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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES,1990)

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O.A/T.A No. 150/2002

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 150/2002
Misc Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicants. Sri Narendra Ch. Sutradhan
Padukalan

-Vs-
Respondant(s) Union of India & ors.

Advocate for the Applicant(s) Mr P. Roy & Smt. R. Dutta

Advocate for the Respondant(s) Case

| Notes of the Registry | Date | Order of the Tribunal |
|--|-------------------|---|
| 7G 574575 9.5.2002 N Samb 13/5/02 | 15.5.02 | Heard Mr.P.Roy learned counsel for the applicant. Application is admitted. Issue notice on the respondents. Call for records. Returnable by 4 weeks. List on 12.6.02 for orders. |
| Shri Narendra Ch. Sutradhan and Son to Shri. for causing the respondent No 1 to 3 by Regd. A/O. In 16/5 | 14.6.02 L time | Mr.A. Deb Roy, Sr.C.G.S.C. prays for adjournment for filing of written statement. Prayer is allowed List on 19.7.02 for orders. |
| D/No 1485/87 Dtd 27/5/02 | 19.7.02 | Written statement has not been filed. List on 23.8.02 for filing of written statement and further orders. |
| ① Service report are still awaited. | | |
| No. written statement has been filed. | | |
| 3.6.02. 18/7.02. | | |

23.8.2002

19.8.02

MS submitted
by the Respondent Nos. 1, 2 and 3

Written statement has been filed
The case is now ready for hearing and
and accordingly listed for hearing on
20.9.2002.

IC (Ushar)
Member

20.9.2002

Heard Mrs. R. Dutta, learned counsel
for the applicant and also Mr. A. Deb Roy,
learned Sr. C.G.S.C.. Mrs. R. Dutta stated
that she has received the annexures to-
day and accordingly the matter may be
listed after two weeks.

Prayer allowed. List the case on
4.10.2002 again for hearing.

Vice-Chairman

bb

4/10

Heard Mr. P. Roy, learned Counsel
for the applicant & Mr. A. Deb Roy, Sr. C.G.S.
for the respondent.

Hearing concluded,
Judgment reserved.

M. B. Roy
4/10

11.10.02

Judgment delivered in open court.
Kept in separate sheets. Applicant
is dismissed. No costs.

IC (Ushar)
Member

lm

28.10.2002

Copy of the Judgment
has been sent to the
Office for filing.
Rule to the applicant
as well as to the
D. C. B. C.

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A.No.....150.....of 2002.

11-10-2002.
DATE OF DECISION.....

Sri Narendra Ch. Sutradhar APPLICANT(S)

Sri P. Roy ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

Union of India & Ors. RESPONDENT(S)

Sri A. Deb Roy, Sr.C.GS.C. ADVOCATE FOR THE
RESPONDENT(S)

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

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 Admn.Mem-ber

K. Ushan

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 150 of 2002.

Date of order : This the 11th Day of October, 2002.

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

Sri Narendra Ch. Sutradhar,
S/o Late Bhagaban Ch. Sutradhar,
Anandanagar Lane 4,
Dist. Kamrup, Assam.

....Applicant

By Advocate Sri P.Roy.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Communication,
New Delhi.
2. The Chief Postmaster General,
Assam Circle,
Guwahati.
3. The Superintendent of Postal Stores,
Guwahati.

....Respondents

By Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

K.K.SHARMA, ADMN.MEMBER,

The relief claimed by the applicant in this application is granting of Special Duty Allowance (SDA for short) with effect from 14.12.1983 to 31.10.1992.

2. The applicant joined the department of Post and Telegraphs as Postal Clerk on 15.7.1953 and retired from the post of Manager on 31.10.1992. The applicant got all the retirement benefits on his retirement and it is stated that the payment of SDA had been withheld in the case of the

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contd..2


applicant. The applicant has relied on this Tribunal's order dated 22.12.2000 (Annexure-A to the O.A). The claim is based on the direction in the order as under :

"In case any amount on account of payment of S.D.A. has been recovered /withheld from retiral dues, the same shall be refunded/released to the applicants immediately."

The applicant has not stated that he was entitled to the SDA when he was in service. The claim is simply based on the ground that the same should be paid on the basis of the order of the Tribunal relied on by the applicant.

3. The claim of the applicant pertains to the period 1983 to 1992. The application has been filed on 10.5.2002. No reason has been assigned as to why the claim could not be made by the applicant within the limitation period as prescribed in Section 21 of the Administrative Tribunals Act. The application is hopelessly barred by limitation and the same is dismissed as time barred.

As the application is dismissed on account of limitation no finding on merit is justified. There shall, however, be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

O. A. NO. 150 /2002.

Sri Narendra Ch. Sutradhar.

-Vs-

The Union of India & Ors.

I N D E X

| <u>Sl. No.</u> | <u>Particulars.</u> | <u>Page Nos.</u> |
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| 2. | Annexure-A | 9-20 |
| 3. | Annexure-B | 21 |
| 4. | Annexure-C | 22 to 23 |

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO. 150 /2002.

