Officers in
the combined cadre of Admn. Officers and Accounts Officers
in terms of para(I)(iii) of Ministry of Fin.O.M.No.20014/3/83-
EEV dt. 14.12. 83 has been considered in consultation with
DARE Fin. and it has been decided that the benefit of 25%
Special (Duty) allowance may be extended to the staff of the
ICAR Research Complex for NEH Region, who have a common
seniority with the staff at the Sikkim Centre, Gangtok (outside
the NEH Region) and who are appointed on the basis of
selection on all India basis.

Yours faithfully

(INDER JIT)
UNDER SECRETARY(EE V)

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14/10Smyth/17/12/2
14/10

Advocate.

Dated the 26th April, 96.

H.No. 100

1/CKVH Tuz

1692 Res. Complex.

Sh. Joint Directors. Contingent. Bikkim.

Copy to:

1. F Ao ZARR Barapani for information and

Advocate.

n.a.

2. F Ao (E) ZARR Barapani for information

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

New Delhi, the 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-reg.

The undersigned is directed to refer to this Department's O.M. No.20012/3/83-E.IV dated 14.12.83 and 20.4.1987 read with O.M. No.20014/16/86-E.IV/E.II(B) dated 1.12.83 on the subject mentioned above.

2. The Government of India vide the above mentioned O.M. dated 14.12.83 granted certain incentives to the Central Government civilian employees posted to the N.E. Region. One of the incentives was payment of a "Special Duty Allowance" (SDA) to those who have "All India Transfer Liability".

3. It was clarified vide the above mentioned O.M. dated 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.

4. 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.

5. 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.

...2/-

Advocate

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6. The Hon'ble Supreme Court in their judgement delivered on 20.9.94 (in Civil Appeal No.3251 of 1993) upheld the submission 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 & Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

10. Hindi version of this OM is enclosed.

Sd/-

(C. BALACHANDRAN)

UNDER SECRETARY TO THE GOVT. OF INDIA.

All P.A./Ministries/Departments of the Govt. of India, etc. etc.
Copy (with spare copies) to C&AG, UPSC etc. as per standard endorsement list.

Attested

Advocate

To

(6)

-20-

ANNEXURE-4

21

The Senior Audit Officer,
Local A/c of A/cs of the Institute,
Camp - Barapani.

Sub: Audit of A/cs for the period 4/96 to 10/96
(1st spell).

Sir,

With reference to your Memo No. LA-I/ICAR/Shillong/39 dt. 3.12.96, I am to inform you that the conditions for drawal of SDA as laid down by the Ministry of Finance O.M.No. 11(3)/95-E.II(B) dt. 12.1.96 is applicable only to those categories of staff who have only mere mention of All India transfer liability in their appointment letter without fulfilling the other conditions for drawing SDA on the basis of C.A.T./Guwahati Bench's verdict. It is a fact that this Institute has been drawing SDA prior to this CAT Verdict on prior approval of the Council and not on the basis of the Hon'ble CAT's verdict.

Moreover, as far as the ICAR Research Complex for NEH Region is concerned, the fulfilment of the conditions for drawal of SDA is taken care of by the one sentence original clarification of the Council while conveying approval for drawal of SDA by the staff of this Institute vide letter F.No.3(14)/84 EEV dt. 11.10.85.

In this connection it may be mentioned that initially no SDA was paid to the staff of this Institute (other than the Scientists). It was only after receipt of the Council's approval vide the letter under reference that SDA was drawn in respect of other categories of staff and the same has since been continued for the last 13 years. So far the Govt. of India's original order mentioning the conditions to be fulfilled for drawal of SDA has not been changed even after the Hon'ble Supreme Court Verdict and Govt. of India clarification as referred to in the audit memo, nor there is any change in the status/position of the staff of this Institute in respect of fulfilment of these conditions till date.

The relevant documents/file is also being made available for your kind perusal please.

Yours faithfully,

(I.K. SHARMA)

ADMINISTRATIVE OFFICER

Attested

Advocate

-22- 21-

ANNEXURE - 5

(98)

By Speed Post

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAVAN: NEW DELHI

F.No:21-20/2000-IA.II

Dated the 23rd January, 2002

To

Dr. N.D. Verma,
Director,
ICAR Research Complex for NEH Region,
Barapani.

