

0/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 101/2003

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

E.P/M.A No. 6/2006

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 101 /2003

Misc Petition No: _____

Contempt Petition No: _____

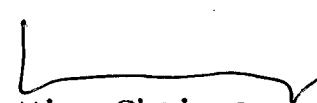
Review Application No: _____

Applicants: - M. Vishwakarma

Respondents: - Wor & Ors.

Advocate for the Applicants: - Mr. M. Chanda, G.N. Chakrabarty &
Advocate for the Respondents: - S. Choudhury

CGSC.

Notes of the Registry	Date	Re	Order of the Tribunal
This application is in form but not in time Condonation Petition is filed / not filed C.P. for Rs. 50/- submitted vide IPO/BD No 79/6079/11 Dated.... 12/4/03	14.5.2003	mb	Heard Mr. M. Chanda, learned counsel for the applicant. Issue notice to show cause as to the the application shall not be admitted. Returnable by four weeks. List on 11.7.2003 for orders.
Steps taken. Notice 13/5/03	mb		 Vice-Chairman
Notice forwarded & sent to S.C. for writing the respondent No. 1 to 5 to Regd. A.I.D. D.P.O. 1078 W/ 1082	11.7.2003	mb	Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents stated that he has received instruction and prayed for time to file reply. Prayer is allowed. List again on 12.8.2003 for admission.
19/8 20/8/03	mb		 Vice-Chairman
No reply has been brought.	mb		

(2)

O.A.No.101/2003

12.8.2003

No written statement so far filed by the respondents. The application is admitted. No fresh notice need to be issued. The respondents may file written statement within four weeks.

List on 3.9.2003 for orders.

No. 128/2003
Written statement
has been filed.

By
11.8.03.

No. Written statement
has been filed.

By
11.8.03.

mb

3.9.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. K.V. Prahaladan, Administrative Member.

Vice-Chairman

Mr. A. Deb Roy, learned Sr. C.G. S.C. for the respondents stated that he is filing written statement in course of the day. List the matter again on 9.9.2003 for admission. Endeavour shall be made to dispose of the same at the admission stage.

4.9.03

Written statement
by Respondents.

By

K.V. Prahaladan
Member

Vice-Chairman

mb

9.9.03 Adjourned. List on 17.11.03.

B/0

17.11.2003 Present: Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman

Hon'ble Shri S.K. Naik, Administrative Member.

Adjourned. List for admission on
19.11.2003.

Deb Roy

nkm

Member

B/0

Vice-Chairman

19.11.2003 Present : The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman.

The Hon'ble Sri S.K. Naik, Administrative Member.

Mr. G.N. Chakrabarty, learned counsel for the applicant seeks and allowed two weeks time to file rejoinder.

Admit, subject to the legal please

List on 8.12.2003 for orders.

Member

Vice-Chairman

mb

23.12.03 Present : The Hon'ble Sri B.Panigrahi, Vice-Chairman.
The Hon'ble Sri K.V.Prahladan, Admn.Member.

Two weeks time allowed for filing rejoinder. Let the matter appear before next available Division Bench for hearing.

Member

Vice-Chairman

pg

23.01.2004 Present : The Hon'ble Shri Bharat Bhushan, Judicial Member.

The Hon'ble Shri K.V. Prahladan, Administrative Member.

Mr. G.N. Chakrabarty, learned counsel for the applicant requests for adjournment on behalf of the petitioner. Not opposed by the respondents. Accordingly, the case is adjourned to 24.02.2004 for hearing.

Member (A)

Member (J)

bb

17.6.04

Font Heard, list on 18.6.04

By Order

Written Statement
filed by the respondents

BB
22.12.03

No rejoinder has
been filed.

MM
22.11.04

16/6/04
No rejoinder has been
filed by the applicant.

NS
16/6/04

17.6.04

Font Heard, list on 18.6.04

By Order

18.6.04

Hearing concluded.
Order reserved.

By order

AB

28.7.2004

Judgment delivered in open Court,
kept in separate sheets. The application
is allowed in terms of the order. No
order as to costs.

Arg 16/8

20.8.04

Copy of the
Judgment has been
sent to the Office
for serving the same
to the applicant
post.
sd

mb


Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL : **GUWAHATI** BENCH
AT **GUWAHATI**

NO. O.A. **101** of 2003

DATE OF ORDER: **28/07/2004**

Shri Mahanth Vishwakarma

Petitioners

Mr. M.Chanda

Advocate for the
Petitioner (s)

Versus

U.O.I. & Ors.

Respondent (s)

Mr.A.Deb Roy, Sr.CGSC

Advocate for the
Respondent (s)

C O R A M :

1. The Hon'ble **Mrs.Bharati Ray, Member (J)**

2. The Hon'ble **Mr. K.V. Prahladan, Member(A)**

1. Whether reporters of local papers may be allowed
to see the judgment ?

2. To be referred to the reporter or not ? *Ans*

3. Whether the judgment is to be circulated to the
other Benches ?

Judgment delivered by Hon'ble **Mrs. Bharati Ray, Member (J)**

* * * * *

K

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application no. 101/2003

Date of decision : This the 16th day of July, 2004

Hon'ble Mrs. Bharati Ray, Member (J)

Hon'ble Shri K.V. Prahaldan, Member (A)

Shri Mahanth Vishwakarma,
Laboratory Technician,
C/o. Commandant,
SSB Group Centre, Tezu,
Dist. Lohit,
Arunachal Pradesh.