BETWEEN

Sri Narendra Ch. Sutradhar,
S/o Late Bhagaban Ch. Sutradhar,
Anandanagar Lane 4, District-
Kamrup (Assam).

..... Applicant.

-Versus-

1. The Union of India - represented
by the Secretary to the Govt. of
India, Ministry of Communication,
New Delhi.
2. The Chief Post Master General,
Assam Circle, Guwahati.
3. The Superintendent of Postal Stores,
Guwahati.

..... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of the order against which this applica-
tion is made :

No final order has yet been passed by the respondent No. 2nd the representation dt. 20.8.2001 filed by the applicant praying for releasing the arrear special Duty Allowance withheld from the retiral dues which the applicant is entitled from 1983 to 31.10.92 in view of the Judgment dt. 22.12.2000 passed by this Hon'ble Tribunal in O.A.No.149/99.

This application is also made for an appropriate direction to the respondents to pay the arrear of special Duty Allowance as was granted to the other Postal

contd.....2.

Narendra Ch Sutradhar

Warrant for
Filed by: Sri Narendra Ch. Sutradhar
Through: Rastogi &
Advocate
10-5-2002

employees in the N.E. Region but was withheld in case of the retired employees like petitioners. The arrears of S.D.A. withheld to be paid to the petitioner from the date of giving effect of the scheme till his retirement dated 31.10.92.

2. JURISDICTION :

The applicant further declare that the subject matter of the instant case is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The applicant declares that the instant application has been filed within the limitation period prescribed under Section 21 of Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :

4(a) That the applicant is a citizen of India and permanent resident of Assam and as such he is entitled to all the rights protections and privileges as guaranteed by the Constitution of India and the laws framed thereunder.

4(b). That the applicant was appointed in the Department of Posts & Telegraph as Postal Clerk on 15.7.53. By dint of his sincerity and devotion to the service he was ultimately promoted to the Post of Manager and retired from service on 31.10.1992 by attaining superannuation.

Contd.....3.

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Left 20 -
withheld

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4(c) That the Govt. of India brought out a scheme granting certain financial benefit to the Central Govt. Civilian employees serving in the States and Union Territories of North Eastern Region including "Special Duty Allowance " in short - SDA vide Office Memorandum No. 20014/3/83 E.IV dtd. 14.12.83 and also vide OM No.F.No.20014/16/86/E.IV/E.II(B) dt. 1.12.88. Accordingly all the Civilian employees drew the arrears of S.D.A. in the month of November, 1988. The said arrear of S.D.A. was also drawn and disbursed by the Superintendent, Postal, Stores, Guwahati, wherefrom the applicant retired, in respect of the serving employees. But the Superintendent, Postal, Stores, Guwahati with a malafide intention withheld the same and did not draw and disburse the arrear SDA of the retired employees including the applicant who retired on 31.10.1992 and who is also entitled for the SDA.

4(d) That vide Office Memo No.11(3)/95-E-11(B) dtd. 12.1.96 the respondents directed for recovery of S.D.A. amount from 20.9.94 onwards but had waived the amount prior to 20.9.94 and as such the applicant was entitled for the said S.D.A. since he retired on 31.10.92 and the SDA was granted from 1983. Even ~~the~~ O.M. dated 12.1.96 as well as 12.1.99 directing recovery of SDA drawn by the employees were quashed by this Tribunal by the Judgment and order dated 22.12.2000 passed in O.A.No.149 of 1999 and 17 other original applications. That in the said Judgment this Hon'ble Tribunal directed that any amount on account of payment of S.D.A. has been withheld from

Contd.....4.

Wacandra Ch Subbarao

retiral dues shall be released immediately and hence the applicant is also entitled to get these arrear SDA from the date of its effect till his retirement.

(A copy of the said Judgment & Order dt. 22.12.2000 is enclosed herewith as ANNEXURE-A to the petition.).

4(e) That after coming to know about the said Judgment & order of the Tribunal the applicant filed a petition to his Drawing and Disbursing Authority, the respondent No.3 on 25.6.2001 praying for immediate payment of arrear SDA. But when no action was taken by the respondent No.3 he filed application to the Chief Post Master General Assam Circle, Guwahati on 20.8.2001 which was received by the Chief Post Master General, Assam Circle, Guwahati, the respondent No.2 ~~xxx~~ on 21.8.2001.

(Copies of these representations dt. 25.6.01 and 20.8.01 are annexed herewith as ANNEXURES-B & C respectively.

5. GROUNDS :

5.1. For that the action of the respondents are prima-facie illegal, arbitrary and violative of the principles of natural justice.

5.2. That the respondents have acted contrary to the scheme brought ~~and~~ by the Govt. of India vide

Contd.....5.

Warendra Ch Subudhar

Office Memo No.20014/3/83EW dtd. 14.12.83 and also
vide Office Memo No.20014/16/86/EIV/E11(B) dated 1.12.88.

5.3. That the respondents have violating the
prescribed rules of F.H.B. Vol.1(Genl) and such
whimsical action of said Officer caused monetary loss to
a great extent and irreparable hardship to the petitioner.

5.4. For that the respondent acted in a malafide
and in arbitrary way by withholding the arrear of
S.D.A. dues to the petitioner.

