

50/100

3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 177/02

R.A/C.P No.

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 177/2002
Misc Petition No. _____
Contempt Petition No. _____
Review Application No. _____

5.10
23/6/97
5 am
2002

Applicants. Joanab Benangee

-Vs-

Respondant(s) H.O.P. Gonna

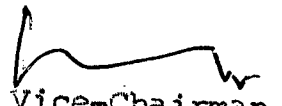
Advocate for the Applicant(s) K.K. Phukan, S. Chakraborty

Advocate for the Respondant(s) Adv. C.A.R. A.K. Chaudhary

Notes of the Registry	Date	Order of the Tribunal
176577085 30.5.2002 11c W.S. 30/5/02 Copy not yet Served to the Respondents. 30/5/02 Steps taken, Notice prepared and sent to DLS for filing the Respondent No. 1 by by Regd. A.D. 12/6	31.5.02	Heard Mr. K.K. Phukan, learned counsel for the applicant. Issue notice to show cause as to why the application shall not be admitted. Also, issue notice to show cause as to why interim order as prayed for suspending the order No. BA/E-8/SDA/2001-02 dated 15.2.2002 shall not be granted. Returnable by four weeks. In the meantime, respondents are directed not to make any recovery of SDA paid for the applicant. List on 28.6.2002 for admission.
DINo 17476/1750 Dtd 13/6/02	mb	Vice-Chairman

28.6.02

On the prayer of Mr.A.K.Choudhury learned Addl.C.G.S.C. the respondents are allowed to file written statement. List on 9.8.02 for orders. The interim order dated 31.5.02 shall continue.


Vice-Chairman

9.8.02

Written statement has been filed. The case is ready for hearing. List on 23.8.2002 for hearing.

5.8.2002

W/S on behalf of Respondent has been filed.

mb

23.8.2002

Mr.K.K.Phukan, learned counsel for the applicant wants adjournment on personal ground. Mr.A.K.Chaudhuri, Addl.C.G.S.C. has no objection.

Prayer accepted. List the case again for hearing on 20.9.2002.


Member

bb

20.9.2002

Heard the counsel for the parties. Judgment delivered in open Court, kept in separate sheets.

The application is allowed in terms of the order. No order as to costs.


Vice-Chairman

bb

30.10.2002

Copy of the Judgment has been sent to the office for filing. The same to the applicant as well as to Addl.C.G.S.C.

W/S

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~2002~~ No. 177 of 2002 ~~82x~~

DATE OF DECISION. 20.9.2002.....

Sri Pranab Banerjee

APPLICANT(S)

Mr. K.K. Phukan & S. Chakraborty

ADVOCATE FOR THE APPLICANT

VERSUS

Union of India & Others.

RESPONDENT(S)

Mr. A.K. Chaudhuri, Addl. C.G.S.C.

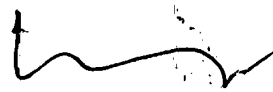
ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

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

Judgment delivered by Hon'ble Vice-Chairman.



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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.177/2002.

Date of Order : This the 20th Day of September, 2002.

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

Sri Pranab Banerjee
S/o Late Nripendra Nath Banerjee
Senior Field Assistant (Veterinary)
S.S.B., D.O.A.P. Division
Dist:-Itanagar
Arunachal Pradesh. . . . Applicant.

By Advocates Mr.K.K.Phukan & Mr.S.Chakraborty.

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Home Affairs
New Delhi - 110 001.
2. Director General
Special Services Bureau
Block - V (East), R.P.Puram
New Delhi- 110066.
3. The Senior Assistant Director of Accounts
GED-II Section (SSB)
O/o the Director of Accounts
East Block - IX, Level - IV
R.K.Puram, New Delhi - 110066.
4. The Divisional Organiser
Special Services Bureau
Arunachal Pradesh Division
Itanagar. . . . Respondents.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C.) :

This application involves the issue of Special Duty Allowance (SDA in short). The applicant is serving as Senior Field Assistant (Veterinary) in the office of the Divisional Organiser, A.P.Division, Special Services Bureau, Itanagar.

I have heard Mr.K.K.Phukan, learned counsel for the applicant and also Mr.A.K.Chaudhuri, learned Addl. C.G.S.C. for the respondents. In the light of the order passed in O.A. 162 of 2002 I do not find any infirmity

Contd./2

in the action of the respondents in stopping the SDA those were paid earlier to the applicant. The only question here relates to recovery of the SDA, which was already paid to the applicant from June, 1997 to January, 2002. After rendering of the decision of the Hon'ble Supreme Court, the Government of India issued Office Memorandum No.11(3)/95-E.II(B) dated 12.01.1996 regarding payment of SDA. When the matter was clarified it was for the authority to stop paying the SDA. But then, these applicants cannot be blamed for paying the SDA from June, 1997 to January, 2002. Therefore, the question of recovery from retrospective effect does not arise. Whatever amount already recovered is to be refunded to the applicant within a period of two months from the receipt of the order.

The application is allowed to the extent indicated above. There shall, however, be no order as to costs.



(D.N.CHOWDHURY)
VICE CHAIRMAN

Filed by
Sri Pranab
Banerjee
- Appellant
Through
S. Chakravarty
Advocate. X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BRANCH
GUWAHATI.

(An application under Section 19 of the
Administrative Tribunal Act' 1981)

O.A. No. 177 Of 2002.

Sri Pranab Banerjee

Son of Late Nripendra Nath Banerjee,
Senior Field Assistant (Veterinary),
S.S.B., D.O.A.P. Division,
Dist. Itanagar, Arunachal Pradesh.

..... Appellant.

- Versus -

1. Union of India, represented by the
Secretary, to the Govt. of India,
Ministry of Home Affairs,
New Delhi - 110001.
2. Director General
Special Services Bureau,
Block - V (East), R.P. Puram,
New Delhi-110066.
3. The Senior Assistant Director of
Accounts, GED - II Section (SSB),
O/o The Director of Accounts,
East Block - IX, Level - IV,
R.K. Puram, New Delhi - 110066.

Contd...p/

4. The Divisional Organiser
Special Services Bureau,
Arunachal Pradesh Division, Itanagar.
..... Respondents.

1. PARTICULARS OF THE CASE AGAINST WHICH THE APPLICATION IS MADE :-

i) After voluntarily paying Special Duty Allowance (SDA) since the date of commencement of payment of SDA, sudden, impugned, arbitrary and unfair actions on the part of the respondent for stoppage of payment of SDA without giving any prior notice or intimation.

ii) Sudden, impugned, arbitrary and unfair action of effecting recovery of SDA already paid to the applicants and that, too, in large installments which caused injury to the applicants and their dependents.

iii) Impugned, arbitrary and unfair actions of not responding to the prayers and petitions submitted by the applicants for redressal of their grievances.

2. JURISDICTION OF THE HON'BLE TRIBUNAL :-

The applicant declare that the subject matter of the orders are within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION :-

The applicant further declare that the application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

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4. FACTS OF THE CASE :-

i) The applicant is serving as Senior Field Assistant (Veterinary) in the Office of the Divisional Organiser, Arunachal Pradesh Division, Special Services Bureau, Itanagar which is a department under Ministry of Home Affairs, Govt. of India, which was recently transferred from Cabinet Secretariat.

ii) That the applicant was 1st appointed as constable vide Memorandum dated 17.08.1990 in the Office of the Commandant Group Centre, Special Services Bureau, Ranidanga. Accordingly he joined in the aforesaid post on 05.09.1990 and have been working in the said post continuously and regularly till he joined as Senior Field Assistant (Veterinary) on 23.06.1997 Itanagar. It is to be stated here that while working as constable at Ranidanga he got a chance of appear one departmental examination to be appointed as Senior Field Assistant (Veterinary). The applicant appeared and qualified in the said exam and vide Office Memorandum dated 13.05.1997 the applicant was appointed as Senior Field Assistant (Veterinary) in the Office of the D.O.A.P Division, Special Service Bureau, Itanagar and the applicant joined in the aforesaid post on 23.06.1997 with All India Transfer Liability.

Photocopies of the aforesaid Office Memorandum dated 17.08.1990 & 13.05.1997 are annexed herewith and marked as Annexure- I & II respectively.

Contd...p/

iii) That the applicant respectfully states that he is a Group-C employee recruited in the North Eastern Regional but liable to serve anywhere. As such he is eligible for special duty allowance although he has not been transferred outside that region since his joining the service due to administrative reasons.

iv) That the Govt. of India, with a view to attracting and retaining the services of competent officers for service in the North Eastern Region, had decided to grant certain additional allowances to the civilian employees of the Central Govt. serving in the North Eastern Region. Among the various allowances, the one was the payment of SDA to those who have All India Transfer Liabilities conveyed by the Govt. of India, Ministry of Finance, Department of Expenditure, vide Memorandum No. 20014/2/83/E.IV dated 14.12.1983. In terms of the memorandum the SDA was granted to the civilian employees of the Central Govt. in North Eastern Region who have all India Transfer Liability at the rate of 25% of basic pay.

An extract of the said memorandum dated 14.12.1983 relating to the grant of SDA is annexed herewith and marked Annexure-III.

v) That the applicant begs to state that he was selected through direct recruitment test held at various Zonal Selection Centres based on All India Level having All India Transfer Liability.

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vi) That the applicant begs to state that Cabinet Secretariat, Govt. of India, New Delhi vide their U.O. No.7/47/84-EA-1 dated 23.04.1984 give clarifications that employees recruited locally serving in North Eastern Region, SDA will be admissible if there is a specific provision in the service Rules or Recruitment Rules pertaining to them that they shall be required to work in any establishment of the Special Service Bureau or other organisations under DG (S).

An extract of the said U.O. dated 23.04.1984 is annexed herewith and marked Annexure-IV.

vii) That the applicant begs to state and submit that the SDA was granted to the applicant by the Respondent authorities after being satisfied that the applicant is legally to get SDA which he was getting regularly with effect from the date of appointment.

viii) That, thereafter the Govt. of India, Ministry of Finance, Department of Expenditure, circulates their letter No.11 (3)/95-B.11 (B) dated 12.01.1996 regarding payment of SDA for civilian employees of the Central Govt. serving in the North Eastern Region for strict compliance of the clarifications contained therein. In the said memorandum dated 12.01.1996, it was stated in paragraph 3 that it was clarified via O.M. dated 20.04.1987 that for the purpose of sanctioning of the SDA, the All India Transfer Liability of

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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 the service/cadre/post has been made on All India basis and whether promotion is also made on the basis of 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.

It was further stated, in paragraph 6 of the said memorandum dated 12.01.1996 that the Hon'ble Supreme Court in their Judgment delivered on 20.09.1994 (in Civil Appeal No.3251/1993) up held the submissions of the Govt. of India that the Civilian employees of the Central Govt. who have All India Transfer Liabilities are entitled to the grant of the SDA on being posted to any station in the North Eastern Region from outside the region and the SDA would not be payable merely because of the clause in the appointment letter relating to All India Transfer Liability. It is also stated that the Apex Court further added that the grant of this allowance only to the officials transferred from outside the region to the North Eastern Region would not be violative of the provisions contained in the Article 14 of the Constitution of India as well as the equal pay doctrine.

Runjeel

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The Hon'ble Apex Court also directed that whatever amount has already been paid to Govt. Servants or for that matter to other similarly situated employees would not be recovered from them in so far as this would not be recovered from them in so far as this allowance (SDA) is concerned. In paragraph 7 of the said memorandum it is further stated that in view of the judgment of the Hon'ble Supreme Court, as stated above, the matter has been examined in consultation with the Ministry of Law and it is, accordingly, decided the amount already paid by way of SDA to the ineligible persons on or before 20.09.1994 will be waived and the amount paid to ineligible persons after 20.09.1994 but payment were made after 20.09.1994 would be recovered.