.. Applicant

By Advocate Mr. M. Chanda

-versus-

1. The Union of India,
Represented through
the Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.

2. The Director General of Security,
Office of the Director, SSB,
Block-V (East), R.K. Puram,
New Delhi 110 066.

3. The Divisional Organiser,
A.P. Division, S.S.B.
Itanagar, Arunachal Pradesh.

4. The Area Organiser (Staff),
Divisional Headquarters, SSB
Itanagar, Arunachal Pradesh.

5. The Asstt. Commandant/DDO,
Group Centre, SSB
Tezu, Arunachal Pradesh.

.. Respondents.

By Advocate Mr. A. Deb Roy, Sr.CGSC

O R D E R

Mrs. BHRATI RAY, MEMBER (J)

This is an application filed by the applicant u/s
19 of the A.T. Act, 1985 seeking the following relief:

8.1. That the Hon'ble Tribunal be pleased to set
aside and quash the impugned memorandum issued

under No.GCT/0531/2002-03/SDA/12601, dated 05.10.02 and all other letters associated thereto.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to pay Special Duty Allowance (SDA) to the applicant in terms of O.M. dated 14.12.83/1.12.88 and O.M. dated 22.7.98, and also in the light of judgment and order passed on 10.8.2001 in O.A. No.84/2001 by this Hon'ble Tribunal, along with arrear, with retrospective effect from the date from which it was stopped.

8.3 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to payment of SDA in terms of the O.M. dated 14.12.83, 1.12.88, 22.7.98 and in terms of O.M. dated 12.1.96 issued by the Govt. of India, Ministry of Finance.

8.4 That the respondents be directed to refund the full amount of SDA recovered from the applicant immediately.

8.5 Cost of application.

8.6 Any other relief(s) which the applicant is entitled to as the Hon'ble Tribunal deems fit and proper.

2. The undisputed facts of the case are that the applicant was initially appointed as Laboratory Technician by the Directorate General of Security, SSB, New Delhi vide appointment letter No.D/SSB/A-2/89(18) dated 23.2.90 and was posted in the Office of the Divisional Organiser, SSB, Arunachal Pradesh Division, Itanagar in the North Eastern Region and joined there w.e.f. 19.3.90.

3. Government of India had decided to give some incentive to the civilian employees of the central government working in the states and Union Territories of the North Eastern Region. The scheme amongst others granted Special Duty Allowance (hereinafter referred to as SDA) to the employees having all India transfer liability. The original scheme was issued under Ministry

of Finance's O.M. No. II 20014/3/83/E-IV dated 14.12.83 whereby SDA was given with effect from 1.11.1983 in terms of para 3 of the said O.M. The period and rate of payment was subsequently modified from time to time. The central government employees posted in North Eastern Region covered by the said OM dated 14.12.83 were paid SDA in terms of the said OM. Copy of the OM dated 14.12.1983 is enclosed as Annexure -III to the OA.

4. In terms of the above OM and on fulfillment ~~criteria~~ of the eligibility ~~✓~~ the applicant was granted SDA which was paid to him since his initial appointment. But thereafter, all of a sudden, the payment of SDA has been denied to the applicant and recovery has been effected from his salary on the plea that the applicant is not entitled to get SDA. The applicant submitted representation to the respondents on 22.4.2002 requesting for payment of SDA and refund of the amount recovered on account of SDA to him. The said representation was followed by subsequent representations dated 22.5.2002, 10.8.2002 and 5.10.2002. Ultimately the respondent no.5 vide impugned memorandum No. GCT/0531/2002-03/SDA/12601 dated 5.10.02 rejected the prayer of the applicant informing him that he is not eligible for SDA and forbidding him from making further correspondence in this regard. Being aggrieved by the same the applicant approached this Tribunal seeking the relief mentioned above.

5. It is the contention of the applicant that in terms of para 10 of the appointment letter dated 23.2.90 applicant has all India transfer liability and he hails from outside the North Eastern region and posted at 19.3.90 Itanagar w.e.f. ~~22~~ and subsequently transferred to Group Centre, SSB, Tezu where he joined on 22.7.1995, both of which are in the North Eastern region. Therefore, in terms of O.M. dated 14.12.83 and O.M. dated 12.1.96 the applicant is entitled to get the SDA. The learned counsel for the applicant in this context has placed reliance on the judgment of the Hon. Supreme Court in the case of Union of India and Ors. vs. S. Vijayakumar and Ors. reported in 1994 Supp(3)SCC 649 and a judgment of this Bench in OA 136/2000 decided on 20.12.2000 which was allowed following the above mentioned decision of the Hon'ble Supreme Court.

6. Heard Mr. ~~M. Chanda~~, ~~XXXXXX~~ learned counsel for the applicant and Mr. A. Deb Roy, learned Sr.C.G.S.C for the respondents. We have gone through the facts of the case and material papers placed before us. We have also gone through the judgments relied upon by the learned counsel for the parties.

7. The O.M. dated 14.12.1983 which was issued by the Ministry of Finance to provide some incentive in North Eastern Region was subsequently clarified by further O.M. dated 29.10.1986 and 20.4.1987. A number of litigations were filed before the Tribunal and finally the matter was resolved by the decision of the Supreme Court rendered in the case of Union of India vs. S.