5.5. For that the respondents No.4, Superintendent,
Postal Stores, Guwahati ~~withdrew~~ and disbursed the
arrear of SDA to other officials but with the malafide
intention withheld the arrear SDA of the applicant which
is a gross violation of prescribed rules.

5.6. For that the action of respondents are malafide
arbitrary and illegal.

5.7. For that the action of respondents are viola-
tive of Article 14 and 19 of the Constitution of India.

5.8. For that the action of the respondents
withholding the arrear SDA benefit granted by the
Government of India is malafide, arbitrary and illegal.

5.9. For that in any view of the matter the
action/inaction of the respondents are not sustainable

Contd.....6.

Waseem Chaudhary

in the eye of law and hence same are liable to be set aside and quashed.

The applicant crave leave of this Hon'ble Tribunal to advance more grounds at the time of hearing of this application.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has exhausted all the remedies available to him 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 previously filed any application, writ petition or suit regarding this new cause of action in respect of which this application is made before any 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 ~~xxxxxx~~....x be called for and after hearing the parties on the cause or causes that may be shown and on perusal of the records be grant the following reliefs to the applicants :-

Contd.....7.

Wardan Ch. Sudhakar

8.a. To direct the respondent to extend the benefit of the scheme granting Special Duty Allowance to the Central Govt. Civilian employees serving in the States and Union territories of North Eastern Region vide Office Memorandum No.20014/3/83/EIV dated 14.12.83 and also vide OM NO:F.NO/20013/16/86/EIV/E11(B) dated 1.12.88 to the applicant also.

8.b. To direct the respondent to release the withheld amount on account of payment of S.D.A. to the applicant.

SDA

8.c. To direct the respondents to pay the arrear amount of Special Duty Allowance to the applicant from the date of its effect till the date of retirement of the applicant who retired on 31.10.92. ✓

8.d. Cost of application.

8.e. Any other relief/reliefs to which the applicant is entitled to and as deemed fit and proper, by the Hon'ble Tribunal.

9. INTERIM ORDER PRAYED FOR :

The applicant prays for an order directing the respondents to pay the arrear S.D.A. immediately.

10. PARTICULARS OF I.P.O.:

- | | |
|---------------|------------|
| 1. IPO NO. | - 76574575 |
| 2. Date | - 9-5-02 |
| 3. Payable at | - Guwahati |

Contd.....8.

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11. Enclosures :- As stated above.

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

I, Sri Narendra Ch. Sutradhar , S/o Late Bhagawan Ch. Sutradhar, resident of Ananda Nagar Lane-4, P.O. Pandu, Guwahati-12, District-Kamrup, Assam , aged about 68 years, by caste-Hindu, by profession-retired serviceman, do hereby solemnly affirm and verify that the statements made in paragraph No.1,2,3,4(a), 4(b), 4(e), 4(f), 6, 7 of this petition are true to my knowledge and those made in the paragraph Nos.4(c),4(d) of the petition are matter of records which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal, and I have not suppressed any material facts of the case.

And I sign this Verification on this 10th day of May, 2002 at Guwahati.

Narendra Ch. Sutradhar

(9)

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1 CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 149 OF 1999.

(AND 17 OTHER ORIGINAL APPLICATIONS)

(O.As 217, 274, 297, 296, and 187 of 1998; 18, 21, 223, 23, 380 and 81 of 1999 AND 282, 208, 24, 21, 428 and 234 of 2000).

Date of decision - December, 22, 2000.

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

THE HON'BLE MR. M.P. SINGH, ADMINISTRATIVE MEMBER.

1. Ordinance Depot Civil
Workers' Union,
Masimpur, P.O. Arunachal,
Dist Cachar, Assam.
2. Sri Badal Ch. Dey,
President,
Ordinance Depot Civil
Workers' Union,
Masimpur,
P.O. Arunachal,
Dist Cachar, Assam.
3. Sri Badal Chandra Dey,
Son of Late Birendra Chandra Dey,
Vill. Badarpur Part-II,
P.O. Nij Jaynagar,
(via Arunachal),
Cachar, Pin 788025.
4. Sri Salim Uddin Barbhuyan,
Son of Late Abdul Hakim Barbhuyan,
Village-Uzam Gram, P.O. Nij Jaynagar,
(Via Arunachal) Dist Cachar, Assam.

(Applicant Nos. 3 and 4 are effected
members of the aforesaid Association
working under No. 1 Det 57 Mountain
Division, Ordinance Unit as Mazdoor).

- APPLICANTS

By Advocates Mr. J.L. Sarkar, Mr. M. Chanda,
Mrs. S. Deka and Ms U. Dutta.