It would be pertinent to mention here that the SDA was initially paid, as stated above, by the respondent authorities of their own when it was found that they were eligible for grant of the SDA. The respondents are, therefore, not justified at this stage for stopping payment of the SDA to the present applicants by enforcing the said memorandum dated 12.01.1996 issued by the Ministry of Finance, Govt. of India in as much as the applicants are liable to be transferred from North Eastern Region to the other states of the country and as such the applicants are saddled with All India Transfer Liability and they are also recruited on All India Transfer Liability and they are also recruited on All India basis in various zones and posted to North Eastern Region. The present applicants are eligible for

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grant of and continuance of SDA in the context of memorandum dated 14.12.1983 (Annexure-III).

A copy of the said memorandum dated 12.01.1996 is annexed herewith and marked as Annexure - V.

ix) That the applicant begs to state that even after receipt of the Govt. of India, Ministry of Finance, Department of Expenditure D.M. No. 11 (3)/95-E. II(B) dated 12.01.1996 (mentioned in paragraph vii). Payment of SDA was not stopped by the respondent being the applicant eligible to get SDA in terms and conditions of his service, having All India Transfer Liabilities and allowed to draw the SDA in the context of Memorandum dated 14.12.1983 (Annexure-III).

x) That although the applicant was regularly getting SDA with effect from the date of joining, the respondent authorities vide office memorandum dated 15.02.2002 stopped payment of SDA since February, 2002 to the applicant illegally and arbitrarily without allowing any opportunity of being heard and directed recovery of the amount paid to the applicant by way of SDA from his joining to the post of Senior Field Assistant (Veterinary) i.e. June, 1997 to January, 2002. The applicant became shocked and surprised when he find that recovery of SDA at high rate from his monthly salary which was effected without any prior intimation or notice. The applicant further state that recovery of SDA from his salary already started from the month of March, 2002.

Original

Mar 2002

NO

Contd...p/

Photocopy of the aforesaid office memorandum dated 15.02.2002 is annexed herewith and marked as Annexure - VI.

xi) That the applicant begs to state and submit that he requested the respondent authorities to recover SDA in such high rate from his salary as he faced financial hardship due to high rate of recovery which was not considered by the respondents.

Photocopy of the aforesaid representation dated 20/3/02 is annexed herewith and marked as Annexure - VII.

xii) That the applicant begs to state and submit that instead of considering the request of the applicant respondent authorities intimated the applicant that the entire amount is being recovered in 36 installments.

xiii) That the applicant begs to state and submit that the respondent authorities have not responded to the requests of the applicant and continued to recover at high rate per month respectively forcing the applicant into acute hardship.

xiv) That the applicant begs to state and submit that the applicant was not fault in any way to receive the SDA inasmuch as it was paid to him voluntarily by the respondent authorities and the applicant has reason to believe that he was entitled to receive the SDA. The amount already paid to the applicant should not have been recovered as no notice was

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given to the applicant as to the action proposed to be taken against the applicant. The recovery of SDA is, therefore, amounts to flagrant violation of the principle of natural justice and as such this is a fit case where the Hon'ble Tribunal would exercise jurisdiction and grant relief.

xv) That the applicant begs to state and submit that the respondent authorities have discontinued payment of SDA to the applicant and at the same time recoveries are being made from the pay without any notice and prior intimation by the Respondent Authorities and in the present circumstances finding no other remedy, the applicant has now approached this Hon'ble Tribunal praying for protection of the rights and interests of the applicant and for grant of proper relief.

xvi) That the applicant begs to state and submit that some employees of the Base Hospital No.151, Basistha, Guwahai who were similarly situated like the present applicant filed two cases before the Hon'ble Tribunal which were numbered as O.A. No. 45/1998 and O.A. No. 90/1998. As both the applicants involved similar facts and law, this Hon'ble Tribunal, by common order dated 28.07.1999 disposed of both the applications and relying on several cases decide by the Hon'ble Apex Court, as referred to in the order, the action of the Respondent Authorities to recover the amount of SDA was quashed and set aside. The respondents were further directed to refund the amount of SDA, if any recovered from

Contd...p/

the applicant within a period of two months from the date of receipt of the order.

Copy of the said common order dated 28.07.1999 passed by the Hon'ble Tribunal while disposing of O.A. No.45/1998 and O.A. No.90/1998 are annexed herewith and marked as Annexure - VIII.

xvii) That the applicant begs to state that some employees of the CPWD, Guwahati, who are also similarly situated like the present applicant filed applications before this Hon'ble Tribunal which were numbered as O.A. No.97/1997, O.A. No.104/1997, O.A. No.106/1997, O.A. No.110/1997, O.A. No.244/1997, O.A. No.24/1998 O.A. No.35/1998 and O.A. No.75/1998. All these original applications relate to SDA involving common questions of law and similar facts and as such this Hon'ble Tribunal, by a common order dated 26.06.1998 disposed of all the original applications. This Hon'ble Tribunal directed the respondent authorities to first determine whether the applicants are entitled to SDA or not as per the decision of the Apex Court in Civil appeal No.1572/1997 holding inter alia, that persons who belong to the North Eastern Region were not entitled to SDA. If it is found after examination, that the applicant or some of them are not entitled to SDA, he shall not be paid SDA. However, the amount already paid to them shall not be recovered.

Contd...p/

Copy of the said order dated 26.06.1998
is annexed herewith and marked as
Annexure - IX.

xviii) That the applicant begs to state and submit that he having All India Transfer Liability, Selection/Recruitment on All India Basis having common seniority list on All India basis are similarly situated like those who were applicants in the above noted original applicants and as such the case of the present applicant is squarely covered by the orders passed by this Hon'ble Tribunal in the above noted original applications.

xix) The applicant begs to state and submit that this Hon'ble Tribunal be pleased to stay the operation of recovery of SDA by the respondent No.3 as an interim measure in as much as the applicant will suffer irreparable loss and injury if the operation of the said recovery of SDA is not stayed and recovered SDA is not repaid to the applicant. This Hon'ble Tribunal would also be pleased to further set aside the act of recovery of SDA by the respondent No.3 as not sustainable in law.

xx) That this application is made bonafide and for the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

- I. For that the applicant has the eligible criteria for grant of SDA in terms of O.M. dated 14.12.1983 (Annexure-III) and UO dated 23.04.1984.

Contd...p/

(Annexure-IV) issued by the Govt. of India, Ministry of Finance, Department of Expenditure and as such unilateral discontinuation of the payment of SDA and effected recovery without notice and intimation by the respondent No.3 is extremely arbitrary, illegal and unfair and as such the action of the respondent authorities is bad in law and liable to be set aside and quashed.

II.

For that the respondent authorities have paid SDA to the applicant after being fully satisfied of their own that the applicant is eligible for payment of SDA in terms of the O.M. dated 14.12.1983 (Annexure-III) issued by the Ministry of Finance, Govt. of India, Department of Expenditure, New Delhi and it is now not open to the respondent authorities to hold that the applicant is not eligible for grant of SDA and as such the action of the authorities regarding stopping and recovery of the amount already paid to him is bad in law and liable to be set aside.

III.

For that the case of the applicant is squarely covered by the orders passed by this Hon'ble Tribunal in the matter of stopping payment of SDA to the employees who are similarly situated like the applicant in those original applications and recoveries of payment already made and as such the

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[14]

applicant is legitimately expecting that his interest will be similarly protected as has been done in those original applications. The orders passed in this regard are placed at Annexure - VIII & ~~VII~~ SIX.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant has submitted representations praying for stoppage of recovery and to make recovery at a moderate rate but the same have been turned down / not responded.

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

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

8. RELIEF SOUGHT :-

It is, therefore, prayed that Your Lordships would please to admit this application, call for the entire records of the case, ask the respondents to show cause as to why they should not be directed to continue payment of SDA to the applicant and as to why recoveries

Contd...p/

of the amount already paid to the applicant as SDA should not be repaid and after perusing the causes shown, if any, and hearing the parties, set aside the impugned Office Memorandum dated 15.02.2002 (Annexure-VI) with regard to recovery of SDA at high rate for the period w.e.f. June, 1997 to January, 2002 and to stoppage of SDA since 1st February, 2002 and direct the respondents to grant SDA to the applicant as usual from the date of his joining in North Eastern Region on first posting and to refund the entire amount deducted from the salaries of the applicant as SDA and/or pass any other order/orders as Your Lordships may deem fit and proper.

And for this act of kindness, the applicant as in duty bound shall ever pray.

9. INTERIM ORDER, IF ANY PRAYED FOR :-

It is, further prayed that Your Lordships would be pleased to stay the operation of the impugned actions for recovery of SDA till final disposal of this application otherwise the applicant would suffer irreparable loss and injury.

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10. The application will be presented by the Advocate of the applicant.

11. Particulars of the Postal Order in respect of the application fee :

I.P.O. NO. :- 76-577085

DATE :- 30-5-2002

Guwahati P.O. payable at Guwahati is enclosed.

12. LIST OF ENCLOSURES :

As state in the Index.

- | | | |
|----|-----------------|--|
| 1. | Annexure-I & II | Appointment letters |
| 2. | Annexure-III | Memorandum dated 14.12.1983 |
| 3. | Annexure-IV | U.O. dated 23.04.1984 |
| 4. | Annexure-V | Memorandum dated 12.01.1996 |
| 5. | Annexure-VI | Office Memorandum dated 15.02.2002 |
| 6. | Annexure-VII | Representation dated |
| 7. | Annexure-VIII | Hon'ble Tribunal's order dated
28.07.1999 |
| 8. | Annexure-IX | Hon'ble Tribunal's order dated
26.06.1998 |

Contd...p/

VERIFICATION

I, Sri Pranab Banerjee, son of Late Nripendra Nath Banerjee, aged about 32 years, Senior Field Assistant (Veterinary), Special Service Bureau, D.O.A.P. Division, Itanagar, do hereby verify and certify that the contents in paragraphs No. 4 (i, ii, iii, V, vii, ix, xi, xii, xiii, xiv, xv, xviii, xix, xx) are true to my personal knowledge and those in paragraphs No. 4 (iv, vi, viii, x, xvi, xvii) are true to the best of my information which have been derived from records which I believe to be true and that I have not suppressed any material fact.

I, sign this verification on this the 30th day of May, 2002 at Guwahati.

Place : Guwahati.

Pranab Banerjee

SIGNATURE

Date :

Regd/AA by AA

NO. 11/C/2/ 6/80
Office of the Commandant
Group Centre (SSB) Ranidanga
PO : Matigara (Pin-734428)
DT : Darjeeling (West Bengal).

Dated, the 17/6/80

M E M O R A N D U M

Subject :-

RECRUITMENT

The undersigned hereby offers Shri Ranidanga son of Shri [Name] temporary post of AA in the office of the Commandant, Group Centre, SSB, Ranidanga on a pay of Rs. 9545 in the scale of Rs. 9545-20-1150-20. He will also be entitled to draw dearness and other allowances at the rates admissible under and subject to the conditions laid down in rules and orders governing the grant of such allowances in force from time to time.

2. The terms of appointment are as follows :-

- (i) The post is temporary. His permanent appointment to the post if and when it is made permanent however will depend on various factors governing permanent appointment to such posts in force at the time, and will not confer on him the title to permanency from the date the post made permanent.
- (ii) The appointment is purely provisional.
- (iii) The appointment may be terminated at any time by a month's notice given by either side viz. the appointee or the appointing authority without assigning any reason. The appointing authority however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice by making payment to him a sum of equivalent to the pay and allowances for the period notice of the un-expired portion thereof.
- (iv) The appointment carries with it the liability to serve in any part of our country.
- (v) Other conditions of service will be governed by the relevant rules and conditions in force from time to time.

The appointment will be further subject to :-

- (i) Production of certificate of fitness from the competent medical authority. This will not be applicable in case he has already been medically examined.
- (ii) Submission of declaration in the prescribed form and in the event of the candidate having more than one wife living the appointment will be subject to his/her being exempted from the enforcement of the requirement in this behalf.

(2/-)

Copy to be
sent to
Advocate

: 2 :

(iii) Taking of an oath allegiance faithfulness to the constitution of India (or making of a solemn affirmation to that effect in the prescribed form).

(iv) Production of the following original certificates :-

- (a) Degree/Diploma/Certificate/Marksheet of educational and other technical qualifications. He must produce his educational certificate.
- (b) Certificate of age.
- (c) Character certificate in the prescribed form.
- (d) Attested by a District Magistrate/Sub-Divisional Magistrate or any other superior officer in the case of candidate for class III posts.
- (e) Certificate from S.D.O. in the prescribed form in support of candidate's claims to belong to a scheduled Caste or Tribe/Angle Indian community.
- (f) Discharge certificate in the prescribed form of previous employment, if any.

2. Resident Certificate from Concerned authority

3. Half long Certificate from Concerned A/c

4. It may please be stated whether the candidate is serving or is under obligation to serve another Central Government Department a State Government or a Public Authority.

5. If any declaration or information furnished by the candidate proves to be false or if the candidate is found to have willfully suppressed any material information will be liable to removal from service and such other action as Government may deem necessary.

6. If Shri Pranab Kumar accepts the offer on the above terms he should report the Commandant, Group Centre, SSB, Ranidanga on or before 17.9.95 positively. If no reply is received or the candidate fails to report for duty by the prescribed date the offer will be treated as cancelled.

7. No Travelling allowances will be allowed for joining the appointment.

8. He has to be in service for minimum three years after Training. If he would like to leave the job before expiry of the aforesaid period of 3 years after training he would be agreeable to pay the entire cost of Training.

9. He will bring with him Rs. 200/- only required in connection with his initial Messing and other charges. He will also bring light bedding with him.

10. Candidate who is not having original pass certificate will bring original marksheet and a certificate from the concerned School's Head Master mentioning that he has passed HS/SF/Madhyamik examination.

NOTE :- After joining, candidate will not be allowed to go home within one month.

To Pranab Kumar
Shri Id. Palumdis
14/2/90 - Ranidanga
101 - Dayatara (1925)

Pranab Kumar
 Commandant
 Group Centre SSB, Ranidanga

20-

Annexure-I

No.NGE/E-10(B)/97-98/126
Directorate General of Security
Office of the Divisional Officer SSB
SSB A.P.Division, Khathing Hills,
Itanagar.

Dated: Itanagar the 13/5/97

Date	
Comdt	✓
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ALMS
13/5/97
MEMORANDUM

E. 42
To hand over
to individual
concerned

The undersigned hereby offers Shri Pranab Banerjee
a temporary post of Senior Field Assistant (Vet) in the office
of the D.O.A.P. Divn., SSB, Itanagar XXXXX
in the pay scale of Rs. 975-25-1150-EB-30-1660/- with usual
allowances as admissible under the rules and orders in force
from time to time.

2. The post is temporary, his permanent appointment to
the post if and when it is made permanent will depend on various
factors governing permanent appointment to such post in force
at the time and will not confer on him title to permanency from
the date of post is made permanent.

3. This appointment is purely temporary, but it is likely
to continue indefinitely. The appointment is likely to
termination on one month notice on either side without reasons
being assigned. The appointing authority, however, reserves
the right, to terminating the services of the appointed forthwith
or before the expiry of the stipulated period of notice by
making payment to him a sum equivalent to the pay and allowances
for the period of notice or the expired portion thereof.

4. The appointee shall be on trial for a period of two
years which may be extended or curtailed at the discretion of the
competent authority but such extension or curtailment shall not
exceed one year.

5. The appointment will be further subject to :-

- i) Production of a certificate of fitness from the competent
Medical Authority viz. Civil Surgeon of District Medical Hospital.
- ii) In accordance with orders in force in regard to the
recruitment to service under the Govt. of India, no candidate who
has more than one wife living, is eligible for appointment under
the Govt. of India provided that Govt. may if they are satisfied
that there are special reasons for doing so except any person from
the operation of this rule. This offer of appointment is therefore
conditional upon his/her furnishing to the office a declaration
as in the Annexure-I of this letter, alongwith his/her reply.
If however, he has more than one wife living she is married to a
person having more than one wife living desire to be exempted
from the operation of the above mentioned rules for any special
reasons, he/she should make a representation in this behalf
immediately. This offer of appointment should in that case be
treated as cancelled and a further communication will be sent to
him/her in due course if upon a consideration of his/her
appointment.

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24/5/97

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Don
21/5/97

Certified to be true
S. Chakravarty
AOLV

NH/CHU
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111) Taking an oath of allegiance faithfulness to the Constitution of India on making of a solemn affirmation to that effect.

6. Production of the following original certificate (if not produced already) :-

- a) Degree/Diploma certificate of educational and other technical qualifications.
- b) Experience certificate.
- c) Certificate of age.
- d) Character certificate in the prescribed form Annexure-II to this letter:-

1) Attested by a District Magistrate or Sub-Divisional Magistrate or their superior officer in the case of candidates for Class-III post and

e) Certificate in the prescribed form in support of candidates claims that he belongs to SC/ST.

f) Discharge certificate in the prescribed form of previous employment, if any.

7. The candidate will be required to undergo and successfully qualify all such training courses as prescribed from time to time.

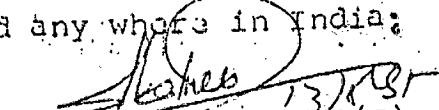
8. It may please be stated whether the candidate is serving or under obligation to serve another Central Govt./ State Govt. or a Public Authority.

9. If any declaration given or information furnished by the candidate proves to be false and if the candidate is found to have fulfilled suppressed any material information he will be liable to removal from the service and such other action as Govt. may deem necessary.

10. If Shri Pranab Banerjee accepts the offer on the above terms, he should report to the O/O Divl. HQ: SSB, A.P. Divn Itanagar within one month from the date of issue of this Memorandum. If no reply is received from the candidate fails to report to duty by the prescribed date, offer will be treated as cancelled

11. No travelling allowance will be allowed for joining the appointment, unless it is admissible under the rules.

✓ 12. He is liable to be transferred any where in India;


AREA ORGANISER(S)
DIVL. HQ: SSB: ITANAGAR

To

✓ Shri Pranab Banerjee, Condt.
C/O Commandant, Group Centre: SSB: RANIDANGA
NDS DIVISION, (West Bengal)

Copy to:-

1. The Area Organiser: SSB: _____ for information with request to obtain all documents as per SL No. 5 & 6 mentioned above from Shri _____ on his joining at _____ and forwarded to this office for

Issue of formal appointment order.

2. The Assistant Director (EA), SSB Dto, New Delhi-110066- for information w.r.t. Dte's Memorandum No. 6/SSB/A-4/96(12)-974-80 dated 26/3/97.

contd..page-3

29-22-
No. 200/12/00/119
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 14th Dec '63

OFFICE MEMORANDUM

Sub : Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North Eastern Region-Improvements thereof.

The need for attracting and retaining the services of competent officers for service in the North Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and ~~xxx~~ Administrative Reforms, to review the existing allowances & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows :-

i) Tenure of posting/deputation.

x x x x x x x x

ii) Weight-age for Central deputation/training abroad and special mention in Confidential Records.

x x x x x x x

iii) Special (Duty) Allowance :

Central Government civilian employees who have All India transfer liability will be granted a special (Duty) Allowance at the rate of 25 percent of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempted from payment of income tax will, however, not

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Copy to be sent to
S. Chakraborty -

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For this Special (City) Allowance (City) Allowance will be in addition to any other pay and the Deputation (City) Allowance also. It is subject to the condition that the total of Special (City) Allowance plus special pay/deputation allowance will not exceed Rs. 400/- p.m. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

XXXXXX

XXXXXXXXXX

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Sd/- S.C. MAHAJAN
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

CABINET SECRETARIAT
SOUTH BLOCK

SECRET

Subject: Allowance and facilities for civilian employees of Central Government serving in the States and Union Territories of North-Eastern Region Improvements thereof.

In continuation of this Secretariat's UD Note of even number dated 9.4.84, on the subject mentioned above, the points raised by the Director of Accounts during discussions with JS(SR) on 19.4.84, are clarified as under:-

- (a) The Dto. General of Security (Secretarial) Service Rules 1975 provide that members of the Service shall be required to work in any of the units under the DG(S). Hence the officers and staff holding posts included in the DGS (Secretarial) Service by any method of recruitment provided in the Rules may be treated to have All India Transfer liability and eligible for Special Duty Allowance granted under the Min. of Finance orders dated 14.12.1983.
- (b) In respect of the categories of employees of DG(S) taken on deputation or recruited locally serving in North Eastern region, Special Duty Allowance will be admissible if there is a specific provision in the service Rules or Recruitment Rules pertaining to them that they shall be required to work in any establishment of the SSB or other organisations under the DG(S).

Sd/-

(G.P. CHADHA)
DIRECTOR (SR)

DACS (Shri N.C. Roy Choudhury, Director of Accounts)
Cub. Sectt's UD No. 7/47/84-FA.I, dated 23.4.84.

Copy forwarded to 1. Director (Planning), DCS New Delhi, for information.

Sd/-

(G.P. CHADHA)
DIRECTOR (SR)

No. 14(11)/Coord/84
Directorate General of Security
Coordination Cell.

Dt. the 28.4.84

Copy forwarded for information and necessary action.

SECTION OFFICER (COORD)

AD(FA)SSB/AD(A)ARC
AD(A) SFF/ACIA

forwarded to all Ao. and Comd. GCS (S)

Certified true copy
S. Chakraborty
Adm.

New Delhi, the 14th Jan. 1987

MEMORANDUM

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

The undersigned is directed to refer to this Department's O.M. No. 20014/3/E3-E.IV dated 14.12.1987 and 20.4.1987 read with O.M. No. 20014/16/E6-E.IV/E.31 (b) dated 1.12.1984 on the subject mentioned above.

2. The Government of India vide the above mentioned OM dt. 14.12.85 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.

It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowances' the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts are 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 or 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 meet the criterion for the grant of SDA.

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S. Chakraborty
Adv.

4. The employees working in the NE Region approached the Hon'ble Central Administrative Tribunal (CAT) (Allahabad 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 prayer 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 Ministers/Departments against the Orders of the CAT.

6. The Hon'ble Supreme Court in their judgment delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993) upheld the submissions of the Government of India that Central Government civilian employees who have all India transfer liability are entitled to the grant of SDA on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The Apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

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As per
Adv.

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1. 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.

- 1) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
- 11) 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 pertained to the period prior to 20.9.94, but payments were made after this date i.e. 20.9.94) will be recovered.

2227-31/94

8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.

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

10. Hindi version of this OM is enclosed.

Sd/- C. Balachandran
Under Secy to the Government of India

To
All Ministries/Departments of the Govt. of India, etc.
Copy (with spare copies) to CAG, UPSC etc. as per standard
understanding list.

Approved
C. Balachandran
15.9.94

28 - 33 -
Annexure III

87

To Mr. A. Chandra Sekhar, Additional Secretary (S.R.)
Cabinet Secretariat, P.O. No. 7/47/84-RC I dated 17.7.85 (Cabinet
Secret.).

REKAR

SECRET HOUSE (Annexure) is appended below :

CABINET SECRETARIAT

SECRET HOUSE (ANNEXURE).

Sub : Allowance and facilities for civilian employees
of Central Govt. serving in the States and Union
Territories of North Eastern Region Improvement
thereof.

Director of Accounts may please refer to this
of Secretariates U.O./even No. dated 28.9.84 under which
certain clarification were issued regarding drawal of
special duty allowance.

2. The matter was further examined in consultation
with the Ministry of Finance and the following clarifi-
cations are issued.

Group C employees recruited local in the North
Eastern Region, but who liable to serve anywhere, will
be eligible for special duty allowance though may not
have been transferred outside that region since their
joining the service due to Administrative reasons.