Sub: Special Duty Allowance(SDA) for civilian employees of the Central Government in the State and Union Territories of North Eastern Region and Andaman and Nicobar & Lakshdweep Groups of Island-Regarding.

Sir,

I am directed to refer to Fax Letter No:RCC/59/99, dated 8.1.2002 on the subject mentioned above and to say that in accordance with the following instructions issued by the Ministry of Finance and endorsed to the Institutes from time to time, the employees in the Administrative(other than Admn. Officers and Accounts Officers from the Combined Cadre) Technical and Supporting category are not entitled for the grant of Special Duty Allowance:-

1. Ministry of Finance(Deptt. Of Expdt. O.M.No.20014/3/83-E.IV, dated 14.12.1983 circulated vide ICAR Endt. No:9-1/84-Cdn(A&A), dated 5.4.1984.
2. Clarifications issued by the ICAR vide Circular No:9-1/84-Cdn(A&A), dated 3.1.1985.
3. Ministry of Finance(Deptt. Of Expdt.O.M.No:4(3)/97-E.II(B), dated 17.8.1998 and No:11(2)/97-E.II(B), dated 22.7.1998 circulated vide ICAR Endt.No:9-3/98-Cdn(A&A), dated 27.11.1998.
4. Ministry of Finance(Deptt. Of Expdt. O.M.No:11(3)/95-E.II(B), dated 12.1.1996 circulated vide ICAR Endt.No:9(1)/96-Cdn.(A&A), dated 26.4.1996.

Further in accordance with Ministry of Finance O.M. No:11(3)/95-E.II(B), dated 12.1.1996, the amount already paid on account of Special Duty Allowance

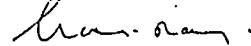
Attested

Advocate.

to the ineligible persons on or before 20.9.1994 will be waived. The amount paid on account of Special Duty Allowance to ineligible persons after 20.9.1994 has to be recovered. You are, therefore, requested to take immediate action to stop payment of Special Duty Allowance to all the Administrative, (other than Admn. Officers and Finance and Accounts Officers from the Combined Cadre of Admn. Officers and Finance and Accounts Officers) Technical and Supporting category with immediate effect. Further necessary action may be taken to recover the payment on account of ineligible staff as clarified above for the period after 20.9.1994 and the Council may also be intimated of the action taken in this regard.

This issues with the approval of the competent authority in the ICAR.

Yours faithfully,



(G.R.DESH BANDHU)
UNDER SECRETARY(NRM)

Attested

Advocate.

IMMEDIATE

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR RESEARCH COMPLEX FOR N.E.H. REGION
UMROI ROAD, UMIAM-793103

no.RC(G)59/99.

Dated the Umiam 25th Feb, 2002.

To,

1. The Joint Director,
ICAR Research Complex for NEH Region,
A.P./Nagaland/Tripura/Manipur/Mizoram/
and Sikkim Centres.
2. The ~~in~~charge KVK, Tura.
3. The Finance and Accounts Officer/Asstt. Administrative
Officer, (Estt). ICAR (RC), Umiam.

Sub:- Special Duty Allowance (SDA) for civilian employees
of the Central Government in the State and Union
Territories of North Eastern Region and Andaman and
Nicobar and Lakshadweep Groups of Island-Regarding.

Sir,

I am directed to forward herewith a copy of Council's
letter F.No.21-20/2000-I.A. II dated 28.01.2002 on the above
mentioned subject for kind information and strict compliance.

The payment of S.D.A. should be discontinued w.e.f.
the month of February, 2002 as instructed/clarified in the
above mentioned letter until further orders.

Yours faithfully,

Encls: As above.

MJ
25/2/02
(M.J.Kharmawphiang,)
Administrative Officer.

rkf/-

Attested
S
Advocate.

To

The Hon'ble Minister of Agriculture and President, ICAR,
Krishi Bhavan,
New Delhi-110 001.

Through proper channel

Sub: An appeal against anomaly and discrimination in respect of decision regarding entitlement for Special Duty Allowance(SDA) to the employees of ICAR Research Complex for NEH Region -regarding.