- Versus -

1. Union of India,
Through the Secretary to the Govt
of India, Ministry of Defence,
New Delhi.

022417

Wardman & Subramaniam

2. Officer Commanding,
57 Mountain Division,
Ordinance Unit,
C/O 99 APO.

3. LAO (A),
Silchar, Masimpur Cantonment,
No. 1 Det 57 Mountain Division,
C/O 99 APO.

RESPONDENTS

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

J U D G M E N T

M. P. SINGH, MEMBER (ADJN.)

By filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicants have challenged the impugned order dated 12th January, 1999 whereby the Special (Duty) Allowance granted in the light of the Office Memorandum No. 20014/3/83.E.IV dated 14th December, 1983 and Office Memorandum No. F.No. 20014/16/86/E.IV/E.II(B) dated 1st December, 1988 is now sought to be recovered by the respondents. The applicants have sought relief by praying that the Office Memorandum dated 12th January, 1996 (Annexure-4) and 12th January, 1999 (Annexure-5) be quashed and set aside and the respondents be directed to continue to pay S.D.A. to the members of the applicant association in terms of O.M. dated 14th December, 1983, 1st December, 1988 and 22nd July, 1988. The applicants have also sought direction to the respondents not to make any recovery of any part of S.D.A. already paid to the members of the applicant association.

Macandra Ch. Subudhar

2. The cause of action, the issues raised and relief sought for in this O.A. are same as raised in O.A. No.217/98 (All India Central Ground Water Board Employees Association, North Eastern Region Central Ground Water Board, Tarun Nagar, Guwahati-5 and others - Vs - Union of India and others), (2) O.A. No.274/98 (Sri Dulal Sarma and others) - Vs - Union of India and others), (3) O.A. No.18/99 (National Federation of Postal Employees Postmen and Gr.D - Vs - Union of India and others), (4) O.A. No.21/99 (Bakhon Ch. Das and others - Vs - Union of India and others), (5) O.A. No.282/2000 (Rabi Shankar Seal and others - Vs - Union of India and others), (6) O.A. No.223/99 (Shri K. Letso and others - Vs - Union of India and others), (7) O.A. No.208/2000 (Krishanlal Saha and others - Vs - Union of India and others), (8) O.A. No.23/99 (Ordinance Mazdoor Union and another - Vs - Union of India and others), (9) O.A. No.24/2000 (Ramani Bhattacharyya - Vs - Union of India and others), (10) O.A. No.21/2000 (Sri Louis Khyriem and others - Vs - Union of India and others), (11) O.A. No.428/2000 (Sri T. Ahmed and others - Vs - Union of India and others), (12) O.A. No.297/98 (Biswajit Choudhury and others - Vs - Union of India and others), (13) O.A. No.380/99 (Smt. Sanghamitra Choudhury and others - Vs - Union of India and others), (14) O.A. No.296/98 (Dwijendra Kumar Debnath and others - Vs - Union of India and others), (15) O.A. No.187/98 (All Assam M.E.S. Employees Union and another - Vs - Union of India and others), (16) O.A. No.234/2000 (Gautam Deb and others - Vs - Union of India and others), (17) O.A. No.81/99 (Sri Nitya Nanda Paul - Vs - Union of India and others) and (18) O.A. No.84/2000 (Subodh Ch Gupta and 56 others - Vs - Union of India and others). We, therefore, proceed to hear all the

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cases together. Among these O.As, O.A. No.149/99 is to be treated as a leading case and the orders passed in this O.A. shall be applicable to all other aforesaid O.As.

3. The brief facts as stated in O.A. No.149/1999 are that the applicant No.1 is an association of Group 'D' employees representing 155 persons working under the Officer Commanding No.1, Det, 57 Mountain Division, C/O 99 APO. The applicant No.2 is the President of the aforesaid association and the applicant No.3 and 4 are the affected members of the said association. They are civilian Government employees working under the Officer Commanding of the aforesaid Mountain Division.

4. The Government of India granted certain facilities to the Central Government civilian employees serving in the States and Union Territories of North Eastern Region vide Office Memorandum dated 14th December, 1983. As per clause II of the said memorandum, Special (Duty) Allowance was granted to the Central Government civilian employees, who have all India transfer liability on posting to any station in the North Eastern Region. The respondents after being satisfied that all the members of the said Association who are civilian Central Government employees are saddled with all India transfer liability and are, therefore, entitled to S.D.A. in terms of the office memorandum dated 14th December, 1983 and office memorandum dated 1st December, 1988. The Special (Duty) Allowance was accordingly granted to the members of the applicant association. ^{But} The Respondent No.3 issued the impugned order dated 12th January, 1990.

wherein ...

Wanda a Substantia

5. On an enquiry made by the applicants, they came to know that the Government of India while issuing the office memorandum dated 12th January, 1996 clarified the position regarding the entitlement of S.D.A. In para 6 of the said office memorandum, it is stated that the Hon'ble Supreme Court in the judgment dated 20th September, 1994 (in Civil Appeal No. 3281 of 1993) upheld the submission of the Government civilian employees, ^{who have} who have all India transfer liability are entitled to the grant of S.D.A., on being posted to any station in the North Eastern Region from outside the region and S.D.A. would not be payable merely because of

the clause ...

Washington ca. September

the clause in the appointment order relating to all India transfer liability. It is also stated that the Apex Court ~~also~~ added that the grant of this allowance only to the officers transferred from outside the 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 Supreme Court further 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. But a contradictory view has been taken in regard to recovery of the Special (Duty) Allowance from the applicants vide para 7 of the office memorandum dated 12th January, 1996. The relevant para 7 of the office memorandum dated 12th January, 1996 is as follows :-

"In view of the above judgment 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.