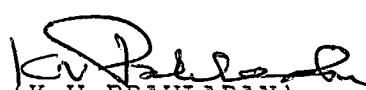
Vijay Kumar and Ors. reported in 1994 (28) ATC 598. It was observed by the Hon'ble Supreme Court that in the O.M. dated 29.10.1986 which was quoted in the O.M. dated 20.4.1987 clearly shows that allowance in question was meant to attract persons outside the North Eastern Region to work in this region because of the inaccessibility and difficult terrain and held that 1986 memorandum made the 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 and the allowance (SDA) is not payable to employees who are residents of that region." It is further held that denial of the allowance to such employees did not violate Article 14 and 16 of the Constitution.

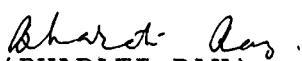
8. On going through the judgment of this Bench in OA 136/2000 we find that the applicant in the said OA is a person hailing from outside North Eastern region and selected on All India selection was initially sanctioned SDA but thereafter he was denied the payment of SDA. This Tribunal following the decision of the Hon. Supreme Court (supra) allowed the OA. The applicant in this OA is similarly placed. We have gone through the decision of this Bench in OA No. 43/2000 decided on 11.1.2001 relied upon by the respondents and find that in the said case the applicant therein hails from the North Eastern Region and permanent residents of Assam and recruited in the Special Service Bureau in the initial stage and consequent upon the promulgation of the Cadre Rules they

were absorbed in D.G(S) Secretarial Cadre Rules during 1975 and therefore held that they are not entitled to the benefits of the above OMs. Therefore, the case relied upon by the respondents has no application in the case in hand.

9. In view of the above facts and circumstances we are of the view that the applicant's case is squarely covered by the decision of the Hon'ble Supreme Court as well as the decision of this Bench in OA No.136/2000. Therefore, the impugned order dated 05.10.2002 is not sustainable and is quashed and set aside. The respondents are directed to pay the SDA along with arrears from the date it was stopped. Respondents are also directed to refund the amount, if any, already recovered from the applicant. Respondents shall complete the above exercise within two months from the date of communication of the order.

10. In result, the O.A. is allowed with no order as to costs.


(K.V. PRAHLADAN)
MEMBER (A)


(BHARATI RAY)
MEMBER (J)

MD

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Central Administrative Tribunal
केन्द्रीय प्रशासन विभाग
Guwahati Bench.
গুৱাহাটী ন্যায়পাই

8 JUN 2007 587
B

Appeal from Misc Case
Civil Rule in WPC(2) 4611/05

No. 1040 of 2006

of 20(6)

Applicant

Petit oncer

Union of India & others
versus

Shri Mahant viswakarma

Respondent

Opposite Party

For Appellant Mr. D. C. Chakravarty
Petitioner

For Opposite Party

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders, or proceedings with signature
1	2	3	4

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

M.C.No. 1040/06
in
W.P(C)No.4611/05

BEFORE

THE HON'BLE MR. JUSTICE A. H. SAIKIA

THE HON'BLE MR. JUSTICE H.N. SARMA

SAIKIA,J

12.03.2007

By means of this Misc. Application the petitioner has sought for restoration of W.P(C)No.4611/05 being dismissed by the Lawzima Court on 28.7.2005

Having meticulously examined the order dated 28.7.05 passed by the Lawzima Court including the initial order dated 24.6.05 passed by this court, it appears that order dated 28.7.05 was passed in pursuance of the order dated 24.6.05 wherein the petitioner was directed to take requisite steps for issuance of notice upon respondents within one week failing which writ petition would be dismissed without further reference to a Bench.

Since the order dated 28.7.05 was passed due to non compliance of the order dated 24.6.05 of the Court and the same is being a consequential order only, we are of the considered view that it is not a fit case for restoration of the related writ petition. It is admitted that the connected writ petition was dismissed not on the count of non prosecution or default.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
		2-	In that view of the matter, we do find no merit in this Misc. Application and the same stands dismissed.

Sd/- H.N. SARMA.
JUDGE

Sd/- A.H. SAIKIA.
JUDGE

Memo No.HC.XXI. 15/6/3-19

/R.M.Dtd.

26/6/02

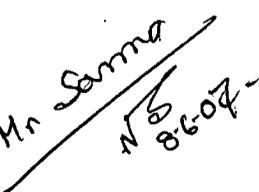
Copy forwarded for information and necessary action to :-

1. The Union of India, represented through the Secretary to the Govt. of India, Ministry of Home Affairs, New Delhi.
2. The Director General, SSB, Block-V (East), R.K. Puram, New Delhi-66.
3. The Divisional Organiser, A.P. Division, SSB, Itanagar, Arunachal Pradesh, now I.G. Frontier Headquarters, SSB, Patna, Bihar.
4. The Area Organiser (Staff), Divisional Headquarters, SSB, Itanagar, Arunachal Pradesh. Now Staff Officer, Frontier Headquarters, SSB, Patna, Bihar.
5. The Assistant Commandant/DDO, Group Centre, SSB, Tezu, Arunachal Pradesh, now under Commandant 13th Bn., Piprakothi, Bihar.
6. Shri Mahanth Vishwakrama, Laboratory Technician, presently posted at 24th Bn., SSB, Sikkim (West Bengal).
7. The Central Administrative Tribunal, Gauhati Bench, Guwahati.

By order

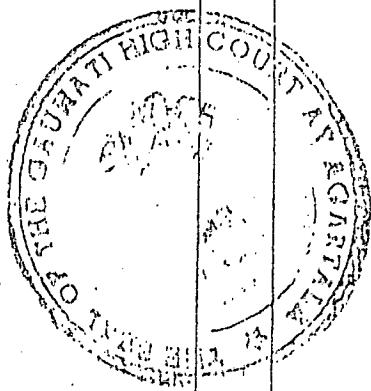

Asstt. Registrar (Judl.)
Gauhati High Court, Guwahati.