3. In view of the above position Directorate of
Accounts may continue to pay the special duty allowance
to Group C employees mentioned above. In case any
recovery have been made from them on the basis of the
earlier clarification issued on the 28.9.84 may be paid
back to them.

Sd/- A. Chandra Sekhar
Addl. Secretary (S.R.)

Handwritten notes and signatures at the bottom left of the page.

Dated the 15.2.2002

Subject:- Clarification on admissibility of S.D.A.

ACCOUNTS OFFICER
DIVL:HORS: SSB: ITANAGAR.

Shri P.K. Banerjee,
S.F.A. (Vety.) BO AP Itanagar.

Dated, the May, 2002

Shri Pranab Banerjee, SFA(Vety.) of Div.Hqrs. SSB
Itanagar may refer to his application dated 20-03-2002
regarding recovery of overpayment of S.D.A. In this connection,
it is intimated that Shri P.Banerjee, SFA(V) is not eligible
for S.D.A. as per Para-2(1) (a) of Cabinet Sectt. U.O. No.
20/12/94-EA.I-1799 dated 02-05-2000. Hence, recovery of
overpayment of S.D.A. from his Pay & allowances is to be
ensured.

To
Shri Pranab Banerjee,
Sr. Field Assistant (Vety.),
Divisional Hqrs., SSB,
Itanagar

- 30 -

Annexure - VII

36

To

The Divisional Organiser,
SSB, A.P. Division, Itanagar,
Arunachal Pradesh-791 111.

Dated: 20th March, 2002.

Sir,

With due respect I am to state that an amount of Rs. 20,634/- has been worked out as overpayment made to me on account of Special Duty Allowance and the amount has been ordered to be recovered from my pay and allowances @ Rs. 573/- per month, which has put me into tremendous financial constraints being a low paid employee.

If I am not entitled for drawal of SDA then further payment may be stopped, but payment already paid to me may kindly be waived on the ground that responsibility for making over payment of Govt. money can not be attributed to me only. In number of court cases filed earlier by the employees of this Division on the said subject, Hon'ble CAT bench of Guwahati has waived the overpayment made to the employees, in the same analogy and also on the principles of 'equality before the law' as laid down in the constitution. The overpayment made to me on the said account may also kindly be waived.

For this act of your kindness I shall remain ever grateful to you.

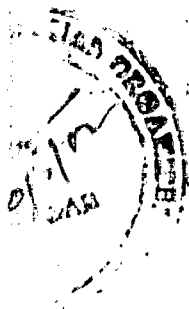
Thanking you,

Yours faithfully,

Pranab Banerjee
20/3/02
(PRANAB BANERJEE) SFA(V)
DIV. HQRS. SSB: ITANAGAR.

PK

*Certified to be true copy
S. Chakraborty -
Adv.*



ADMINISTRATIVE TRIBUNAL, GUWAHATI MEMOR.

Order of this the 20th day of July, 1998

Shri G.L. Sanglyine, Administrative Member.

Original Application No. 45 of 1998.

Shri Ajitangshu Dab and 16 others.

Original Application No. 90 of 1998.

Shri S.K. Denerjee and 4 others.
All the applicants are working under
Commander, Base Hospital No.151, Guwahati

... Applicants

- Versus -

1. Union of India
through Secretary to the
Government of India,
Ministry of Defence,
New Delhi.
2. Controller of Defence,
Assam Area,
Accounts Officer,
Guwahati.
3. Commander,
Base Hospital No. 151,
Govt. of India,
Basilatha, Guwahati.

Respondents

By Advocate Shri H.C. Pathak, Adv. G.O.S.C.

ORDER

G.L. SANGLYINE, JNN. MEMBER.

These two Original Applications involve similar facts and law and therefore they are disposed of by this common order for convenience.

2. Seventeen applicants in O.A.No.45/98 and five applicants in O.A.No.90/98 are Group 'C' and Group 'D' employees, as the case may be, in the Base Hospital No.151, Basilatha, Guwahati. They were allowed to draw Special(Duty) Allowance (SDA for short) in terms of Office Memoranda issued from time to time with regard to payment of SDA. But from July 1996 the payment of SDA was stopped. Further recovery of SDA paid from 20.7.1996

Confidential to be kept
S. Chakraborty

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... 1996 was ... to be recovered in instalments ...
... from the pay bill of February 1996 in terms of O.M. No.
11(3)/95-E-II(H) dated 12.1.1996 issued by the Ministry of
Finance, Department of Expenditure and made applicable to
the employees in the Ministry of Defence by Defence Direction
No. A(19)/83-D(CIV-1) Vol-II dated 18.1.1996. Thereafter the
applicants submitted the Original Applications disputing their
recovery of the SDA paid. The respondents have submitted
written statement.

3. Mr. M. Chanda, the learned counsel for the applicants,
submitted that consequent to the order of the Hon'ble Supreme
Court dated 20.9.1994 in Civil Appeal No. 3251 of 1993 (Union
of India & Ors. vs. S. Vijayakumar & Ors.) the Ministry of
Finance, Department of Expenditure issued an Office Memorandum
dated 12.1.1996 and para 7 of the O.M. is as below:

"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 prior
before 20.9.94 will be waived;
- ii) the amount paid on account of SDA
to ineligible persons after 20/09/94
(which also include those cases in
respect of which the allowance was
pertaining to the period prior to
20/09/94, but payments were made after
this date i.e. 20.9.94) will be recovered.

The respondents have purported to recover the amount of SDA
paid to the applicants in terms of para 7(ii) above. The
respondents had not however acted upon the Office Memorandum
on the letter dated 18.1.1996. They continued to pay SDA
to the applicants upto June 1996. Thereafter no action to
recover the amount of SDA paid was taken till February 1997.
It was not the fault of the applicants to receive the SDA
as it was paid to them voluntarily by the respondents.

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in the order dated 19.12.1995 the respondents had submitted that they were entitled to believe that they were entitled to recover the SDA, relying on the decision of the Hon'ble Supreme Court in *Vijay Babu Verma and others vs. Union of India and others* reported in (1994) 27 ATC 121 he submitted that they had received the amount in such situation and the amount already paid to them should not be recovered. Subsequently and without giving the applicants any notice the respondents had effected recovery of the SDA received. He submitted that the recovery is therefore in violation of principle of natural justice. According to him the respondents had not acted fairly as the applicants were not informed of the action taken against them before the action was taken and therefore the respondents cannot in law make recovery of the amount of SDA already paid to the applicants. In this connection he placed reliance on *K.I. Saphard & Ors. vs. Union of India & Ors.* reported in 1988(1) S.L.J. 105 and *Bhagwan Chukla vs. Union of India & Ors.* reported in (1994) 6 SCC 154. Mr Chanda further submitted that in the matter of recovery of SDA paid the underlying principle of the decision of the Supreme Court in *Vijayakumar* is that the amount of SDA paid needs not be recovered. He submitted that this is further reiterated by the Hon'ble Supreme Court in the order dated 7.9.1995 in Civil Appeal No. 8208-8213 of 1995 in *Union of India & Ors. vs. Geological Survey of India Employees' Association & Ors.* in which it was directed that the appellant will not be entitled to recover any part of payment of Special Duty Allowance already made to the concerned employees. This Tribunal also, he submitted, had held in the order dated 26.6.1998 in O.A. No. 97 of 1997 and series of O.As that amount of SDA already paid shall not be recovered. Mr B.C. Pathak, the learned Addl. C.G.S.C opposed the contention of Mr Chanda. According to him the applicants are

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ineligible to receive SDA. It is a matter of policy to recover the amount of SDA paid to the ineligible persons. Therefore there is no bar to recover the amount wrongly paid. It is admitted that payment of SDA is not a condition of service and therefore there is no violation of natural justice if recovery of amount wrongly paid is made without issuing notice. However, in the present case respondents had issued notice NO-453/1/Civ Est/CoY/98 dated 13.2.1998 before recovery by endorsing copy to the General Secretary, N.E. Defence Co-ordination Committee, Guwahati for his information and necessary action.

4. I have heard counsel of both sides. In both the cases the applicants are local residents of North Eastern Region and recruited locally to work in the region. In such situation they are not eligible to benefit of SDA in view of the decision dated 20.9.1994 of the Hon'ble Supreme Court mentioned above. However, in these cases they continued to be paid SDA till it was stopped in July 1996. The decision to recover the amount paid after 20.9.1994 was taken by O.M. dated 12.1.1996 and adopted by the Ministry of Defence, respondent No.1 on 10.1.1996. No recovery was however made till February 1998. In February 1998 the recovery was initiated without giving any notice to the applicants regarding the action proposed to be taken against them by the respondents. The letter dated 13.2.1998 referred by Mr. Pathak is not addressed to any of the applicants and there is no indication that the contents of the above letter were brought to the notice of the applicants. The respondents had not therefore acted fairly and reasonably in making recovery of the amount of SDA paid to the applicants between 20.9.1994 and 30.6.1996. The recovery therefore is not sustainable in law. Moreover, in view of the facts and circumstances relating

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... payment of SDA to the applicants for mentioned period
... period and the decisions relied on by the learned
... for the applicants, in view of the view that the respon-
... should not recover the amount of SDA already paid to
... the applicants. Therefore, in the facts and circumstances
... of the case of the applicants, the action of the respondents
... to recover the amount of SDA paid to them for the period from
... 20.5.1994 to 30.6.1996 is quashed and set aside. The respon-
... are directed to refund the amount of SDA if any recovered
... from the applicants within a period of 2 months from the
... date of receipt of this order.

The applications are disposed of. No order as to costs.

20/ NINSHI (Mn)

ORIGINAL APPLICATION NO. 47 OF 1997 AND OTHERS
 ORDER OF DECISION: THIS THE 26th day of June 1998

Presented by Mr Justice D.H. Baruah, Vice-Chairman

1. O.A. No. 27 of 1997
 All India Junior Engineers Association & others, CMD,
 Guwahati.

2. O.A. No. 104 of 1997
 All India Engineering Drawing Staff
 Association and others,
 Guwahati.

3. O.A. No. 105 of 1997
 A.P.M.S. Class & State Union,
 Guwahati Branch, Guwahati.

4. O.A. No. 106 of 1997
 C.P.M.S. Staff Association,
 Guwahati Branch, Guwahati.

5. O.A. No. 110 of 1997
 P.P.M.S. Harbours Union,
 Guwahati Branch, Guwahati.

6. O.A. No. 205 of 1997
 Chief H.C. Baruah and 269 others

7. O.A. No. 24 of 1998
 Chief H.K. Das and 35 others

8. O.A. No. 35 of 1993
 Chief H.P. Thakur and 64 others

9. O.A. No. 75 of 1998
 Chief A.K. Gohain and 5 others
 by Advocates Mr. J.L. Sackal, Mr. A.K. Sharma,
 Mr. H. Chandra, Mr. A. Ahmed, Mr. S. Sarma and
 Mr. H.D. Goswami.

Various Respondents
 Union of India and others
 by Advocates Mr. S. Ali, Sr. C.G.S.C. and
 Mr. A.K. Choudhury, Addl. C.G.S.C.

Get Affee to be true copy
 S. Choudhury
 Adv

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All the above applications relate to Special (Group) Allowance (SDA for short). As the applications involve common questions of law and similar facts, I propose to dispose of all the applications by this common order.

2. The applicants claim that they are entitled to SDA as per the Office Memorandum No.20014/3/83.E-IV dated 14.12.1983, but the same was denied to them. Some of the employees, situated similarly, approached this Tribunal praying, inter alia, for payment of SDA. This Tribunal gave direction to the respondents to pay SDA to these applicants. Though the present applicants did not approach this Tribunal and there was occasion to give such direction to the respondents for payment of SDA to the present applicants. However, in view of the order passed by this Tribunal in the earlier cases the respondents continued to pay SDA to the present applicants also. Nonetheless, the respondents challenged the earlier order of this Tribunal before the Apex Court by filing Civil Appeal No.1572 of 1997 and other Civil Appeals. The Apex Court disposed of all the above Civil Appeals holding, inter alia, that persons who belong to the North Eastern Region were not entitled to SDA. The present applicants are working in various departments under the Central Government, but it is not very clearly known whether all the applicants were recruited outside the North Eastern Region and have come on transfer. By the strength of the earlier order of this Tribunal, even

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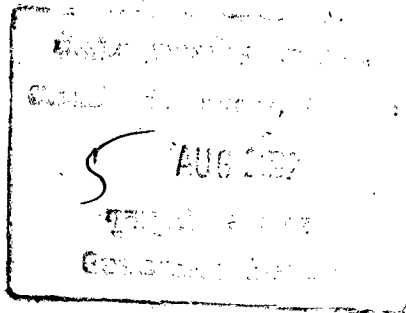
98-45-45-45
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... who are not entitled to SDA also continued
... However, as per the Apex Court's decision in
... civil appeals those persons who belong to the
North Eastern Region are not entitled to SDA. In the said
civil appeals the Apex Court also held that the amount
of SDA which has already been paid to the employees
should not be recovered.

3. I have heard both sides. After hearing the learned
counsel for the parties and following the decision of the
Apex Court in Civil Appeal No.1572 of 1997 and others, I
direct the respondents to first determine whether the
present applicants are entitled to SDA or not as per the
decision of the Apex Court. If after examination it is
found that the applicants or some of them are not
entitled to SDA they shall not be paid SDA. However, the
amount already paid to them shall not be recovered.

4. With the above observation all the applications
are accordingly disposed of. No order as to costs.

20/-VICE CHAIRMAN



Filed by:-
A.K. Chaudhuri
5-8-02
Addl. Central Govt
Standing Counsel
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Divisional Organiser
SSB A.P. Division
Itanagar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI.

IN THE MATTER OF : OA NO. 177/2002

Shri Pranab Banerjee - Petitioner

- Versus -

Union of India & Others - Respondents

And in the matter of

Written statement on behalf of the respondents.

I, Shri M.L. Chaudhuri, presently working as Divisional Organiser, Special Service Bureau, Arunachal Pradesh Division, Divisional Head Quarters, Itanagar aged about 56 years do hereby solemnly affirm and say as follows :-

1. That I am competent to file this written statement on behalf of the respondents No. 1 to 4 as authorised, and I swear the same. I am also acquainted with the facts and circumstances of the case. The copies of original application served upon the respondents have been gone through and understood the contents thereof save and except those, what has been specifically admitted in this written statement, all avernments and submissions made in the OA may be deemed to have been denied by the declarant.

2. That with regard to the avernments made by the petitioner of the OA this declarant begs to submit that no illegal and ultravires action has been taken by the respondents by recovering the payment of special duty allowance from the inadmissible employee.

3. That with regard to the avernment made by the petitioner vide para 4(I) this declarant has no comments as the same are matter of record.

4. That with regard to the avernment made by the petitioner vide para 4(II) ,(III) & (IV) this declarant begs to submit that though the applicant hails from non N.E. Region (North Bengal) was initially serving as Constable(GD) at GC Ranidanga (West Bengal). Since on the basis of the selection through Direct Recruitment test he has been appointed as SFA(Vety) in AP Division(North Eastern Region), he is not entitled for grant of SDA as per clarification contained in para 2(I) (a) of Cabinet Secretariat U.O. No. 20/12/94-EA-I/1799 dated 2.5.2000, as per clarifications received from SSB hqrs., vide Memorandum No. 42/SSB/A-I/2001(I)Pt.451 dated 18.1.2002 which clearly indicates that a person belonging to outside NE Region but appointed on first appointment after selection through all India Direct Recruitment basis having a common/centralised seniority list and all India transfer liability are not entitled to drawl of SDA. In the instant case the petitioner was posted to was posted to the N.E. Region on initial

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Divisional Organiser
SSB A.P. Division
Itanagar

appointment which consistute that though he was employed but he was posted to the NE Region from outside of the NE Region on initial appointment in a different cadre therefore, he is not entitled to grant of SDA in terms of judgment of Appex Court dated 20.9.94, wherein it has been clearly indicated that the grant of SDA would be paid to the civilian employees who have all India transferred liability and posted to N.E. Region from out side this region on transfer, grant of SDA to such category of employee would not be violative of Article 14 of the Constitution. in true spirit of the judgment of Hon'ble Supreme Court pronounced on 20.09.1994 followed by Ministry of Finance clarification vide their O.M. dated 12.01.1996 and Cabinet Secretariat U.O. No.20/12/99-EA-I-1799 dated 02.05.2000. The payment of special duty allowance to the non entitled Officers has to be regulated accordingly.

Copy of SSB Hqrs. Memo. dated 18.1.2002 and Cab.Sectt., U.O. dated 2.5.2000 is annexed at Appendix-(R-1 & R-2)

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[Signature]
Divisional Organiser
SSB A.P. Division
Itanagar

5. That with regard to the averments made by the petitioner vide para 4 (V) this declarant begs to submit that the position as enumerated by the petitioner have since been reviewed vide Cabinet Secretariat U.O dated 02.05.2000.

6. That with regard to the averments made by the petitioner vide para 4 (VI) & (VII) it is submitted that :

(a) Govt. of India, Ministry of Finance, Department of Expenditure vide their O.M No.20014/2/83-E.IV dated 14.12.1983 allowed special duty allowance to Central Government Civilian Employees who have All India transfer liability based on the recommendation of a Committee set up by the Govt. of India. Based on the decision, the respondents allowed special duty allowance on the analogy to the employees having All India transfer liability to the applicant, including all other SSB employees posted in N.E Region.

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Divisional Officer
SSB A.P. Division
Itanagar

Copy of Ministry of Finance O.M.
No.20014/2/83-E.IV dated 14.12.1983 is attached at
Appendix (R-3)

(b) Based on the Hon'ble Supreme Court judgment dated 20.09.1994 (In Civil appeal No.3251 of 1993) the Government of India, Ministry of Finance, Department of Expenditure vide O.M. No. 11(3)/95-E.II(B) dated 12.01.96 incorporated the provision of above judgment as under:

"Central Government civilian employees who have All India transfer liability are entitled to the grant of Special Duty Allowance, on being posted to any station in the N.E Region from the out side the region and special duty allowance would not be payable merely because of the clause in the appointment order to All India transfer liability. The Apex Court further added that the grant of this allowance only to the Officers transferred from out side this region would not be violative of the provision contained in Article 14 of the Constitutions as well as the equal pay doctrine."

Copy of the judgment of the Hon'ble Supreme Court delivered on 20.09.1994 (In Civil appeal No.3251 of 1993) Union of India Vrs. S. Vijay Kumar and others, 1995 (I) SLP 139 (SC) is enclosed as Appendix (R-4).

Further, the Ministry of finance decided that the amount already paid on account of Special duty allowance to the ineligible persons on or before 20.09.94 will be waived off and payments made after this date will be recovered.

Copy of Govt. of India, Ministry of Finance, Dept. of Expenditure O.M. No.11/(3)/95-E.II(B) dated 12.01.96 is enclosed as appendix (R-5).

(c) That the govt. of India, Ministry of Finance, Deptt. of Expenditure vide their U.O No.11(3)/85-E-II(B) dated 07.05.97 clarified that the employees who fulfill all the conditions of All India transfer liability and are posted from outside N.E Region to N.E region, are entitled to special duty allowance otherwise not.

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[Signature]
Divisional Officer
SSB A.P. Division
Itanagar

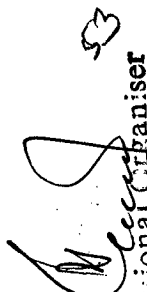
Copy of Govt. of India, Ministry of Finance,
Deptt. of Expenditure U.O No.11(3)/85-E-II(B)
dated 07.05.97 is enclosed as appendix (R-6).

(d) That the Hon'ble supreme court in another judgment on 25.10.96 in petition NO. 794 of 1996 titled sub-Inspector Sadan Kr. Goswami and others Vrs. Union of India and others held that "The Judgment of this Court would indicate that it did not make any distinction between Group 'C' & 'D' and Group 'A' & 'B' Officers. all are Governed by the law under Article 141."

Copy judgment of the Hon'ble Supreme Court is enclosed as Appendix (R-7).

(e) That on careful scrutiny of the Cabinet Secretariat U.O No.7/47/84-EA.I dated 11.04.96, it would be seen that a proposal for waiver of payment of special duty allowance made to locally recruited employees of Group 'C' & 'D' of DGS and R&AW serving in the N.E Region was mooted for the consideration of the Ministry of Finance on which

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Divisional Officer
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Itanagar

the Ministry has conveyed decision based on the recent judgement dated 20.09.94 pronounced by the Hon'ble supreme Court and accordingly necessary instruction was issued for regulating payment of Special duty allowancae to Group 'C' & 'D' employees. There has not been made any distinction between Group 'A', 'B', 'C' or 'D' for grant of the special duty Allowance.

Copy of Cabinet Secretariat U.O. No. 7/47/84-EA-I dated 11.4.1996 is enclosed as Appendix (R-8)

That keeping in view of the judgment of the Apex court and decisions of the Ministry of Finance, the petitioner is ineligible for the grant of Special Duty allowance for merely having been appointed, in N.E. Region, from outside of the NE Region and not been posted to the NE Region on transfer from outside of the region, therefore, the respondents has rightly stopped payment of Special Duty Allowance to the petitioner.

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SSB A.P. Division
Itanagar

7. That with regard to the averments made by the petitioner vide para-4(VIII, IX, X, XI, XII and XIII) the declarant begs to submit that the allowances and facilities provided in the office Memorandum dated 14.12.83 were with a view to accepting and retaining of the services of the competent officers for serving in the North Eastern Region. Now, the applicant of the O.A recruited though on the basis of All India level selection list and posted to the N.E Region initially, he do not posses any competency/experience in service hence accordingly to the basic principle for granting SDA he being purely raw in experience and competency, not entitled for SDA at this stage. Hence, the claim of the applicant is devoid of merit according to the fundamental criteria for grant of the said additional allowance. The aforesaid position has since been reviewed on the basis of Cab. Sect. U.O NO.20/12/99-EA-I-1799 dated 02.05.2000 Annexure (R-1) which clearly indicates that a person belonging to outside N.E Region but appointed on

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Divisional Officer
SSB A.P. Division
Itanagar

first appointment posted in N.E Region after selection through All India Direct Recruitment basis having a common/centralised seniority list and having All India transfer liability are not entitled to drawal of SDA.

In the instant case the applicant was posted in N.E Region on initial appointment which constitute that though he was employed but have not been transferred from out side the N.E Region to N.E Region and therefore, he is not entitled to grant of SDA in terms of judgment of Apex Court dated 20.09.94, wherein it has been clearly indicated that Grant of SDA would be paid to the Civilian employees who have All India transfer liability and posted to N.E Region from out side this region on transfer, grant of SDA to such category of employees would not be violative of Article 141 of the Constitution.

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[Signature]
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SSB A.P. Division
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On the basis of the order of Cab. Sectt. dated 10.06.97 SDA was paid to the applicant, but the said payment being irregular and have to be recovered as per the revised / amended instructions of Cab. Sectt. issued vide their U.O dated 02.05.2000 (Annexure R-I).

In the instant case the applicant was posted to N.E Region on initial appointment in an ex-cadre post which constitutes that he was not transferred from outside the N.E Region to N.E Region, and moreover he is not competent / experienced as contemplated in the O.M dated 14.12.83 under the aforesaid position stoppage for drawal of SDA in respect of the applicant as well as the order for recovery of the amount already paid was not illegal and arbitrary. The recovery of irregular payment of SDA made to the applicant can not be termed as violation of the principles of natural justice as already the notice of eligibility conditions of SDA were circulated through the notice board of the office with a view

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Divisional Officer
SSB A.P. Division
Itanagar

that every employee who is receiving payment of irregular SDA can made up his mind and calculate out his eligibility conditions. Undoubtedly the applicant was in fault in receiving the irregular payment of SDA.

8. That with regard the statements made by the petitioner vide para-4(XIV) and (XV) this declarant begs to state that the contention of the petitioner is based on mere surmission and mis-conjecture factual position have already been enumerated vide aforesaid paras of this statement. Action to stop payment of SDA and also recovery of over payment made to the petitioner have been ordered in pursuance to the Cabinet Sectt. U.O No.20/12/99-EA-I-1799 dated 02.05.2000, the decision was further taken in consultation with the Ministry of Finance, Deptt. of Expenditure which is in consonance with the judgment pronounced by the Hon'ble Supreme Court, on 20.09.94 (in Civil appeal No.3251/93).

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 Divisional Officer
 SSB A.P. Division
 Itanagar

9. That with regard to the statement made by the petitioner vide para -4 (XVI), (XVII), (XVIII) and (XIX) this declarant has no knowledge regarding the decision taken by the Hon'ble CAT bench of Guwahati against OAs No.45/98,90/98, 97/97, 104/97, 106/97 109/97, 244/97, 24/98, 35/98, 75/98 as these cases do not pertain to this Department. However, in an analogous case in OA NO.43/2000 titled Shri Mathuresh Nath and others Verses UOI and others, the Hon'ble CAT bench of Guwahati vide their judgment dated 11.01.2001 stated that " the issue raised in this application is no longer Res-integra in view of the judgment of the Supreme Court rendered in Civil appeal No. 3251 of 1993 disposed of on 20.9.94 in Union of India and others versus S.Vijoy Kumar and others, reported in (1994) 28 ATC 598. As per the afore mentioned decision, Central Govt. employees who have all India transfer liability are entitled to grant SDA on being posted (emphasis supplied) to any station in the North-Eastern region from outside the region and SDA would not be payable merely

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Deputy
Divisional Officer
SSB A.P. Division
Itanagar

because of the clause in the appointment letter relating to all India transfer liability. Consequent thereto, the concerned Ministry issued necessary instructions not to disburse SDA to ineligible persons. There are also a number of like decision rendered by the tribunal as well as the High Court.

In the circumstances there is no scope for directing the respondents to pay SDA to the present applicants. Mr. K.P.Singh, learned counsel for the applicants cited the instance of some persons who are allegedly being paid SDA though they are similarly situated like the present applicants. Assuming persons contrary to the provisions of law that would not be a ground for giving similar unlawful benefit to the applicants by the Tribunal."

Copy of the judgement dated 11.1.2001 is attached at appendix(R-9)

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Divisional Officer
SSB A.P. Division
Tirunagar

10. That with regard to the statements made by the petitioner vide para-5 (I) this declarant begs to state that in view of the position explained in the foregoing paras discontinuation of the payment of SDA and effecting recovery from the ineligible employee was not illegal, arbitrary and unfair as contented by the petitioner and hence, it is not bad in law.

11. That with regard to the averments made by the petitioner vide para-5(II) and (III) this declarant has no comment as the matter has been clearly explained in the foregoing paras which is reiterated here for the sake of brevity. As explained the grounds shown can not sustain in law and hence the application is liable to be dismissed with cost.

12. That with regard to the statement made in para 6 and 7 of the application, the answering respondents have no comments to offer.

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Divisional Officer set
SSB A.P. Division
Itanagar

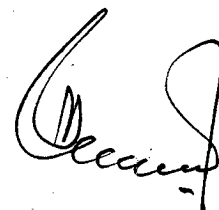
13. That with regard to the relief sought and interim order as prayed for by the petitioner vide para-8 and 9 of the petition this declarant reiterates the submissions made in the foregoing paras of this petition and submits before this Hon'ble Tribunal that the petitioner being ineligible is not entitled for drawal of SDA hence, relief sought by him is bad in law and therefore interim order passed by the hon'ble Tribunal needs to be reviewed in the context of the judgement of the Apex Court dated 20.9.94. The applicant is not entitled to any relief whatsoever as prayed for and hence the application is liable to be dismissed with cost as devoid of any merit. In the premises aforesaid, it is therefore prayed that your lordship would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall further be placed to dismiss the application with cost.

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VERIFICATION

I, Shri M.L. Chaudhuri presently working as Divisional Organiser being competent and duly authorise to sign this verification. I do hereby solemnly affirm and states that the statements made in Para 1,2,10,11,12 & 13 are true to my knowledge and belief and those made in the para 3,4,5,6,7,8, & 9 being matter of records are true to my information, derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign the verification in this 27th day July, 2002 at Itanagar.



DEPONENT

Divisional Organiser
SSB A.P. Division
Itanagar

19 APPENDIX-R-1

No:- 42/SSB/A1/2001(1)Pt.451
Government of India,
Ministry of Home Affairs,
Office of the Director General. SSB.
East Block -4, R.K.Puram,
New Delhi -110066.

Dated, 18.1. 2002.

Memorandum

Subject :- Regarding clarification on admissibility of Special Duty Allowance(SDA).

Please refer to your memo No. HGE/F-9(A)/2001/332 dated 5.11.2001 vide which clarification on admissibility/eligibility of Special Duty Allowance (SDA) has been sought.

2. In this connection, the necessary clarification in each case is given as under:-

- i) Shri D.N.Bardhan, DFO(G):- Though Shri D.N.Bardhan, DFO(G) who hails from Non-North Eastern Region (North Bengal) was initially serving as Constable(GD) in GC Palakata, since appearing and on the basis of his selection through Direct Recruitment test has been appointed as DFO(G) in A.P.Division, he is not eligible for Government of SDA as per the clarification contained in para- 2(i) (a) of Cabinet Sectt. UO NO. 20/22/94-EX-I-1799 dated 2.5.2000.
- ii) Shri Ramesh Chandra Verma, SFA(Homeo):- Shri Sh. R.C.Verma, SFA(H) who hails from non-North Eastern Region while serving as Constable (GD) in Group Centre Dhasampur(H) was appointed as SFA(Homeo) on transfer basis and posted in A.P.Division (N.E. Region), he may be granted SDA as decided with the opinion of MOL, Department of Legal Affairs in the case of Shri Jagmohan Singh, SFA(H) on CAT Guwahati Judgement dated 10.8.2001 on CA no. 84/2001 titled Shri Jagmohan Singh Vs UOI and others.
- iii) Shri P.K.Banerjee, SFA(V):- Though Shri. P.K.Banerjee SFA(V) who hails from NON-NE Region (North Bengal) was initially served as Constable (GD) in GC Ranidanga. Since on the basis of his selection through Direct Recruitment test he has been

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[Signature]
Section Officer
SSB, Itanagar

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appointed as SPA(V) in AP Division (NE Region)
he is not eligible for the grant of SDA as per
clarification contained in Para-2(i) (a) of
Cabinet Sectt. UO NO. 20/12/94-EA.I-1799 dt.
2.5.2000.

Sd.
(S.S.BORA)

JOINT DEPUTY DIRECTOR (EA)

To,

The Area Organiser (Staff)
A.P. Division,
Itanagar.

OFFICE OF THE DIVISIONAL ORGANISER, SSB, A.P. DIVISION, ITANAGAR

Enclst. NO. NGE/F-9(A)/96/Vol-I/339

Dt. 28-01-02.

Copy to:-

1. The Divisional Organiser, SSB, North Bengal & Sikkim Division, for favour of information & necessary action please.
2. The Accounts Officer, Div, Hqrs, SSB, Itanagar for information and immediate necessary action.
3. The Area Organiser, SSB Bomdila/Ziro/Along/Tezu/Khonsa for information and necessary action.

Sd.

AREA ORGANISER (STAFF)
DIV, HONS, SSB, ITANAGAR.

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[Signature]
26/2/02
Section Officer
SSB, Itanagar

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APPENDIX - R-2
COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(EA.I Section)

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

SSB Directorate may kindly refer to their UO No.42/SSB/AI/99(18)-2369 dated 31.3.2000 on the subject mentioned above.

2. The points of doubt raised by SSB in their UO No.42/SSB/AI/99(18)-5282 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Department of Expenditure) and clarification to the points of doubt is given as under for information, guidance and necessary action:

i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.

- R 114/c
- a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer Liability.
- b) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.
- ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-E.IV dated 14.12.83 and 20.4.87 read with

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[Signature]
Section Officer
SSB, Itanagar

Contd...2/-...

OM 20014/16/86 E.II(B) dated 1.12.88) but subsequently the post/cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the NE Region though they can be transferred out to any place outside the NE Region having All India Transfer Liability.

iii) An employee belongs to NE Region and subsequently posted outside NE Region, whether he will be eligible for SDA if posted/transferred to NE Region. He is also having a common All India seniority and All India Transfer Liability.

YES

iv) An employee hailing from NE Region, posted to NE Region initially but subsequently transferred out of NE Region but re-posted to NE Region after sometime serving in non-NE Region.

YES

v) The MOF, Deptt. of Expdr. vide their UO No.11(3)/95-E.II(B) dated 7.6.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. For determination of the admissibility of the SDA to any Central Govt. Civilian employees having All India Transfer Liability will be by applying tests (a) whether recruitment to the Service/Cadre/Post has been made on All India basis (b) whether promotion is also done on the basis of All India Zone of promotion based on common seniority for the service/Cadre/Post as a whole (c) in the case of SSB/PGS, there is a common recruitment system made on All India basis and promotions are also done on the basis of All India Common Seniority basis. Based on the above criteria/tests all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from NE Region or posted to NE Region from outside the NE Region.

In case the employee, hailing from NE Region is posted within NE Region he is not entitled to SDA till he is once transferred out of that Region.

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

It has already been clarified by MOF that a mere clause in the appointment order regarding All India Transfer Liability does not make him eligible for grant of SDA.

vii) Whether the payment made to some employees hailing from NE Region and posted in NE Region be recovered after 20/9/1991 i.e. the date of decision of the Hon'ble Supreme Court and/or whether the payment of SDA should be allowed to all employees including those hailing from NE Region with effect from the date of their appointment if they have All India Transfer Liability and are promoted on the basis of All India Common Seniority List.

The payment made to employees hailing from NE Region & posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employees hailing from NE Region and posted in NE Region be recovered from the date of payment or after 20th Sept. 94 whichever is later.

3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy.No.1349 dated 11.10.99 and Ministry of Finance (Expenditure)'s I.D.No.1204/E-II(B)/99 dated 30.3.2000.

Sd/-
(P.N. THAKUR)
DIRECTOR (SR)

1. Shri R.S.Bedi, Director, AEC
 2. Shri R.P.Kureel, Director, SSE
 3. Brig (Retd) G.S.Uban, IG, SFF
 4. Shri S.R.Mehra, MD(P&C), SSC
 5. Shri Ashok Chaturvedi, JS(Pers), R&AW
 6. Shri B.S.Gill, Director of Accounts, DACS
 7. Smt. J.M.Menon, Director-Finance(S), Cab.Sectt.
 8. Col. K.L.Jaspal, CIOA, CIA
- Cab. Sectt. UO No. 20/12/99-EX-II-1799 dated 2.5.2000

Section Officer
SSB, Itanagar

New Delhi, the 14th Deco.1983.

OFFICE MEMORANDUM

Subject: Allowances and facilities for civilian employees of the Central Government serving in the State and Union Territories of North-Eastern Region-improvements thereof.

The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have ~~xxx~~ been carefully considered by the Government and the President is now pleased to decide as follows:-

(i) Tenure of posting/deputation:

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years service. Periods of leave, training, etc. in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of Service mentioned above, may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employees concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central Deputation/training abroad
special mention in confidential Records.

Satisfactory performance of duties for the prescribed tenure in the North-East shall be given due recognition in the case of eligible officers in the matter of-

- (a) Promotion in cadre Posts;
- (b) deputation to Central tenure posts; and
- (c) Courses of training abroad.

The general requirement of at least three years service in a cadre Post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North East.

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Section Officer
SSB/Itanagar

A specific entry shall be made in the C.R. of all rendered a full tenure of service in the North-Eastern effect.

(iii) Special (Duty) Allowance:

Central Government Civilian employees who have All-India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 percent of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North-Eastern Region. Such of those employees who are exempt from payment of income-tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any Special pay and/ or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such special (Duty) allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and project Allowance will be drawn separately.

(iv) Special Compensatory Allowance:

1. Assam and Meghalaya

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

2. Manipur

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

Pay upto Rs. 260/-	Rs. 40/- p.m.
pay upto Rs. 260/-	15% of basic pay subject to a maximum of Rs. 150/- p.m.

3. Tripura

The rates of the allowance will be as follows:-

(a) Difficult Areas	25% of pay subject to a minimum of Rs. 50/- and a maximum of Rs. 150/- p.m.
(B) <u>Other Areas</u>	
Pay upto Rs. 260/-	Rs. 40/- p.m.
Pay above Rs. 260/-	15% of basic pay subject to a maximum of Rs. 150/- p.m.

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

(v) Travelling Allowance on first Appointment:

In relaxation of the present rules (S.R. 105) that travelling allowance is not admissible for journeys undertaken in

C7C
Section Officer
SSB, Itanagar

connection with initial appointment, in case of journeys for taking up initial appointment to a Post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 400 kms. for the Government servant himself are his family will admissible.

(vi) Travelling Allowance for journey on Transfer:

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

to only family
no receipt

(vii) Road Mileage for transportation of personal effects on transfer:

In relaxation of orders below S.R. 116, for transportation of personal effects on transfer between two different stations in the North-Eastern region, higher rate of allowance admissible for transportation in 'A' Class cities subject to the actual expenditure incurred by the Government Servant will admissible.

(viii) Joining Time with leave:

In case of Government servants proceeding on leave from a place of posting in North-Eastern Region, the period of travel in excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) Leave Travel Concession:

A Government servant who leaves his family behind at the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North-East to his home town or place where the family is residing that in addition the facility for the family

W. Thumar family

-27-

(restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North eastern region. In case the option is for the latter alternative, the cost of travel for the initial distance (400Kms/150 kms) will not be borne by the officer.

Officers drawing pay of Rs. 2250/- or above, and their families, i.e., spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance/Hostel Subsidy:

Where the children do not accompany the Government Servant to the North-Eastern Region, Children Education Allowance upto class XII will be admissible in respect of Children studying at the last station of posting of the employee concerned or any other station where the children reside, without any restriction of pay drawn by the Government Servant. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

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

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

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

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


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

Sd/-

(S.D. MAHALIK)

To
JOINT SECRETARY TO THE GOVERNMENT OF INDIA
All Ministries/Departments of the Government of India.

CTC


Section Officer
SSE, Itanagar

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C. APPENDIX - R-4)

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SUPREME COURT JUDGMENT

Special Duty Allowance in North Eastern Region can be paid only those who are posted there from outside the region and not to those locally recruited.

Facts : This Special leave appeal is against the judgment of the Tribunal which upheld the contention of the respondent/petitioner herein that for purpose of payment of Special Duty Allowance it is not only the staff who reside outside the North Eastern Region who are eligible, but also local residents for the reason that the latter has also been incidence of All India Transfer. The Petitioner/Respondent contended in this SLP that in order to draw person from outside the North Eastern Region this allowance was introduced and therefore, the object sought to be achieved gets frustrated in view of the judgment of the Tribunal and prayed for setting aside the same.

Held : We have duly considered the rival submission inclined to agree with the contention advanced by the learned additional Solicitor General for two persons. The first is that, a close perusal of two aforesaid memoranda along with what was stated in the memorandum dated 29/10/86 which has quoted in the question was meant to attract person outside the North Eastern Region to work in the Region because of inaccessibility and difficult terrain. We have said so because even the 1983 Memorandum starts by saying that the need for allowance was felt for "attracting and retaining" the service of the competent officers for service in the North Eastern Region mentioned about retention has been made because it was found that incumbent is going to that region on deputation use 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 Govt. Civilian Employees who have All India Transfer liability would be granted the allowance "on posting to any station to the North Eastern Region". This aspect is made clear beyond doubt by the 1987 memorandum which stated that allowance would not be payable merely because of the clause in the appointment order relating all India transfer liability. Merely because in the office memorandum of 1983 the subject was mentioned as quoted above is not enough concede the submission of Dr. Ghosh.

CTC


Section Officer
SSB/Itanagar

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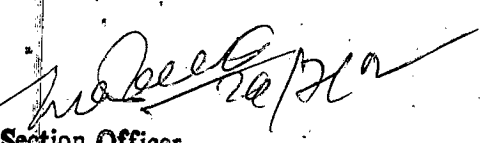
The submission of the respondent that the denial of the allowance to the respondents would violate the equal pay doctrine is adequately met by what was held Reserve Bank of India Vs Reserve Bank of India Staff Officers Association and Others, (1991 (4) SCC 132) to which an attention has been invited by the learned Solicitor General in which grant of Special Compensatory Allowance or Remote Locality Allowance only to the officers transferred from outside to Guwahati unit of Reserve Bank of India. While denying the same to the local officer posted at Guwahati was not regarded as violative of Article 14 of the Constitution.

In view of the above, we held that the respondents were not entitled to the allowance and the impugned judgment of the tribunal are therefore set aside. Even so, in view of the fair stand taken by the Additional Solicitor General we state that whatever amount has been paid to the respondent or for death matter to other similarly situated employees would not be recovered from them in so far as the allowance is concerned. The appeals are allowed accordingly.

{Union of India and Others Vijaya Kumar and Others,
1995(1)SLJ/139(SC) dated of judgment 20/09/94}

Civil Appeal No.3251 of 1993.

CTC


Section Officer
SSB, Itanagar

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C O P Y

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APPENDIX (R-5)

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-Regarding.

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dated 14/12/83 and 20.04.87 read with OM No. 20014/16/86-E.IV/E.II(3) dt. 01/12/88 on the subject mentioned above.

2. The Government of India vide the above mentioned OM dt. 14/12/83 granted certain incentives to the Central Government Civilian employees posted to the NE Region: One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have All India Transfer Liability".

3. It was clarified vide the above mentioned OM dt. 20/04/87 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 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 has 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 Petitioners were filed in the Hon'ble Supreme Court by some Ministries/Departments against the orders of the CAT.

CTC


Section Officer
SSB, Itanagar

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6. The Hon'ble Supreme Court in their judgment delivered on 20/09/94 (in Civil Appeal No.3251 of 1993) upheld the submissions of the Government of India that Central Government civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability). The apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

7. In view of the above judgment of the Hon'ble Supreme Court,, the matter has been examined in consultation with the Ministry of Law and the following decision have been taken:

- i) -The amount already paid on account of SDA to the ineligible persons on or before 20.09.94 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 allowances 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 Ministers/Departments etc. are requested to keep the above instructions in view for strict compliance.

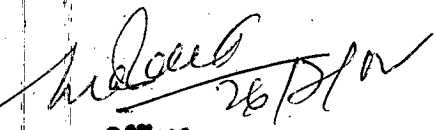
9. In their application to employees of India Audit Accounts Department, these orders issue in consultation with the comptroller and Auditor General of India.

10. Hindi version of this OM is enclosed.

(C. Balachandran)
Under Secy. to the Govt. of India

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

CTC


Section Officer
SSB/Itanagar

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APPENDIX (R-6)

COURT CASE
MOST IMMEDIATE

Ministry of Finance,
Department of Expenditure
E.II(B) : Branch.

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

Cabinet Secretariat may please refer to their D.O. letter No. 20/3/96-EA-I-645 dated 8th April, 1997 on the above mentioned subject and to say that for the purpose of sanctioning special duty allowance to Central Government civilian employees to 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 tests of recruitment zone, promotion zone etc. i.e. whether recruitment to the service/cadre/posts has been made on all India basis and whether/promotion based on a common seniority list for the service/cadre/posts as a whole. A mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc. to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance.

2. Therefore, Cabinet Secretariat may determine in each case whether the employees locally recruited in NE Region, who rejoin NE Region on their transfer to NE Region from outside and the Central Govt. civilian employees who are posted on first appointment from outside NE Region to NE Region, fulfill the above said conditions of all India transfer liability or not. If they fulfill all the conditions of all India transfer liability and are posted from outside NE region to NE region they are entitled to SDA otherwise not. However, if further advice is needed on any particular case, the same may be referred to this Ministry alongwith the views of IFU thereon.


sd/-
(P.S. Walia)

For Under Secretary to the Govt. of India

Cab.Sectt. Bikaner House Anne. (Sh.P.N. Thakur Director)
MOF(Exp)'s U.O. No.11(3)/85-E-II(B) dated 7th May, 1997.

CTC

1


Section Officer
SSB, Itanagar

Cabinet Secretariat
EA.I Section.


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

The matter was taken up with Ministry of Finance (Department of Expenditure) and a copy of their U.O. No. 11(3)/85-E-II(B) dated 7th May, 1997 is enclosed for information and further necessary action.

(Jagdish Chander)
Desk Officer.

1. Deputy Director(B) ARC w.r.t. his U.O. No. ARC/Coord/16(3)/94 dated 29.10.1996.
AD(EA) SSB w.r.t. U.O. No. 42/SSB/A1/92(61)-1855 dated 9.7.1996.
Cabinet Secretariat UO No. 20/3/96-EA.1-1040 dated 10.6.1997.

CTR


Section Officer
SSB, Itanagar

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APPENDIX - R-7
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All communications should be
addressed to the Registrar,
Supreme Court, by designation.
NOT by name
Telegraphic address:—
"SUPREMECO"

D. No. 3366/96/X

SUPREME COURT
INDIA

28th November, 1996
Dated New Delhi, the 19

FROM: ASSISTANT REGISTRAR (JUDL)

- TO : 1. The Union of India,
Represented by the Cabinet Secretary,
Government of India, North Block,
NEW DELHI.
2. The Director, SSB,
Office of the Director, SSB,
East Block V, P.K.Puran,
New Delhi - 110 066
3. The Divisional Organiser,
SSB Shillong Division,
A.P. Secretariat Building,
Shillong, Meghalaya.
4. Commandant, Group Centre, SSB,
Tripura, Salbagan, Agartala,
Tripura West.

WRIT PETITION NO. 794 OF 1995 ✓
(Under Article 32 of the Constitution of India)

WITH
INTERLOCUTORY APPLICATION NO. 1
(Application for ex-parte Stay)

Sadan Kumar Goswami & Ors.

.. PETITIONERS

VERSUS

Union of India & Ors.

.. RESPONDENTS

Sir,

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

Yours faithfully,

ASSISTANT REGISTRAR (JUDL)

Section Officer
SSB, Itanagar

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Verified to be true copy
Nashik
Assistant Registrar (Judl.)
28-11-96
1996
Supreme Court of India
REPORTABLE-1278/96

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION NO. 794 OF 1996

133724

(Under Article 32 of the Constitution of India)

Sub-Inspector Sadhan Kumar Goswami &
Ors.

...Petitioners

v.

The Union of India & Ors.

...Respondents

THE 25TH DAY OF OCTOBER, 1996

Present:


Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice S.P. Kurdukar

Sankar Ghosh, Sr. Adv. and Amlan Ghosh, Adv. with him for
the Petitioners.

O R D E R

The following Order of the Court was delivered:

CTC


Section Officer
SSB, Itanagar

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION NO.794 OF 1996

Sub-Inspector Saghan Kumar Goswami &
Ors.

... Petitioners

Versus

The Union of India & Ors.

... Respondents


O R D E R

This writ petition under Article 32 is one of the series of cases we have come across to reopen the judgments/orders of this Court rendered under Article 136 of the Constitution of India after their becoming final.

The admitted facts are that the petitioners who joined service under the Special Security Bureau (SSB) in North Eastern Region of India, claimed special duty allowances as per order of the Central Government. The question was considered by this Court in Union of India vs. S. Vijay Kumar [CA No.3251 of 93] decided on September 20, 1994; therein this Court had held thus:

"We have duly considered the rival submissions and are inclined to agree with the contention advanced by the

CTC


Section Officer
SSB, Itanagar

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

The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in

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Section Officer
SSB, Itanagar

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Reserve Bank of India vs. Reserve Bank of India Staff Officers Association & Ors. [(1991) 4 SCC 132] to which attention has been invited by the learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution."

In view of the above, this Court allowed the appeals of the State and held that the respondents were not entitled to the allowances but whatever amount was paid upto the date of the judgment, was directed not to be recovered from them. The petitioners are relying upon the Office Memorandum dated July 11, 1996 which provided that "it is not applicable from one station to another station within the region of Group A and B staff will further continue to get the facilities". They have filed this writ petition contending that while the Group C and D employees have been denied the benefit of the above judgment, special duty allowance benefit is being granted to Group A and B; it tantamounts to violation of Article 14 and, therefore, the writ petition should be allowed so as to give them the same benefit. Admittedly, the petitioners are Group C and D employees and are bound

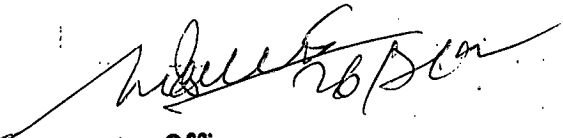
CTC


Section Officer
SSB, Itanagar

by the above declaration of law made by this Court. Merely because they were not parties to the judgment, they cannot file writ petition under Article 32. The contention that they are entitled to get the benefit at par with Group A and B officers under the above Memorandum dated July 11, 1996, ^{is not correct} Apart from the fact that Group A and B employees are entitled to special duty allowance contrary to the law declared by this Court in the above judgment, they too are bound by it; whether or not they are entitled to the above benefit due to this Court's judgment, the petitioners are not entitled to the benefits of the allowances as claimed by them. The judgment of this Court would indicate that it did not make any distinction between Group C and D and Group A and B Officers. All are governed by the law under Article 141. The petitioners are not entitled to the payment of the special duty allowance irrespective of whether or not they were parties to the judgment rendered in Vijay Kumar's case [supra]; they cannot be permitted to raise new grounds, though not raised or argued in earlier case, or canvass the correctness of the judgment by filing the writ petition under Article 32.

Of late, we have been coming across this type

CTC


Section Officer
SSB, Itanagar

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of writ petitions filed by several parties. We are constrained to take the view that the learned counsel who are advising them to move this court under Article 32 should certify to the court that though they advised the petitioners that the judgment of this Court binds them and cannot canvass its correctness and still, in spite of such advice, the party insisted upon filing the writ petition. It would then be for this Court to consider and deal with the case appropriately. Hereinafter, it would be necessary that the Advocate-on-Record should file, as part of the paper book of the writ petition filed under Article 32, a statement and certificate that the party concerned was advised that the matter is covered by the judgment of this Court and yet the writ petitioner insisted to file the same. Should such certification form part of the record of the petition, then only the Court would deal with the writ petition. In view of the fact that Class C and D employees are not entitled to special duty allowance as per the law already declared by this Court, the petitioners are not entitled to the benefit.

It is next contended that the Government is recovering as per Memorandum dated January 17, 1996 the amounts paid which is contrary to the direction issued

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Section Officer
SSB, Itanagar

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by this Court in the above judgment. The petitioners are not right in their contentions. It is seen that the Government have limited the payments already made after the date of the judgment of this Court; payments made prior to that date are not being recovered.

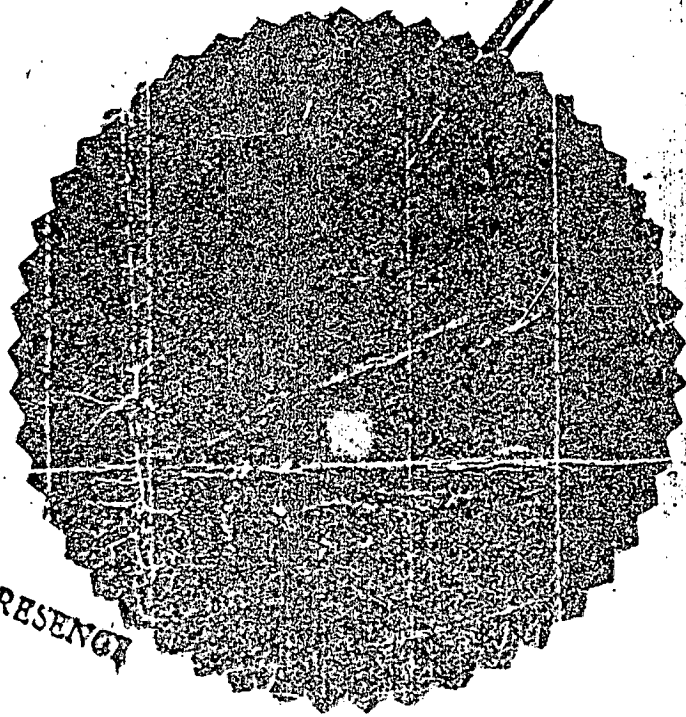
Under those circumstances, we do not think that there will be any justification to direct the respondents not to recover the amount from the petitioner after the date of the judgment of this Court.

The writ petition is accordingly dismissed.

.....J.
(K. RAHASWARY)

.....J.
(S.P. KURUKAR)

NEW DELHI;
OCTOBER 25, 1996.



CTC

[Signature]
26/10/96
Section Officer
SSB/Itanagar

SEALED IN MY PRESENCE
27/10/96

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41
Cabinet Secretariat
EA.I Section

APPENDIX-R

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

7.2/16
Reference this Secretariat's UO of even number dated 17.7.85 (enclosed) in which a clarification after discussion with Ministry of Finance was issued that Group 'C' employees recruited locally in the NE Region but who are liable to serve anywhere will be eligible for Special Duty Allowance (SDA) though they may not have been transferred out of that region since their joining the service due to administrative reasons.

2. In the context of a court case, the Min. of Finance requested this Sectt. to make available our file in which the above clarification was issued. On perusal of the papers, Ministry of Finance informed that they had not agreed to the decision contained in the clarification but they made it clear that SDA is not admissible to the locally recruited employees. It was later on clarified vide their O.M. dated 20.4.87 (enclosed). In view of the position that Ministry advised us to withdraw our clarification issued on 17.7.85 forthwith. It was also envisaged that besides stopping irregular payments of SDA, recovery of the over payments may also be made on account of SDA paid under our clarification dated 17.7.85.

3. A proposal for waiver of payment of Special Duty Allowance made to locally recruited employees of Group 'C' and 'D' of DGS and R&AW serving in the NE Region was mooted for the consideration of Ministry of Finance stating that at this belated stage, it will not be possible to recover the amount paid wrongly to the employees as possibly most of them have retired/quit service/died and it would be a difficult task to ascertain the exact amount paid to various such employees. In view of the position that Ministry was requested to agree waiver of such payments made to the employees who were not eligible as per Ministry of Finance ruling. That Ministry has conveyed their decision as follows:

"that the clarifications issued by Cabinet Sectt. on 17.7.85 was not correct and the payments made to the ineligible employees merit recovery. However, in a recent judgement dated 20 September 94 pronounced by the Hon'ble Supreme Court, while the stand of the Govt. of India in the payment of SDA as clarified vide Ministry of Finance O.M. dated 20th April 87 has been upheld, it has been directed that the amount already paid would not be recovered. In this connection, a copy of the O.M. dated 12.1.96 issued by Ministry of Finance is enclosed according to which the irregular payments made on or after 20 September 94 have to be recovered."

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Section Officer
SSB/Itanagar

contd...2/-

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4. In view of the Min. of Finance ruling in the preceding paragraph, DGS/R&AW may kindly regulate the SDA of their locally recruited Group 'C' & 'D' employees serving in the NE Region and stop payment of SDA to them forthwith. Recovery of irregular payments made may also be effected. A compliance report in this regard may be sent to this Sectt. at an early date.

P.N. Thakur
(P.N. Thakur)
Director (SR)

1. R&AW (Sh. Gurinder Singh, JS(Pers.))
2. DGS (Sh. S.R. Mehra, JD(P&C))
3. DACS (Sh. C.V. Avadhani, Director)
Cab.Sectt. U.O.No.7/47/84-EA.I v/ dated.

117 APR 1996

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Section Officer
SSB/Itanagar

[Signature]

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APPENDIX (R-9)
SL. No. 119

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(APPENDIX R-9)

Original Application No. 43 of 2000

Date of Decision: This the 11th day of January 2001

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

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

Shri Mahuresh Nath and 4 others

.....Applicants

The applicants are employees of the
Special Service Bureau, Arunachal Pradesh Division.

By Advocate Mr K.P. Singh.

- versus -

1. The Union of India
(Represented by the Cabinet Secretariat),
Department of Cabinet Affairs,
New Delhi.
2. The Director General of Security,
Block-V R.K. Puram,
New Delhi.
3. The Director, SSB,
Block-V R.K. Puram,
New Delhi.
4. The Director of Accounts,
Cabinet Secretariat,
New Delhi.
5. The Divisional Organiser,
Arunachal Pradesh Division, SSB,
Itanagar, Arunachal Pradesh.

.....Respondents

By Advocate Mr B.S. Basumatary, Adcl. C.G.S.C.

ORDER (ORAL)

CHOWDHURY, J. (V.C.)

The admissibility of Special (Duty) Allowance (SDA for short) is the key question raised in this application. The applicants are five in number and they are working in the Secretarial Cadre of Service under the respondents. They are claiming SDA in terms of the Central Government Notification dated 14.12.1993 and other Notifications issued from time to time.

CTC

Section Officer
SSB/Itanagar

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2. The applicants on their own stated that though they hail from the North Eastern Region and are permanent residents of Assam, they were recruited in the Special Service Bureau (SSB for short) in the initial stage and consequent upon the promulgation of the Cadre Rules they were absorbed in D.C.(S) Secretarial Cadre Rules during 1975. Since they are borne in the Cadre Rules they have All India Transfer liability.

3. The issue raised in this application is no longer Res Integra in view of the judgment of the Supreme Court rendered in Civil Appeal No.3251 of 1993 disposed of on 20.3.1994 in Union of India and others vs. S. Vijay Kumar and others, reported in (1994) 28 ATC 593. As per the aforementioned decision, Central Government employees who have All India Transfer liability are entitled to grant of SDA on being posted (emphasis supplied) to any station in the North Eastern Region from outside the region and SDA would not be payable merely because of the clause in the appointment letter relating to All India Transfer liability. Consequent thereto, the concerned Ministry issued necessary instructions not to disburse SDA to ineligible persons. There are also a number of like decisions rendered by the Tribunal as well as the High Court.

In the circumstances there is no scope for directing the respondents to pay SDA to the present applicants. Mr K.P. Singh, learned Counsel for the applicants cited the instance of some persons who are allegedly being paid SDA though they are similarly situated like the present applicants. Assuming that the respondents are paying SDA to ineligible persons contrary to the provisions of law that would not be a ground for giving similar unlawful benefit to the applicants by the Tribunal.

5. Considering all the aspects of the matter and upon hearing the learned counsel for the parties we do not find any merit in this application. Accordingly the same is dismissed. There shall, however, be no order as to costs.

SD/ VICE CHAIRMAN

SD/ MEMBER (Adm)

CTC

[Signature]
Section Officer
SSB/Itanagar