6. According to the applicants, the Hon'ble Supreme Court keeping in mind the possible hardship to the low paid employees directed not to make recovery of the S.D.A. which is already paid to the employees. After a lapse of

[Signature]

concluded

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considerable period, the respondents have now sought to recover the amount of S.D.A. paid to them after 20.9.1994. Aggrieved by this, they have filed this O.A. seeking relief as mentioned in Para-1 above.

6. The respondents have contested the case and stated in their reply that in order to retain the services of civilian employees from outside the North Eastern Region, who do not like to come to serve in the North Eastern Region being a difficult and inaccessible terrain, the Government of India brought out a scheme under the office memorandum dated 14th December, 1983 thereby extending certain monetary and other benefits including "Special (Duty) Allowance" (in short SDA). While the provisions of the office memorandum dated 14th December, 1983 were wrongly interpreted which raised some confusion relating to payment of S.D.A., the Government of India brought out a clarification to remove the ambiguity of the earlier office memorandum dated 14th December, 1983 by the office memorandum dated 20th April, 1987 and also extended the benefit to Andaman, Nicobar and Lakshdweep Islands. According to this clarification for the sanctioning of S.D.A., the all India transfer liability of the members of any service/cadre or incumbents of any posts/Group of posts has to be determined by applying the test of recruitment zone, promotion zone etc. i.e. whether recruitment to the service/cadre/posts has been made on all India basis and whether promotion is also done on the basis of all India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order that the person concerned is liable to be transferred anywhere in India does not make him eligible for grant of S.D.A.

Harindran C. Subramaniam

7. Thereafter, a number of litigations came up challenging the non-payment/stoppage of payment of S.D.A. to certain classes of employees who were not coming within the zone of consideration as stated in the office memorandum dated 14th December, 1983 and 20th April, 1987. The Hon'ble Supreme Court in Civil Appeal No. 3251/93 vide judgment dated 20th September, 1994 held that the benefit under the office memorandum dated 14.12.1983 read with office memorandum dated 20.4.1987 are available to the non-residents of North Eastern Region and such discrimination denying the benefit to the residents civilian employees of the region is not violative of Article 14 and 16 of the Constitution of India. It has also been held that as per the office memorandum dated 20th April, 1987 the S.D.A. would not be payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India. According to another decision dated 7th September, 1995, the Hon'ble Supreme Court in Civil Appeal No. 8208-8213 held as follows :-

"It appears to us that although the employees of the Geological Survey of India were initially appointed with an All India Transfer Liability, subsequently, Government of India framed a policy that Class C and D employees should not be transferred outside the Region in which they are employed. Hence All India Transfer Liability no longer continues in respect of Group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having All India Transfer Liability is not to be paid to such group C and D employees of Geological Survey of India who are residents of the Region in which they are

posted 0 0 0

Wenden an Substrat



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10. The question for consideration before us is as to whether the applicants are entitled for the payment of S.D.A. and if not, whether the recovery of the amount of S.D.A. already paid to them beyond 20.9.1994 is to be effected. The issue relating to the grant of S.D.A. has been considered and decided by the Hon'ble Supreme Court in Union of India and others - Vs - S.Vijayakumar and others, reported in 1994 Supp (3) SCC 649. The Hon'ble Supreme Court in that case has held as under :

"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 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 Transferability would be granted the allowance "on posting to any station to the North Eastern Region". This

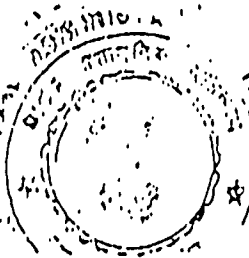
aspect ...

Varadachari Anandaram

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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 Memorandum of 1983 the subject was mentioned as quoted above is not enough to concede to the submission of Dr. Ghosh."

The position has been further clarified by the Supreme Court vide their judgment in Union of India and others - Vs - Geological Survey of India Employees Association and others passed in Civil Appeal No. 8208-8213 (arising out of S.L.P. Nos. 12450-55/92) as stated in para 7 above.



11. In view of the criteria laid down by the Hon'ble Supreme Court in the aforesaid judgments, the applicants are not entitled to the payment of S.D.A. as they are resident of North Eastern Region and they have been locally recruited and they do not have all India Transfer Liability. As regards the recovery of the amount already paid to them by way of S.D.A., the Hon'ble Supreme Court in the aforesaid judgments has specifically directed that whatever amount has been paid to the employees, would not be recovered from them. The judgment of the Supreme Court was passed on 20.9.1994 but the respondents on their own had continued to make the payment of S.D.A. to the applicants till 31.1.1999. The orders have been passed by the respondents to stop to payment of S.D.A. only on 12.1.1999. The order passed on 12.1.1999 can have only prospective effect and, therefore, the recovery of the SDA already paid to the applicants would have to be waived.

[Signature]

Warden as Submitter

No order as to costs.

Wander au Sankhu

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ANNEXURE-B

To

The Superintendent of Postal Stores,
Guwahati.

Subj :- A prayer for immediate payment of arrear S.D.A.
Sir,

I have the honour to state that I was appointed in the Department of Posts and Telegraph as a Postal Clerk on 15.7.1953 and I retired from the Post of the Manager Postal Stores, Guwahati after attaining superannuation on 31.10.1992.

I have come to know that the arrear of S.D.A. from its date of effect has since been drawn and disbursed to all categories of postal employees but I being the pensioner have been deprived for the reason not known to me.

May I therefore request you to be kind enough to immediate payment of the said arrears of S.D.A. as was entitled for the period while I was on service to me so that I do not require to process the matter for necessary action from the authority/authorities legally concerned and thus oblige.

Yours faithfully,

Sd/-Narendra Ch. Sutradhar,
(Ex-Manager P.S.D., Guwahati)
Anandanagar Lane-4,
P.O. Pandu, Pin-781012,
Dist-Kamrup, Assam.

Dated, the 25th
June, 2001.

Narendra Ch. Sutradhar

To SRI R. S. N. R. MUATI
The Chief Postmaster General Assam Circle,
Guwahati.

Sub : Prayer for the payment of the arrear of S.D.A

Respected Sir,

With due honour to your goodself I beg to state that all the ineligible postal employees of the both Assam and N.E. Circles have already received the payment of S.D.A. with the arrears from the date of its effect but I have been deprived from such payment. I have come to know that ~~there~~ recovery against such payment has been waived under the decision of the C.A.T. Guwahati upto 31.1.1999. So my claim for payment of the arrears of S.D.A. is genuine and quite justified but the payment was not made by the office of the Superintendent of Postal stores Guwahati during drawal and payment of arrears perhaps for lack of applying prescribed procedure. The Superintendent postal stores and his office was fully aware that I was in service from 15-7-1953 to 31-10-1992 (till the date of retirement) from his office.

I preferred my claim for the arrears on 25.6.2001 when I gathered information about the aforesaid decision of the C.A.T. Guwahati dated 22.12.2000.

The Superintendent Postal stores Guwahati has been maintaining his stillness on the matter for about two months and ^{thus} not only hurt me severely and ever pushed me to arrive at my firm decision for sitting on hunger-strike till the payment made or till death without looking after my ill health of various kinds of diseases of this old age and time.

contd...

Handwritten signature

*Received
21/8/01
Sr. P.A. to
CPMG*

(23)

- 2 -

I would therefore pray before your goodself most submissibly to be kind enough to consider suitable and your kind judicious order into the matter before my proceeding on hunger - strike for which act of your kindness I shall remain grateful to your reverentself. I am enclosing both the photostat copies of my application dated 25.6.01 and 20.8.01 for favour of your kind perusal.

Your's faithfully,

Dated, Guwahati the 20th day
of August, 2001.

Narendra Ch. Sutradhar

(Narendra Ch. Sutradhar)
Ex. Manager, Postal St. res
Guwahati.

Pensioner (P.P.O No. CA. 42204)
Ananda Nagar, Lane-4
P.O. Pandu, 781012
Dist-Kamrup, Assam.

Narendra Ch. Sutradhar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH ::: GUWAHATI.

Filed by

19/8/02

(A. DEB ROY)

ST. C. C. S. C.

C. A. T. Guwahati Bench

O.A. NO. 150 of 2002

Shri Narendra Chandra Sutradhar

- Vs- Applicant

Union of India & Ors.

..... Respondents.

(Written Statements on behalf of the respondents

No. 1, 2, and 3)

The Written Statements of the abovenoted respondents
are as follows :

1. That the copy of the O.A. No. 150/2002 (referred to as the "application") has been served on the respondents. The respondents have gone through the same and understood the contents thereof. The interest of all the respondents being similar the respondents have filed their common written statements.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.
3. That before traversing the various paragraphs of the application, the respondents give a brief history of the case as under :-

Shri Narendra Chandra Sutradhar, the applicant entered in the Department of Posts on 15.7.1953 as Postal Clerk (Group 'C') . After serving in different stations in various capacities, the applicant was last posted as Manager, Postal Store Depot, Guwahati. He retired on 31.10.1992 on superannuation.

The Govt. of India, Ministry of Finance granted Special Duty Allowance (SDA) as one of the incentives to the Central Govt. employees having "All India Transfer Liability" and posted in North Eastern Region vide OM No. 20014/3/83-E.IV dated 14.12.83 (copy enclosed). The scheme was extended by further orders dated 20.4.87 and 1.12.88 (copies enclosed). As per the above orders only those Central Govt. employees who are recruited on All India basis, promoted on the basis of an all India common seniority list and who have "All India Transfer Liability" will be entitled to SDA.

The Hon'ble Supreme Court in its judgement delivered on 20.9.94 in Civil Appeal No. 3251 of 1993 in the case of Union of India and others - Vs- S. Vijoy Kumar and others (reported as 1994 (Supp. 3) Scc, 649) upheld the position of the Govt. of India laying down the criteria that the Central Govt. employees who have "All India Transfer Liability" are only entitled to the grant of SDA on being posted to any station in the North Eastern Region from outside the region and the same would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability. It was ruled by the Hon'ble Supreme Court that

any payment of SDA to ineligible employees after 20.9.94 would be recoverable. The Govt. of India issued further clarificatory order dated 12.1.96 (copy enclosed) in the light of the above judgement of the Appex Court.

In the present application, the applicant has claimed payment of SDA in arrear from 1.11.83 to 31.10.92 and sought direction from the Hon'ble Tribunal for entertaining the claim on the strength of the judgement dated 22.12.2000 passed by the Hon'ble Tribunal in O.A. No.149 of 1999 and 17 other OAs. The Hon'ble Tribunal in its order/judgement dated 22.12.2000 (copy enclosed) has inter-alia held that in view of the criteria laid down by the Hon'ble Supreme Court in the judgement dated 20.9.94 the applicant are not entitled to the payment of SDA as they are residents of NE Region and they have been locally recruited and they do not have "All India Transfer Liability". It was however ordered that no recovery would be made by respondents of the amount of SDA already paid to the applicants upto 31.1.1999 and in case any amount on account of SDA has paid upto 31.1.99 has been recovered/withheld from applicants retiral dues, the same shall be refunded/released to the applicants immediately.

In the context of the above judgement/order of the Hon'ble Tribunal and criteria laid down in Supreme Court judgement dated 20.9.94, the applicants claim for payment of SDA is not at all justified for the fact that the applicant was a locally recruited employee and did not have "All India Transfer Liability".

The applicant has misread the judgement/order dated 22.12.2000 passed by the Hon'ble Tribunal in OA No. 149/99. He was never paid of any amount on account of SDA during his entire service period till the date of retirement on 31.10.92. Since he was not entitled to SDA as per Govt. orders. Moreover, the applicant was not paid of any arrear of SDA even after his retirement on 31.10.92 till 31.1.99 nor any amount of SDA was withhold/recovered from his retiral dues. As such, the judgement/order dated 22.12.2000 of the Hon'ble Tribunal has no bearing on the claim of the applicant. The order of the Hon'ble Tribunal regarding refund/release of the amount of SDA withheld/recovered from retiral dues relate to the employees who have drawn SDA irregularly since November, 1998 in whose case, equivalent amount was withheld/recovered from retirement gratuity as Govt. dues pending decision of the Tribunal. This does not entail the applicant who retired on 31.10.92 to draw SDA in arrear since he was never entitled to SDA nor was paid of any amount on this account before his retirement. Therefore the question of release/~~draw~~ refund of the withheld/recovered amount of SDA from the retiral dues of the applicant does not at all arise. Moreover, the Hon'ble Supreme Court in its judgement dated 20.9.94 made it categorically clear that no payment of SDA shall be made after 20.9.94 even for the period prior to 20.9.94 to the ineligible employees. This judgement itself bars the admissibility of SDA by the applicant who retired on 31.10.92 long before the date of judgement by the Hon'ble Supreme Court. Further, the Govt. of India, Min. of Finance vide their OM No.11(5)/97-E.II(B) dated 29.5.02

(copy enclosed) has issued clarification on the eligibility conditions in the matter of SDA keeping in view the various judgement/orders of the Hon'ble Supreme Court/Tribunal.

PARAWISE COMMENTS :

4. That with regard to the statements made in para 1 of the application the respondents beg to state that the representation of the applicant regarding his request for release of Special Duty Allowance (SDA) withheld from his retiral dues (DRG) was not entertainable for the fact that the applicant was never paid of SDA during service period or after retirement on 31.10.92 as he was not entitled to SDA as per Govt. orders and the judgement of the Hon'ble Supreme Court passed on 20.9.94 in Civil Appeal No. 3251 of 1993. The judgement/order dated 22.12.2000 passed by the Hon'ble Tribunal, Guwahati Bench in O.A. No. 149/99 and 17 other OAs relates to the case of the employees who have drawn SDA irregularly since November, 1998 in whose case equivalent amount was withheld from retiral dues (service gratuity) as Govt. dues pending decision of the Hon'ble Tribunal. The said judgement/order does not entail the applicant who retired on 31.10.92 to draw SDA since he was never entitled to grant of SDA. As no any amount of SDA was ever paid to the applicant, withholding of any part of SDA paid to him from his retiral dues and release of the same in the light of the judgement/order dated 22.12.2000 has not arisen. The applicant's case has no bearing on the said judgement. Hence liable to be dismissed.

5. That with regard to para 2 and 3 of the application the respondents beg to offer no comment as the statements in these paras relate to matter of law point .

6. That with regard to para 4(a), of the application the respondent beg to offer no comment as the statement is a matter of law point.

7. That with regard to para 4(b) of the application the respondents beg to state that the statement is admitted to the extent of materials on record and the rest ~~xxx~~ are denied.

8. That with regard to the statement made in para 4(c) of the application the respondents beg to state that the contention of the applicant to the fact that all the civilian employees draw the arrears of SDA in the month of November, 1998 on the strength of the Govt. of India O.M. No. 20014/3/83 E. IV dated 14.12.83 and OM No. F.20014/16/86/E.II(B) dated 1.12.88 is not correct. The actual fact is that the employees of Assam Postal Circle drew the SDA irregularly from the month of November, 1998 though they were not entitled to SDA as per Govt. orders quoted above. The authority issued order for recovery and stoppage of monthly payment. Against this order, the employees filed the OA No. 296/98 in the Tribunal, Guwahati and obtained stay order. The employees also drew arrears of SDA for the period from 1.11.83 to 31.10.98 in the month of July 1999 irregularly. The said case was tagged with OA No.149/99 and disposed of by the Hon'ble Tribunal vide its order/judgement dated

dated 22-12-2000 upholding the stand of the respondents (departments) and reiterating the criteria laid down by the Hon'ble Supreme Court in its judgement dated 20.9.94 in Civil Appeal No. 3251 of 1993 to the fact that SDA is admissible to the employees only who have All India Transfer Liability and posted to N.E. Region from outside. That the applicant who had retired on 31.10.92 was a group 'C' cadre employee who was recruited locally and who did never have All India Transfer Liability for which he was not entitled to payment of SDA. Therefore payment of SDA to the applicant after his retirement and other retired employees who were not entitled to SDA ~~in~~ in or after November, 1998 did not arise.

9. That with regard to the statements made in para 4(d) of the application the respondents beg to state that the Govt. of India, Min of Fin vide its OM No. 11(3)/95-E.II(B) dated 12.1.96 issued clarificatory order in the light of the judgement dated 20.9.94 of the Hon'ble Supreme Court with regard to criteria laid down in the judgement and waiver of the recovery of the amount already paid upto 20.9.94. It was ordered by the Govt. of India in pursuance of that judgement that the payment of SDA already made to ineligible employees on or before 20.9.94 will be waived. But the payment on account of SDA made after 20.9.94 will be recovered from the employees concerned. This order for recovery also applicable to those payments to ineligible employees on account of SDA relating to the period prior to 20.9.94 but paid after 20.9.94. The contention of the applicant to the fact that the said Govt.

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order dated 12.1.96 was quashed by the Hon'ble Tribunal in its judgement/order dated 22.12.2000 in OA No. 149 of 1999 and 17 other OAs is totally ~~in~~ ill conceived. The said OAs relate to recovery orders issued by the respondents (Department) against the frawal of SDA irregularly by the ineligible employees in November, 1998. In the said judgement of the Hon'ble Tribunal the criteria laid down by the Hon'ble Supreme Court in the judgement dated 20.9.94 were upheld. However, recovery of SDA already paid to ineligible applicants upto 31.1.99 was ordered to be waived. This does not in no way supercede the judgement dated 20.9.94 of the Hon'ble Supreme Court. Since the applicant who is not entitled to SDA was ^{never} ~~now~~ paid of any amount on this account during service period, recovery or release of the same in pursuance of the order dated 22.12.2000 of the Hon'ble Tribunal does not arise. Since the applicant is not entitled to SDA, his claim for arrear of SDA from 1.11.83 to 31.10.92 is barred by the judgement dated 20.9.94 of the Apex Court.

10. That with regard to the statements made in para 4(e), of the application the respondents beg to state that the claim of the applicant for payment of arrear of SDA is not entertainable on the grounds stated in the foregoing paras. Hence his request was not entertained.

11. That with regard to the statements made in para 5.1 to 5.9 of the application the respondents beg to state that for the reasons stated in pre-paras, the claim of the applicant for arrear of SDA after a lapse of 9 years after his retirement is

not maintainable. The applicant is not entitled to SDA as per Govt orders upheld by the Supreme Court and the Hon'ble Tribunal. No any arrear is due to the applicant nor any amount of SDA was paid to him at any time and later on withheld from his retiral dues. The claim being unjustified and barred by the Ruling of the Hon'ble Supreme Court, the application has no merit and liable to be dismissed.

12. That with regard to para 6 and 7 of the application the respondents beg to offer no comments.

13. That with regard to the statements made in para 8(a) to 8(c) of the application the respondents beg to state that for the grounds stated in the aforesaid paras the claim of the applicant for payment of arrear SDA is not maintainable. Hence reliefs sought for by the applicant are liable to be rejected and the application dismissed.

14. That with regard to the statements made in para 9 the respondents beg to state that the matter of admissibility of SDA and waiver of recovery of the amount thereof paid to ineligible employees has already been settled by the Hon'ble Supreme Court and Tribunal. The applicant who retired in 1992 is barred to payment of SDA as per criteria laid down in the aforesaid judgement dated 20.9.94 of the Hon'ble Supreme Court. Hence his application is liable to be dismissed.

15. That with regard to para 10 and 11 of the application the respondents beg to offer no comments.

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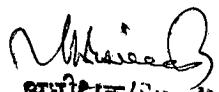
V E R I F I C A T I O N

I,

being authorised do hereby solemnly affirm
and declare that the statements made in this written statement
are true to my knowledge and information and I have not
suppressed any material fact.

And I sign this verification on this 9th day of
~~July~~^{August}, 2002 at Guwahati.

Deponent.


अधीक्षक/Supdt.
डाक व त. भंडार
POSTAL STORES DEPOT,
गुवाहाटी/Guwahati-781 21