3/6/02
13/6/02


Mr. Sarma
13/6/02

by Officer
Advocate

Serial No.	Date	Office notes, reports, orders or proceedings with signature
<u>BEFORE :</u>		
THE HON'BLE THE CHIEF JUSTICE THE HON'BLE MR. JUSTICE B.B. DEB		
5-3-2001		Heard Mr. P.K. Dhar, the learned Senior Central Government Standing Counsel for the petitioners.
<p>This writ petition, in our considered view, deserves to be dismissed in limine. The impugned judgment rendered by the Central Administrative Tribunal, Guwahati on the basis of not only notification but a judgment of the Apex Court. We are in respectful agreement with the views taken by the Tribunal.</p> <p>Finding no merit in the writ petition, the same is dismissed in limine.</p> <p>Learned Tribunal in its ultimate decision granted 2 months' time. Time would stand extended. The payment be now made within 2 (two) months from today.</p> <p>Copy of the order be made available to the learned Senior Central Government Standing Counsel at the earliest.</p>		



TRUE COPY

Sub: Superintendent (Records)
Gauhati High Court,
Agartala Bench.

11.1.02

10/10/2001
JUDGE

Official

X
1

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

In the matter of

O.A No. 101/2003

Shri M. Viswakarma

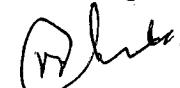
-Vs-

Union of India & Ors.

The applicant relies upon the following judgments:

1. 1994 Supp (3) SCC 649 (Union of India Vs. S. Vijayakumar and Others.) - Para-4.
2. CAT Guwahati, Judgment dated 20.12.2000 passed in O.A. No. 136 of 2000 (Santosh Kumar N.V Vs. Union of India and others) - Para-2.
3. CAT, Guwahati, Judgment and Order dated 13.02.2003 passed in O.A. No. 8 of 2003 (Mrs. Santosh Raina Walli Vs. Union of India and Others).
4. Order of the Hon'ble Gauhati High Court passed in W.P (C) No. 107 of 2000 dated 05.03.2001.

Filed by:



Advocate.

केन्द्रीय प्रशासनिक अधिकारालय
Central Administrative Tribunal

12th MAY 2003

गुवाहाटी न्यायालय
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:::GUWAHATI

O.A. NO. 101 /2003

Shri Mahanth Vishwakarma

- Versus -

The Union of India & Ors.

SYNOPSIS OF THE DATE AND PARTICULARS OF THIS APPLICATION

<u>Date</u>	<u>Synopsis of Particulars</u>
23.2.90	- Applicant appointed as Laboratory Technician by the Directorate General of Security, SSB, New Delhi after conducting selection Test amongst the candidates on All India basis and posted in Arunachal Pradesh in the N.E. Region.
30.3.90	- Order issued by the Divisional organiser, Itanagar, Arunachal Pradesh posting the applicant at Itanagar w.e.f. 19.3.90 as Laboratory Technician.
	The applicant was paid Special Duty Allowance (SDA) in terms of O.M. dated 14.12.83, of Ministry of Finance, Govt. of India like other Central Government employees.
22.7.95	- Applicant then joined Group Centre, SSB, Assam Tezu, NER on transfer.
12.1.96	- Ministry of Finance Ministry of Finance, Govt. of India issued O.M. No. 11(3) /95-I/ 11(s) regulating the payment of SDA and spelt out that Central Government civilian

18
Filed by the
Applicant through
Advocate Singh N.
Chakraborty on 10/03/03

employees who have all India liabilities are entitled to the grant of SDA, on being posted at any station in the NE Region from outside the region. This was issued following the decision rendered by the Hon'ble Supreme Court on 20.9.94.

Applicant is entitled to SDA in terms of the aforesaid OMs and order. He was accordingly paid SDA but suddenly his SDA was stopped and recovery effected on the plea that he is not eligible for SDA.

22.4.02,	- Applicant submitted representations praying for payment of SDA and refund of the amount recovered from the applicant by way of SDA to the applicant.
22.5.02	
10.8.02	
05.10.02	
05.10.02	- Respondents issued impugned memorandum No. 12601 rejecting the prayer of the applicant and forbidding him from making any further correspondance in this regard.

PRAYERS

8.1 - Be pleased to set aside and quash the impugned memorandum No.GCT/0531/2002-03/SDA/ 12601 dtd. 05.10.02 and all other associated thereto issued by the Respondents.

8.2. - Be pleased to direct the respondents to pay SDA to the applicant in terms of O.M. dated 14.12.83, 1.12.88, 22.7.98 and also in the light of judgment and order dtd. 10.8.01 passed by this Hon'ble Tribunal in O.A. No. 84/2001 alongwith arrear.

8.3. - Be pleased to declare that the applicant is entitled to SDA in terms of the OM dated 14.12.83, 1.12.88, 22.7.98 and in terms of O.M. dtd. 12.1.96 issued by the Government of India, Ministry of Finance.

8.4. - Respondents be directed to refund the SDA recovered from the applicant immediately.

8.5. - Cost of application.

8.6. - Any other relief (s) which the applicant is entitled to as the Hon'ble Tribunal deems fit and proper.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application Under section 19 of the Administrative
Tribunal Act, 1985)

O.A. No. /2003

Shri Mahanth Vishwakarma , Applicant

- Versus -

Union of India & Others, Respondents

I N D E X

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4	II	order dated 30.3.90	16
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9	VII	Memorandum dtd. 05.10.02	25
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Filed on :

Filed by

Advocate

Filed by Mr. Appellant
22
M. George

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An application Under Section 19 of the Administrative
Tribunals Act, 1985)

O.A. No. 161 /2003

BETWEEN

Shri Mahanth Vishwakarma
Laboratory Technician,
c/o Commandant,
SSB Group Centre, Tezu
Dist. Lohit
Arunachal Pradesh

..... Applicant

- AND -

1. The Union of India

Represented through the Secretary to the
Government of India, Ministry of Home
Affairs, New Delhi.

2. The Director General of Security,
Office of the Director, SSB,
Block-V (East), R.K. Puram
New Delhi -110 066.

3. The Divisional Organiser,
A.P. Division, S.S. B.
Itanagar, Arunachal Pradesh

4. The Area Organiser (Staff)
Divisional Headquarters, SSB,
Itanagar, Arunachal Pradesh

contd...p/2

Mahanth Vishwakarma

5. The Asstt. Commandant/DDO
Group Centre, SSB
Tezu, Arunachal Pradesh.

..... Respondents

DETAILS OF APPLICATION :

1. Particular of Order(s) against which this application is made :

This application is made against the impugned Memorandum No. GCT/0531/2002-03/SDA/12601 issued on 05.10.02 by the Respondent No.5, whereby the applicant is informed that the applicant is not entitled to Special Duty Allowance (SDA) and the applicant is further cautioned not to make unnecessary correspondance in this regard.

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of this application is well within jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declares that this application is filed within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case :

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protections as guaranteed by the Constitution of India.

(4)

4.2. That the applicant was initially appointed as Laboratory Technician by the Directorate General of Security, SSB, New Delhi vide appointment letter No. D/SSB/R-2/89(18) dated 23.2.90. The post of Laboratory Technician is a civil post and the recruitment to the post was made on All India basis for which the selection test was held at SSB Directorate, R.K. Puram, New Delhi from amongst the candidates sponsored by Central Employment Exchange. Candidates from different states of India and Union Territories appeared for test/interview and the applicant also appeared in the same in New Delhi through Central Employment Exchange, following which he was selected and appointed vide letter dated 23.2.90.

(Copy of appointment letter dated 23.2.90 is annexed herewith as Annexure-I).

4.3. That after appointing the selected candidates, the SSB Directorate, New Delhi posted the appointed persons in different parts of the country and accordingly, the applicant was posted in the Office of the Divisional Organiser, SSB, Arunachal Pradesh Division, Itanagar in the North Eastern Region and necessary Travelling allowances were paid from the Directorate. The applicant thereafter proceeded to NE Region and assumed duties as Laboratory Technician at Itanagar with effect from 19.3.90 vide order dated 30.3.90 of Divisional Organiser, Itanagar.

(Copy of order dated 30.3.90 is annexed herewith as Annexure-II).

cond...p/5

Mahanu Vishwakarma

4.4. That the Government of India had decided to give some incentive to the civilian employees of the Central Government working in the States and Union Territories of the North Eastern Region. The scheme amongst others granted Special (Duty) Allowance to the employees having All India Transfer Liability. The original scheme was issued under Ministry of Finance's O.M. No. II 20014/3/83/E-IV dated 14.12.83 whereby Special Duty Allowance (SDA) was given with effect from 1.11.1983 in terms of para 3 of the said O.M. The period and rate of payment was subsequently modified from time to time. The Central Government Civilian employees posted in North Eastern Region covered by the said O.M. dated 14.12.83 were paid SDA in terms of the said O.M.

(Copy of O.M. dated 14.12.83 is annexed herewith as Annexure-III).

4.5. That, those who were even thereafter denied the benefit of SDA, approached the Hon'ble Central Administrative Tribunal and got the benefit of SDA. Thereafter the same was taken upto the Hon'ble Supreme Court in number of cases. The Hon'ble Supreme Court decided on the entitlement of SDA as laid down in the O.M. dated 14.12.1983 following which the Government of India, Ministry of Finance issued an O.M. No.11(3)/95-I/11(S) dated 12.1.96 regulating the payment of SDA in the manner as indicated in para 6 of the said OM which clearly spells out that Central Government civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted at any station in the NE Region from outside the region.

(Copy of O.M. dated 12.1.96 is annexed herewith as Annexure-IV). *Markant Krishnakumar*

26
contd

4.6. That the applicant begs to state that he has All India Transfer liability which is evident from para 10 of his appointment letter dated 23.2.90. Further he hails from outside the N.E. Region and posted at Itanagar with effect from 19.3.90 and subsequently transferred to Group Centre, SSB, Tezu where he joined on 22.7.95, both of which are in the N.E. Region. The applicant is not a resident of N.E. Region but a permanent resident of Vill- Deokali, P.O. Dhamner, Dist. Deoria, UP-274505 and was recruited at Delhi by SSB Directorate, New Delhi and subsequently posted in the N.E. Region. As such, the applicant possesses all the eligibility required for the grant of SDA as laid down in the O.M. dated 14.12.83 and O.M. dated 12.1.96 annexed as above and is entitled to get the SDA. Further his seniority is maintained on All India basis.

4.7. That in terms of above, and on fulfilment of the eligibility the applicant was granted SDA which was paid to him since his initial appointment. But thereafter, all on a sudden, the payment of SDA has been denied to the applicant and recovery has been effected from his salary on the plea that the applicant is not entitled to get SDA which is surprising. The Respondents, by denying the payment of SDA and effecting recovery of the same, have acted in an arbitrary, unjust and unfair manner.

4.8. That thereafter, the applicant submitted representation to the respondents on 22.4.2002 praying for payment of SDA and refund of the amount recovered

(7)

on account of SDA to him. This was followed by subsequent representations submitted on 22.5.2002, 10.8.2002 and 5.10.2002 but with no result whatsoever.

(Copy of representations dated 22.4.2002 and 10.8.2002 are annexed herewith as Annexure-V & VI respectively)

4.9. That eventually, the Respondent No.5, vide his impugned memorandum issued under No.GCT/0531/2002-03/SDA/12601, dated 5.10.02 rejected the prayer of the applicant, informing that the applicant is not eligible for SDA and forbidding him from making further correspondence in this regard.

(Copy of impugned Memo dated 5.10.2002 is annexed herewith as Annexure-VII)

4.10. That the applicant humbly submits that as regards the grant of SDA to the applicant, the matter is squarely covered by the judgment rendered by this Hon'ble Tribunal on 10.8.2001 in O.A. No. 84/2001 (Jagmohan Singh - Vs- U.O.I & Ors.) and regarding recovery of SDA also, the law has been laid down by this Hon'ble Tribunal vide its judgment and order dated 22.12.2000 passed in O.A. Nos. 217, 274 and some others of 2000 laid down the law and held inter alia as under :

" 11. As regards the recovery of the amount already paid to them by way of SDA, the Hon'ble Supreme Court in the aforesaid

contd... p/8

Maheshwari Mishra

judgments has specifically directed that whatever amount has been paid to the employees, would not be recovered from them. The Judgment of the Supreme Court was passed on 20.9.1994 but the Respondents on their own had continued to make the payment of SDA to the applicants till 31.1.99. The orders have been passed by the Respondents to stop payment of SDA only on 12.1.99. The order passed on 12.1.99 can have only prospective effect and, therefore, the recovery of the SDA already paid to the applicants would have to be waived.

12. For the reasons recorded above, the OA is partly allowed and the respondents are directed that no recovery would be made by them of the amount of SDA already paid to the applicants upto 31.1.99. In case any amount on account of payment of SDA has been recovered/withheld from retiral dues, the same shall be refunded/released to the applicants immediately.

The O.A. is disposed of with the above observation. No order as to Costs. "

sd/-

It is abundantly clear from the above two judgments that the applicant is entitled to the grant of SDA and that the recovery made on account of SDA by the Respondents from the applicant is unlawful.

(Copy of Judgment and Order dated 10.8.2001 is annexed herewith as Annexure- VIII).

contd...p/9

Mahanu Vishwakarma

4.11. That the applicant most humbly submits that due to non-payment of SDA to the applicant as per the settled position of law, the applicant has been incurring heavy financial loss every month and finding no other alternative, the applicant is approaching this Hon'ble Tribunal, praying for protection of his rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with and to direct the Respondents to pay SDA to the applicant with retrospective effect and refund the amount already recovered on account of SDA to the applicant ~~xxx~~ with all consequential benefits immediately which the applicant has been denied with malafide intention and in an arbitrary, capricious, unfair and unjust manner by the Respondents.

4.12. That this application has been made bonafide and for the ends of justice.

5. Grounds for relief(s) with legal provision :

5.1. For that the applicant is entitled to SDA in terms of the Office Memorandum dated 12.1.96.

5.2. For that the applicant is saddled with All India Transfer Liability and the recruitment as well as seniority is being maintained on All India basis.

5.3. For that the SDA has been stopped and recovery has been affected without giving any scope or show cause notice to the applicant which is violative of the principles of natural justice.

contd...p/10

Mahanur Vishwakarma

5.4. For that non-payment of SDA and recovery of SDA already paid, shall cause undue hardships to the applicant for no fault of his.

5.5. For that the applicant is entitled to SDA as per O.M. dated 14.12.83, O.M. dated 12.1.96 and also in terms of clarificatory order dated 8.5.2000 issued by the Cabinet Secretariat after consultation with the Ministry of Finance, Department of Expenditure.

5.6. For that the applicant's case is covered by the judgment and order dated 10.8.2001 passed by this Hon'ble Tribunal in O.A. No. 84/2001 and that the recovery of SDA from the applicant is unlawful as per the order passed on 20.9.94 by the Hon'ble Supreme Court and also by the judgment and order dated 22.12.2000 of this Hon'ble Tribunal in O.A. No. 217, 274 etc. of 2000.

6. Details of remedy exhausted

That your applicant states that they have no other alternative and efficacious remedy than to file this application.

7. Matter not pending before any other Court/Tribunal

The applicant further declares 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 ~~xxxx~~ or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

contd...p/11

Mahanth Vishwakarma

8. Reliefs sought for :

~~xx~~ Under the facts and circumstances of the case the applicant prays for the following reliefs :-

8.1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum issued under No. GCT/0531/2002-03/SDA/12601 dated 05.10.02 and all other letters associated thereto.

8.2. That the Hon'ble Tribunal be pleased to direct the respondents to pay Special Duty Allowance (SDA) to the applicant in terms of O.M dated 14.12.83/1.12.88 and O.M. dated 22.7.98, and also in the light of judgment and order passed on 10.8.2001 in O.A. No.84/2001 by this Hon'ble Tribunal, alongwith arrear, with retrospective effect from the date from which it was stopped.

8.3. That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to payment of SDA in terms of the O.M. dated 14.12.83, 1.12.88, 22.7.98 and in terms of O.M. dated 12.1.96 issued by the Government of India, Ministry of Finance.

8.4. That the respondents be directed to refund the full amount of SDA recovered from the applicant immediately.

8.5. Cost of application.

8.6. Any other relief(s) which the applicant is entitled to as the Hon'ble Tribunal deems fit and proper.

contd...p/12

Mahanty. Vishwakarma

9. Interim Prayer :

During the pendency of the application the applicant prays that the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar for the Respondents for considering the relief(s) as sought for by the applicant.

10. This application is filed through Advocate.

11. Particulars of the IPO :

i) IPO No. : 7G 607911.
ii) Date of Issue : 7.4.03
iii) Issued from : G.P.O., Guwahati.
iv) Payable at : G.P.O., Guwahati.

12. List of enclosures :

As stated in the index.

Verification....

Mahanthi Vishwakarma

33

(13)

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

I, Shri Mahanth Vishwakarma, ~~xxxxxx~~ aged about 36 years at present residing at SSB Group Centre, Tezu, District : Lohit, Arunachal Pradesh do hereby verify that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this Verification on this the ^{10th} day of May 2003.

Mahanth Vishwakarma

Signature

No. 6/SSB/ A-2/89(18)
 Directorate General of Security,
 Office of the Director, SSB
 Block-V(East), R.K. Puram,
 New Delhi - 110 066

Dated, the

23.2.90

MEMORANDUM

The undersigned hereby offers Shri Mahanth Vishwakarma a temporary post of Lab. Technician in the Office of the Divisional Organiser, SSB, Arunachal Pradesh Division Itanagar. in the pay scale of Rs. 1320-30-1560-EB-40-2040 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 is likely to continue indefinitely. The appointment is likely to termination on one month's notice on either side without reasons being assigned. The appointing authority, however, reserves the right of 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 three 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 :-

1) Production of a certificate of fitness from the competent Medical Authority viz Civil Surgeon or District Medical Officer.

2) In accordance with orders in force in regard to the recruitment to service under the Government of India, no candidate who has more than one wife living, is eligible for appointment under the Government of India provided that Government may, if they are satisfied that there are special reason for doing so except any person from the operation of this rule. This offer of appointment is, therefore, conditional upon his/her furnishing to this 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 and desires to be exempted from the operation of the above mentioned rules for any special reasons, he/she should make 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.

Affested
 Surya Chaudhary
 Advocate.

→ P2 (16)
 Contd -P/2 --

3) Taking an oath of allegiance faithfulness to the Constitution of India on making of a solemn affirmation to that effect.

4) Production of the following original certificates (if not produced already) :

- (a) Degree/Diploma certificates of educational and other technical qualifications ;
- (b) Certificate of age ;
- (c) Character certificate in the prescribed form Annexure II to this letter.
- i) Attested by a District Magistrate or Sub-Divisional Magistrate or their superior officer in the case of candidates for Class III posts and :
- (d) Certificate in the prescribed form in support of candidates claims that he belongs to a SC/ST
- (e) Discharge certificate in the prescribed form of previous employment, if any.

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

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

8. If Shri Mahanth Vishwakarma

accepts the offer on the above terms, he should report to the Divisional Organiser, SSB Arunachal Pradesh Akhathning Hall Ganga, PO Itanagar, Arunachal Pradesh. within one month of the date of issue of this Memorandum. If no reply is received or the candidate fails to report for duty by the prescribed date, offer will be treated as cancelled.

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

10. He is liable to be transferred anywhere in India.

✓ To

Shri Mahanth Vishwakarma,
C/o Sh. S.K. Sharma,
H.No.2nd B/131, Nehru Nagar (Ghaziabad)
U.P. - 201 001.

huk
(K K LUTHRA)
Assistant Director, EA

Copy for information and necessary action to
Divisional Organiser, SSB A.P. Division, Itanagar

DIRECTORATE GENERAL OF SECURITY
OFFICE OF THE DIVISIONAL ORGANISER
A.P. DIVISION : SSB : ITANAGAR

ORDER

In pursuance of SSB Directorate Memo No. 6/SSB/A-2/
89(18) dated 23.2.90, Shri Mahanth Viswakarma is hereby appointed
as Laboratory Technician in the pay scale of Rs 1320-30-
1560-SS-40-2040/- p.m. w.e.f. 19.3.90 (FN) on purely temporary
basis and posted to Divl. Hq., Itanagar in the establishment
of Divisional Organiser, A.P. Division, Itanagar.

Annexure

2. The terms and conditions of the appointment are as
follows:-

(i) The appointment is made on probation for a period of
(Three) 3 years and the same may be terminated at anytime by
a month's notice given by either side viz., the appointee
or the appointing authority without assigning any
reason. The appointing authority, however, reserve the
right for terminating the service of appointee forth-
with or before the expiry of the stipulated period of
notice by making payment to him/his a sum equivalent
to the pay and allowances for the period of notice or
the expired portion thereof.

(ii) The post is temporary but likely to be permanent. → 19

(iii) The appointment carries with it the liability to
serve in any part of India.

(iv) Other conditions of service will be governed by the
relevant rules and orders in force from time to time.

Sd/-
DIVISIONAL ORGANISER
A.P. DIVN., ITANAGAR.

Memo No. MGE/E-10/90-123 Dated Itanagar the 30th Mar/90.

Copy to:-

1. The Director of Accounts, Cab., Secretariat,
East Block IX, R.K. Puram, New Delhi.

2. The Assistant Director, SSB Directorate, New Delhi,
w.r.t. to Dte memo No. 6/SSB/A-2/89(18) dated 23.2.90
The Police verification and IB Clearance of the
candidate may please be forwarded to DO AP Itanagar
for keeping record in the Service Book.

3. The Accounts Officer, Divl. Hq., Itanagar with copy
of Medical certificate.

4. The D.M.C., Divl. Hq., Itanagar.

5. O.O. Books 6. PA to AO(S). 7. Persona 1 file.

6. Shri Mahanth Viswakarma - for information.

7. W.O. Divl. Hq., Itanagar. 10. Office copy.

*M. H. K. Chacko
S. S. J. Chacko
Advocate*

SECTION OFFICER
A.P. DIVN. : ITANAGAR

3/90

No. 20014/2/03/E.IV
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 14th Dec '83

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 sometime. The Government had appointed a committee under the Chairmanship of Secretary, Department of Personnel and Administrative Reforms, to review the existing allowances and Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Control 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

xxxxxxxxxxxxxxxxxx

ii) Weightage for Central deputation/training abroad and special mention in confidential Records.

xxxxxxxxxxxxxxx

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

Contd...

Attested
S. Chakrabarty
Advocate

station in the North Eastern Region. Such of thos employees who exempted 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 pre Deputation (Duty) Allowance alr ady being drawn subject to the condition that the total of such Special (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn seporately.

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XX X X X X X

X XXXXXXXXX

XXXXXXXXXXXX

Sd/- S.C. MAHALIK

JOINT SECY T&P THE GOVERNMENT OF INDIA

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 O.M. No. 20014/3/83-E.IV dated 14.12.1983 and 20.4.1987 read with O.M. No. 20014/16/86-E.IV/E.II (b) dated 1.12.1988 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 N.E. Region. One of the incentives - as 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. 20.4.87 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 has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on All India basis 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.

Attested
Surjit Chahal
Advocate

Carthika

Y/W

PLH

4. Some employees working in the N.E. Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment letters carried the clause of All India Transfer Liability and, accordingly, directed payment of SDA to them.

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministries/Departments against the Orders of the CAT.

6. The Hon'ble Supreme Court in their Judgement 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.

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

i) the amount already paid on account of IDA to the ineligible persons on or before 20.9.94 will be waived;

ii) the amount paid on account of IDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments made after this date i.e. 20.9.94) will be recovered.

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

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

10. Hindi version of this O.I. is enclosed.

Sd/- C. Palachandran

Under Secretary to the Government of India

To

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

To

The Director General,
 SPECIAL SERVICE BUREAU,
 Ministry of Home Affairs,
 East, Block-V, R.K.Puram,
 New Delhi - 110066.
 (Through proper channel)

SUBJECT: REQUEST FOR ENTITLEMENT OF S.D.A.

Sir,

Begging a sincere apology for encroachment upon your valuable time, I would like to draw your kind attention towards my monetary less for which I feel, I am entitled.

Sir, I was recruited by the honorable SSB Directorate, New Delhi as a civil staff (Lab. Technician) where I appeared for final interview and was directed to assume my duty at O.O. Itanagar, Arunachal Pradesh. I was further transferred to G.C. SSB, TEZU (A.P.) on 19.7.95 and since then I am discharging my duties at the Group Centre, Tezu.

I joined my at my aforesaid station which means I do not belongs to North East Region nor I am locally appointed, whereas my recruitment to the service has made on All India basis of all India zone of promotion based on common seniority list for service as a whole.

I, therefore, request your kind honour to please consider my case of getting SDA sympathetically and please save me from bearing heavy monetary less.

Thanking you.

Mested
 Sanjivchandhuly
 Advocate.

Yours faithfully,

Mananth Vishwakarma 22/4/02

(MAHANTH VISHWAKARMA)
 LAB.TECHNICIAN

ANNEXURE - VI

To

The Commandant
Group Centre SSB, Tezu (A.P.)
(Through proper channel)

Sub: Request for entitlement of SDA

Sir,

Most respectfully & humbly I would like to draw your kind attention toward my monetory loss for which I feel, I am entitled that Sir

I was recruited by SSB Dtc New Delhi as a civil staff (Lab. Tech) where I appeared for final interview and was directed to assume my duty at D.O. Itanagar(A.P.). I joined at my aforesaid station (copy of offer of appointment enclosed) and I have given 1st TA from Delhi to Itanagar which means I do not belong to N.E. Region not I am locally recruited whereas my recruitment to the service has made All India basis of All India Zone of Promotion based on common seniority list for service as a whole.

Sir, my application dated 22.4.02 Add to D.G.SSB has been returned by your good office vide Memo No.NGE/F.a(A)/96 est-1 GOI MHA DO Ap Dt. 22.5.02 (copy enclosed) by refering Cab Sect U.C No. 20/12/99-EA-1-1799 dt. 2/5/2000 containing clarification reg. SDA.

But Sir as per CAT GHY Bench OA No. 149 of 1999 Decisions dt. 22/12/2000 (copy enclosed) Para 4 & 5, the said allowance would be payable only to employees posted to North East Region from outside N.E. