

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 71/02.....

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SECTION OFFICER (Judl.)

Shalil
22/11/02

(X)

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

ORDER SHEET

Original No. 71/2002
Misc. Petition No. /
Contempt Petition No. /
Review Application No. /

Applicant(s) Mr. S. Chakrabarty 90005

Respondent(s) K.O.I. 90005

Advocate for Applicant(s) B.K. Sharma, S. Sarma, Mrs. U. Das

Advocate for Respondent(s) Case K.N. Choudhury, B.C. Das
or Rept. No. 293.

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
This is a standard form C. F. No. R. 504 dismissed 760550917	4.3.02	Heard Mr. S. Sarma, learned counsel for the applicants.
Dated 27.2.2002 By, Registrar 13/02		The application is admitted. Call for the records.
Steps taken. Notice preferred case sent to DLS for inform the respondent No 1 to 3 by Regd. AD.		Issue notice to show cause as to why interim order as prayed for shall not be granted. Returnable by four weeks.
14/3/02		List on 4.4.2002 for order.
DINo 8195821	mb.	<u>B.K. Sharma</u> Member
Dated 19/3/02	4.4.2002	Put up after service report. List on 2.5.2002 for order.

① Service report are
still awaited.

BB
3.5.02

B.K. Sharma
Member

Vice-Chairman

0.A. 71 of 2002

2.5.02

Order dtd. 21/5/02
communicated to the
Parties Counsel.

6/5/02

No. reply has been
brought.

30
30.5.02

Heard Mr.U.K.Nair learned counsel
appearing on behalf of the applicant
and Mr.B.C.Das learned counsel on behalf
of the ICAR. No reply so far filed by
the respondents as prayed for the
interim order. In the facts and circum-
stances the respondents are directed not
to make any recovery from the applicant
in respect for SDA in operation of the
impugned order dated 28.1.2002 and
25.2.2002.

List on 31.5.02 for orders.

K C Sharji
Member

Vice-Chairman

lm

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 state-
ment.

List on 1.7.2002 for orders. In the
meantime, interim order dated 2.5.2002
shall continue to operate.

No written statement
has been filed.

28
28.6.02

mb

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

K C Sharji
Member

Vice-Chairman

mb

No. ws has been
filed.

22
22.8.02

O.A. 71/2002.

(3)

Notes of the Registry	Date	Order of the Tribunal
	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-wks has been filed <u>3y</u> 19.9.02.		List on 20.9.2002 for orders. In the meantime, interim order dated 2.5.2002 shall remain operative until further orders.
No. wks has been filed <u>3y</u> 19.10.02.	mb	I.C.Usha Member
No. wks has been filed <u>3y</u> 11.11.02	20.9.02	Written statement has not been filed. The case may now be listed for hearing on 11.10.02. In the meantime, the respondents may file written statement List on 11.10.02 before Single Bench.
No. written statement has been filed.	11.10.02	Vice-Chairman
No-wks has been filed <u>3y</u> 28.11.02	11.10.02	On the prayer of learned counsel for the parties case is adjourned to 22.11.02 for orders.
No-wks has been filed.	13/11.	I.C.Usha Member
		Writ it along with the OA 63/2002 on 29/11/2002.
		Mr. A.K.Jay
		13/11.

Notes of the Registry

Date

Order of the Tribunal

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.

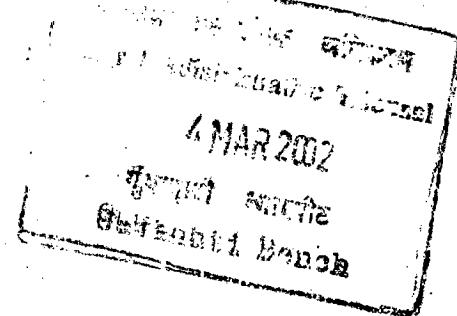
2. The respondents contested the claim by filing written statement. The respondents asserted that they took the necessary steps in terms of law laid down by the Supreme Court and the instructions issued by the competent authority. The issue relating to payment of SDA to the employees of North Eastern 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

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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.

Sd/VICE CHAIRMAN



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :-

C.A. No. 71 of 2002

BETWEEN

Shri S.Chakraborty & 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 :- SDAICAR-1

Date : 06.3.02.

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.**

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

D.A.No. 71 of 2002

BETWEEN

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.

All the applicants are presently holding various posts as mentioned above under the Respondents No 3. i.e., the Director, ICAR Research Complex, NEH Region, Umroi Road, Borapani, Meghalaya.

***** 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 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 As such they are entitled to all the rights, protections and privileges As 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 as mentioned above. The cause of action and the relief sought for by the applicants are similar and as such they pray before the Hon'ble tribunal to allow them to join together in a single application invoking Rule 4(5)(a) CAT Procedure Rules 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

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extended to the Central Govt Civilian employees serving in the N.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

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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 18.11-10.1985.

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 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 18.11-10-1985 towards payment of SDA. In fact the order granting SDA dated 18/11/10/1985 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 these 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

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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 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. GROUNDS 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 OM's 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 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. : 7G 550917
2. Date : 17-2-2002
3. Payable at : Guwahati.

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

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VERIFICATION

I, Shri Subuir Chakraborty, son of late S. Chakraborty, aged about 45 years, at present working as T-4, in the office of the Director ICAR, Umium, Meghalaya, do hereby solemnly affirm and verify that the statements made in paragraphs 1-3, 4-1-4-2, 4-10 to 4-12 and 5 to 12..... are true to my knowledge and those made in paragraphs 4-9-4-9..... 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 4 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 3rd day of March of 2002.

✓ S. Chakraborty.

To, (1) 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

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.

....., 2

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 ~~maxx~~ 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. Admin Officer, Farm Manager, Manager (Operation & Maintenance), Technical Officer etc.) are not 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.

TELEPHONE: OFF. 388991/.....Ext. 22

TELEGRAM : AGRISEC
TELEX : 031 - 62249 ICAR IN

भारतीय कृषि अनुसंधान परिषद्, कृषि भवन, डा० राजेन्द्र प्रसाद मार्ग, नई दिल्ली-११०००९

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 has 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)

P-109X

Attested
Advocate.

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAVAN : NEW DELHI-1.

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(1)/96-Cdn(A&A)

Dated the 26th April, 96.

ENDORSEMENT

A copy of Ministry of Finance (Department of Expenditure) O.M. No.11(3)/95-E.II(B) dated 12.1.96 is forwarded herewith for information, guidance and necessary action, if any.

The previous reference viz. Ministry of Finance (Department of Expenditure) O.M. No.20014/16/86-E.IV/E.II(B) dated 1.12.88 was circulated vide Council's endorsement No.9-3/89-Cdn(A&A) dated 30.3.89.

(T.V. ASARI),
DY. DIRECTOR (FINANCE)

DISTRIBUTION :

I. ICAR Research Institutes etc.:

1. The Directors/Joint Directors/Project Directors of all Research Institutes, Project Directorates and National Research Centres.
2. Project Coordinated, Coordinated Research Project.
3. The Finance & Accounts Officers of all Research Institutes, Project Directorates and National Research Centres.

II. ICAR Headquarters :

1. All Sections/Officers including Krishi Anusandhan Bhawan, Pusa, New Delhi.
2. P.S. to Minister (Agriculture)/Director General/Secretary/Financial Adviser and Chairman, A.S.R.B.

H.No. Re(E) 10 A/84 dt 7-5-96

1/c KVK Tum

Copy to:

1. S/o Joint Directors of the Institutes except Tikkim ICAR Res. Comptbx.
2. F/o Dr. Lekh Ranapuri for information and
3. A/o Dr. Lekh Ranapuri for information

Attached

Advocate.

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/-

Attested

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- 16 -

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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 F.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

Arvind

To

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-17-

ANNEXURE-4

26

24

The Senior Audit Officer,
Local Audit 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 these 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

By Speed Post

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAVAN: NEW DELHI

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

Dated the 9th 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 Islands-Regarding.

Sir,

I am directed to refer to Fax Letter No:RC©/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 Admin. Officers and Accounts Officers from the Combined Cadre) Technical and Supporting category are not entitled for the grant of Special Duty Allowance.

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:II(3)/95-E.II(B), dated 12.1.1996, the amount already paid on account of Special Duty Allowance

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 Admin. Officers and Finance and Accounts Officers from the Combined Cadre of Admin. 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,
man ray

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

Approved
.....
.....

IMMEDIATE

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

No. RC(O)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 Charge KV.K.Tura.
3. The Finance and Accounts Officer/Asstt. Administrative
Officer, (Estt), ICAR (RC), Umiam.

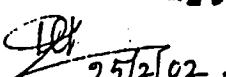
Sub:- Special Duty Allowance (SDA) for civilian employees
of the Central Government in the State and Union
Territories of North Eastern Region and Andaman and
Nicobar and Lakshadweep Groups of Island-regarding.

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,


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

Enclos: As above.

skd/-

Attested

To

- 21 -

ANNEXURE - 7

22

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

Sub: Through proper channel
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 uninterrupted 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

Date: 01.01.2003

Attached

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. N. O.	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 Annexure-1. 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 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 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 Annexure-2, #
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 Annexure-3. It may also be mentioned that Roster Registers for all the vacancies filled in the above manner were maintained on the basis of Rostera 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 Annexure-4. 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 Annexure-5.&6 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 Annexure-7.
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 <u>which is outside the Region</u> . 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 Annexure-2. 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 <u>including Sikkim which is outside the Region</u> . 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 Annexure-8.

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.

Approved
Anu. 2000.