Hon'ble Sir,

With due respect and humble submission, the undersigned beg to appeal to your highness, the following facts for favour of your kind and sympathetic consideration please :-

1. That Sir, ever since the Council implemented the Govt. of India's decision regarding grant of Special Duty Allowance(SDA) to the civilian employees of the Central Government in the State and Union Territories of North Eastern Region and Andaman-Nicobar & Lakshadweep Group of Islands vide its order Min.of Fin.(Deptt.of Expdt)OM No.20014/3/83-E.IV dt. 14.12.1983 circulated vide ICAR endt. No.9-1/84-Cdn(A&A) dt. 5.4.1984, the undersigned by virtue of having fulfilled all the terms and conditions contained in these instructions, was availing the benefit of these allowances till now uninterrupted and without having any questions raised in the matter.
2. That Sir, it is understood, the Council by its letter F.No.21-20/2000-IA.II dt.28.1.2002 has conveyed to the Institute to stop payments to all administrative (other than AO, FAOs), technical and supporting category with immediate effect in spite of the fact that the staff of this Institute irrespective of their grade, category and cadre continue to fulfil the conditions stipulated by the Govt. of India for drawal of SDA. It is also noteworthy to mention here that there is no change in the original orders for drawal of SDA including the clarification issued by GOI,Min. of Fin., Deptt. of Expndt. OM No. 11(3)/95-E.II(B) dt. 12.1.1996 issued in view of Hon'ble Supreme Court Verdict dt. 20.9.94.
3. That Sir, the above decision of the Council is unilateral and abrupt without giving any opportunity to the aggrieved employees. Worse it was issued to the Institute at a time when the Director of the Institute constituted an expert committee to look into the aspect of fulfillment of the terms and conditions for drawal of SDA by the staff. It is also understood that the above decision/recommendation of the expert committee in the matter was conveyed to the Council vide Institute letter No.RC(G)59/99 dt. 5.2.2002 and the same is yet to be disposed by the Council.
4. That Sir, the employees of the Institute fulfil all the terms and conditions stipulated in the Govt. of India orders and clarifications issued on the matter from time to time for eligibility towards drawal of SDA and the same will be evident from the comparative statement of administrative (other than AO, FAOs), technical and supporting category vis-a-vis Administrative Officers/Finance and Accounts Officers and Scientific staff in respect of fulfillment of these conditions. The same is also supported by necessary documents as per the Annexures-1 to 9.
5. That Sir, the sudden stoppage of the SDA to certain section of staff like the undersigned belonging to the unprivileged category of staff, that too at this stage after availing the same for nearly 20 years uninterruptedly will not only create severe financial hardship but will also amount to discrimination and it will also effect morally in discharging my duties.

In view of the facts and circumstances stated above, the undersigned would pray for your honour to issue suitable orders to the Council to maintain status-quo without any discrimination in respect of drawal of SDA, pending disposal of this appeal.

Hoping to be favoured with your kind blessings,

Yours faithfully,

Signature _____

Name :-

Designation _____

Attested
Advocate.

Date: _____

- 25 -

COMPARATIVE STATEMENT OF AO/FAO & SCIENTIFIC STAFF VIS-A-VIS ADMINISTRATIVE (OTHER THAN AO, FAO), TECHNICAL AND SUPPORTING CATEGORY IN RESPECT OF FULFILLMENT OF CONDITIONS FOR DRAWAL OF SDA

Sl. No.	Conditions required to be fulfilled to draw SDA in terms of GOI instructions	ACTUAL POSITION IN TERMS OF FULFILLMENT OF CONDITIONS FOR DRAWAL OF SDA BY THE EMPLOYEES	
		Admn. Officer/Fin. & Accounts Officers and Scientific staff.	Staff <u>OTHER THAN</u> Administrative Officers/Finance and Accounts Officers and Scientific staff.
1	2	3	4
1	"All India Transfer Liability"	The Scientists holding Research Management Posts (RMP) of the Institute other than the AO and FAO of the combined cadre are appointed on tenure basis against specific posts of the Institute and they are normally not transferred in routine manner in and out of the Region.	There are numerous examples of staff other than at col. 3 are having been transferred out of the Region in the public interest irrespective of their grade/post/cadre. Examples listing name of persons supported by copies of orders are enclosed at <u>Annexure-1</u> . It is also pertinent to be mentioned here that these staff are transferred to or out of the Region in routine manner and practically in addition to the mandatory insertion of the clause "liable to be transferred anywhere within India" in their appointment orders. Therefore, the clarification issued by GOI, Min. of Fin., Deptt of Expendt. OM No. 11(3)/95-E.II(B) dt. 12.1.1996 issued in view of Hon'ble Supreme Court Verdict dt. 20.9.94 is strictly adhered to by all the staff in this Category. Further, the condition regarding fulfillment of the All India Transfer liability and other conditions of SDA are also elaborated in the Council's letter F.No.3(14)84/EE.V dt. 10/11 Oct. 1985 copy of which is enclosed as <u>Annexure-2</u> . #
2	Recruitment Zone	Scientists of the Institute other than the AO and FAO of the combined cadre are recruited against the vacancies of the Institute through ASRB which implies that their appointment or postings are specifically for the Institute and within the Region.	Recruitment to all the vacancies irrespective of post, grade or cadre in the category are invariably made on all India basis through open advertisement/All India Circulation among ICAR Institutes. A list of such posts/grades and cadres of the category duly supported by the copies of Vacancy Circulars Registers are listed and enclosed in <u>Annexure-3</u> . It may also be mentioned that Roster Registers for all the vacancies filled in the above manner were maintained on the basis of Rosters of 40,120,200 and 400 points respectively as prescribed in case of All India Recruitment prior to shifting to the Post Based Rosters w.e.f. 2.7.97. A list of such posts/grades and cadres of the category duly supported by the copies of Roster Registers are enclosed in <u>Annexure-4</u> . Further, in case of posts in the administrative cadres like Assistant, a certain percentage of vacancies (25%) are also filled by the ASRB on All India Competitive Examination as prescribed in the Recruitment Rules. Similar quota (33.3%) is also prescribed in respect of posts like Sr.PA/PA/Steno.Gr.-II etc. for recruitment through ASRB/Staff Selection Commission on all India Basis. Copies of these Recruitment Rules are enclosed in <u>Annexure-5 & 6</u> respectively. Besides, appointing authority in respect of all technical posts above the grade of T-6 are Director General, ICAR at New Delhi. Copy of Council's letter prescribing this provision is enclosed at <u>Annexure-7</u> .
3	Promotion Zone	There is no specific "promotion zone" in respect of Scientific Category as the same is based on performance over a period of time as prescribed by ASRB from time to time	Promotion zone in respect of all the posts/grades/cadre in this category are "All India Basis" as the Institute is <u>SPREAD BEYOND THE STATES OF NORTH EASTERN REGION</u> and covers a Centre including one KVK under it at Tadong and Ranipul in Sikkim which is outside the Region. Therefore all promotions made in the Institute automatically includes the staff at Sikkim. Fulfillment of this condition is also elaborated in the Council's letter F.No.3(14)84/EE.V dt. 10/11 Oct. 1985 copy of which is already endorsed at <u>Annexure-2</u> . Besides it, having maintained all India seniority list as well as roster for reservation in respect of promotion from the grade of Assistant Administrative Officer, the grade automatically covers all India promotion zone.
4	Common seniority list for the service/cadre	There is no common seniority list for the service/cadre in respect of Scientists of the Institute other than the AO and FAO of the combined cadre.	There is common seniority in respect of all technical and administrative category of staff in the Region including Sikkim which is outside the Region. Further, all technical staff transferred outside the Region from the Institute retains their notional seniority for all purpose towards service benefits. Besides it, as already mentioned at Sl. 3, there is also common seniority list in respect of certain Administrative Grade on all India basis. A statement of such grades/posts/cadres in the category which have such common seniority with copies of seniority lists and are enclosed at <u>Annexure-8</u> .

It is an altogether different matter that GOI vide its order NO. O.M.NO. 4(3)/98-CDN(A&A) DT. 27.11.98 has extended the facility of SDA to the Central Govt. Civilian Employees posted in the State of Sikkim. It is pertinent to be mentioned here that irrespective of extension of the above facility to the state of Sikkim along with Andaman-Nicobar & Lakshadweep Islands, THESE STATES CONTINUES TO BE OUTSIDE THE NORTH EASTERN REGION AND THERE IS NO CHANGE IN THEIR GEOGRAPHIC LOCATION. Copy of the above GOI order is also enclosed as Annexure-9.

Attested

23 SEP 2002
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI
BENCH

Filed by: The Respondents
Through: Mrs. R.S. Chowdhury
20/9/02 Advocate

O.A. NO. 63 /2002

IN THE MATTER OF :

O.A. No. 63/2002

Sri Victor Dkhar & Ors.

..... APPLICANTS

-Vs-

Union of India & Ors.

..... RESPONDENTS

(WRITTEN STATEMENTS ON BEHALF OF THE RESPONDENTS)

I, Sri Ramal Bujarboruah, son of late A.M. Bujarboruah, aged about 50 years, at present working as the Director of Indian Council of Agricultural Research (HEREINAFTER REFER TO AS 'I C A R'), Research Complex, NEH Region, Barapani, Meghalaya, do hereby solemnly affirm and state as follows :

1. That I am the Director of the I C A R Research Complex and I have been impleaded as the Respondent No. 3

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in the aforesaid case and a copy of the Application has been served upon me. I have perused the same and understood the contents thereof. I am well acquainted with the facts and circumstances of the case and have been duly authorised to swear this Affidavit on behalf of the Respondent Nos. 1 and 2.

2. That all the averrments and submissions made in the Original Application are denied by the answering Respondents, save and except those which have been specifically admitted herein and those which appear from the records of the case.

3. That with regard to the statements made in Paragraphs 1, 2 and 3 of the Original Application, the answering Respondents have no comments to offer.

4. That with regard to the statements made in Paragraphs 4.1 and 4.2, the answering Respondents have no comments to offer.

5. That the answering Respondents deny the averrments made by the Applicants in Paragraph 4.3 of the Original Application. The answering Respondents state that although it is a fact that the Govt. of India, Ministry of Finance vide their Office Memorandum (O.M.) No. 200114/3/83-E.IV dated 14.12.1983 granted certain incentives to the Central Govt. civilian employees posted to the North-Eastern Region, One of the incentives being payment of a Special Duty Allowance (S.D.A.) to those who have "All India Tran-

sfer Liability", However, as mentioned, the benefit of grant of S.D.A. was extended only to those posts/Officers which are filled up on All India common seniority list basis through selection and their common seniority is maintained on All India basis. It is pertinent to mention herein that vide Order dated 10/11.10.1985 (Annexure - 2 to the Original Application), it was categorically stated that it has been decided that the benefit of 25% (Twenty-five percent) S.D.A. may be extended to the staff of the I.C.A.R. Research Complex for N E H Region who have common seniority with the staff at Sikkim Centre, Gangtok (Outside N E H Region) and who are appointed on the basis of selection on All India basis.

5(a) However, vide another O.M. dated 20.4.1987 issued by the Govt. of India, Ministry of Finance, it was clarified that 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 S.D.A. and that for the purpose of sanctioning of S.D.A., All India Transfer Liability of the members of any service/cadre of posts has to be determined by applying test of recruitment zone, promotion zone etc. and whether the promotion is made on the basis of All India common seniority list. This clarification resulted into some litigations before this Hon'ble Tribunal and this Hon'ble Tribunal up held the prayers of the Applicants and accordingly, directed the payment of S.D.A. to them. Subsequently, a few Special Leave Petitions were filed in the Hon'ble

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Supreme Court against the Orders of the Tribunal and the Hon'ble Supreme Court in its Judgment delivered on 20.9.1994 (in Civil Appeal No. 3251/1993) up held the submission of the Govt. of India that Central Govt. Civilian employees who have All India Transfer liability are entitled to the grant of S.D.A. on being posted to North Eastern Region from outside the Region, and the S.D.A. 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 of Article 14 of the Constitution of India as well as the equal pay doctrine. The Hon'ble Supreme Court also directed that whatever amount has already been paid to the employees would not be recovered from them. In view of the above Judgment of the Hon'ble Supreme Court, the Govt. of India, Ministry of Finance vide O.M. No. 11 (3)/95-E.II (B) dated 12.1.1996 took the following decisions :

1. The amount already paid on account of S.D.A. to the ineligible persons on or before 20.9.1994 will be waived.
2. The amount paid on account of S.D.A. to ineligible persons after 20.9.1994 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.1994, but payments

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were made after this date, i.e. 20.9.94)
will be recovered.

The said Communication dated 12.1.1996 was duly endorsed and forwarded for information, guidance and necessary action vide endorsement dated 26.4.1996 (Annexure-3 to the Original Application). Therefore, the instructions contained in the Council's letter dated 10/11.10.1985 extending the benefit of grant of S.D.A. to the staff of I.C.A.R. Research Complex in N E H Region was deemed to have become nullified with effect from 20.9.1994, the date on which the Judgment was passed by the Hon'ble Supreme Court.

6. That with regard to the statements made in Paragraph 4.4., the answering Respondents reiterate what has been stated in the foregoing Paragraphs and further do not admit anything contrary thereto.

7. That the answering Respondents contend the statements made in Paragraph 4.5 of the Original Application and would like to submit that although it is a fact that I.C.A.R. is an Autonomous Body having its own Rules and bye-laws, but in case of entitlement as well as drawing and disbursement of Public money, Orders contained in the Govt. of India, Ministry of Finance O.M. dated 12.1.1996 (Annexure-3 to the Original Application) are not only fully applicable in the Council, but are also binding and therefore, the clarification dated 4.12.1996 furnished by the Administrative Officer (Annexure - 4 to the Original Application) is a misinterpretation and is contrary to the Govt.

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of India, Ministry of Finance O.M. dated 12.1.1996.) The same, therefore, cannot be treated as valid and cannot sustain in the eyes of law.

8. That the statements made in Paragraph 4.6 are mere submissions made by the Applicants and the answering Respondents do not admit anything which is contrary to the facts/records of the case and further reiterate the submissions made in Paragraph 5(a) above.

9. That the answering Respondents categorically deny the statements made in Paragraph 4.7 of the Original Application to the effect that the Applicants fulfill the eligibility criteria for grant of S.D.A.. It is submitted here that the issue has been clarified by the Hon'ble Supreme Court vide Judgment dated 20.9.1994 in Civil Appeal No. 3251/1993, duly communicated by the Govt. of India, Ministry of Finance O.M. dated 12.1.1996 and endorsement letter dated 26.4.1996 and so far as Order dated 10/11.10.1985 is concerned, the same is deemed to have been nullified on the basis of the Verdict passed by the Hon'ble Supreme Court on 20.9.1994. It is further submitted that vide Ministry of Finance O.M. No. 11(5)/97-E-II (B) dated 29.5.2002, it has been mentioned that the Hon'ble Supreme Court of India in Civil Appeal No. 7000/2001 has Ordered on 5.10.2001 that whatever amount has been paid to the employees by way of S.D.A. will not be recovered from them in spite of the fact that the Appeal has been allowed. Therefore, as per direction of the Hon'ble Supreme Court dated 5.10.2001, it has been decided by the Govt. of India,

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Ministry of Finance that the amounts already paid on account of S.D.A. to the ineligible persons on or before 5.10.2001 (which is the date of the Judgment of the Hon'ble Supreme Court) will be waived. The amount paid on account of S.D.A. to ineligible persons after 5.10.2001 will be recovered. Therefore, in view of this recent direction, the recovery of S.D.A. is to be affected only with effect from 5.10.2001 to 31 January/2002. The said O.M. dated 29.5.2002 was duly endorsed on 18.6.2002 and forwarded to all concerned for information, guidance and necessary action.

A copy of the said O.M. dated 29.5.2002 and the endorsement dated 18.6.2002 are annexed herewith and marked as ANNEXURE - A & B respectively.

10. That with regard to the statements made in Paragraph 4.8 of the Original Application, the answering Respondents reiterate what has been stated in Paragraph 9 above and in view of the Order dated 29.5.2002, the Orders dated 28.1.2002 and 25.2.2002 (Annexure - 5 & 6 respectively to the Original Application) would stand nullified as regards recovery of S.D.A. from the employees till 5.10.2001.

11. That the answering Respondents categorically deny the statements made in Paragraph 4.9 of the Original Application and reiterate that the Order dated 10/11.10.1985 is not sustainable in the eyes of law in view of the Judgment dated 20.9.1994 and subsequent Judgment dated 5.10.2001

passed by the Hon'ble Supreme Court. The question of separate set of guidelines for grant of S.D.A. for the Applicants does not arise. It is a fact that the Applicants, without waiting for the decision of the Respondents on their ^{Representation,} ~~have moved~~ the instant Original Application before this Hon'ble Tribunal and have, therefore, not exhausted the remedies which were available to them before filing their Original Application and on this ground itself, the present Original Application is liable to be dismissed.

12. That the answering Respondents deny the statements made in Paragraph 4.10 of the Original Application and reiterate what has been stated in Paragraph 7 of this Written Statement. The clarifications dated 4.12.1996 being in contravention to the Govt. of India, Ministry of Finance O.M. dated 12.1.1996 cannot be treated as valid.

13. That the answering Respondents deny the allegation made in Paragraph 4.11 of the Original Application that the Respondents have acted illegally in issuing the Order dated 28.1.2002 and 25.2.2001. The said Orders have been issued keeping in view the Verdict of the Hon'ble Supreme Court dated 20.9.1994, duly communicated by the Govt. of India to the answering Respondents and the Respondents have no alternative other than implementing the said Orders. So far as the recovery of S.D.A. is concerned, the same will be governed by subsequent Judgment of the Hon'ble Supreme Court dated 5.10.2001. The allegation that the Respondents have not issued any notice to the

Applicants is incorrect and denied. The representation of the Applicants was heard in person in the presence of the Secretary, I.C.A.R. by the Director on 21.2.2002, but, the claim of the Applicants could not be acceded to because their claim was not justified and the answering Respondents were bound to implement the Orders issued by the Govt. of India, Ministry of Finance O.M. dated 12.1.1996. Accordingly, the Order dated 25.2.2002 was issued. The allegation that similarly situated employees like that of the Applicants are still drawing the S.D.A. is absolutely incorrect and baseless.

The answering Respondents beg to state at this stage that in view of the recent Order vide O.M. dated 29.5.2002, the recovery of payment of S.D.A. shall be with effect from 5.10.2001 to January/2002. However, in compliance of this Hon'ble Tribunal's interim Order dated 26.2.2002, the recovery of S.D.A. has been kept in abeyance and has been deferred till further Orders from this Hon'ble Tribunal. In view of the state^{ments} made in the foregoing paragraphs, the Hon'ble Tribunal may be pleased to vacate the interim Order dated 26.2.2002.

14. That the answering Respondents respectfully submit that none of the grounds mentioned in Paragraph 5 of the Original Application is a valid ground of law. The action of the Respondents cannot in anyway be regarded as illegal and arbitrary and cannot be said to have been taken with ulterior motives. The Respondents have issued Orders dated

28.1.2002 and 25.2.2002 in view of the Hon'ble Supreme Court Judgment dated 20.9.1994 passed in Civil Appeal No. 3251/1993 and subsequent Orders issued by the Govt. of India, Ministry of Finance. The allegation that similarly situated employees are in receipt of S.D.A. is incorrect and misleading. The Orders dated 28.1.2002 and 25.2.2002 are reasoned Orders and, therefore, liable to be up held by this Hon'ble Tribunal.

15. That under the facts and circumstances as stated above, it is respectfully stated that the instant Application is devoid of any merit and as such, is liable to be dismissed.

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

I, Sri Kamal Bajajbaramah, son of late A.O. Bajajbaramah aged about 50 years, at present working as the Director of Indian Council of Agricultural Research, NEH Region, Barapani, Meghalaya, do hereby verify that the statements made in Paragraphs 1 to 8, 9 (pt), ^{10 to 15} of the Written statements are true to my knowledge and those made in Paragraphs 9 (pt) being matters of records are true to my information derived therefrom and I have not suppressed any material facts.

PLACE :

Guwahati

DATE :

19.9.02

(Kamal Bajajbaramah)

S I G N A T U R E

3 NO. 2 (FV)
F.No. 11(5)/97-E.II.(B)
Government of India
Ministry of Finance
Department of Expenditure

DISPOSED
A
AUTHORITY

New Delhi, dated the 29th May 2001

OFFICE MEMORANDUM

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

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

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

3. Some employees working in NE region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgement delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993 in the case of UOI and Ors Vs 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

10/6/

Relis

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

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

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

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


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

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

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

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

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


(N.P. Singh)

Under Secretary to the Government of India.

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

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

**INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAWAN ; NEW DELHI**

F.No.9-3/98-Cdn(A&A)

Dated: 18.6.02

ENDORSEMENT

A copy of Ministry of Finance (Department of Expenditure) O.M. No.11(5)/97 E II(B) dated 29.5.2002 is forwarded herewith for information, guidance and necessary action

The previous reference viz. Ministry of Finance (Department of Expenditure) O.M. No.11(3)/95-E.II(B) dated 12.1.96 was circulated vide Council's endorsement No. 9-1/96 Cdn(A&A) dated. 26.4.96.

P. C. Arya
-P.C. Arya
Finance & Accounts Office

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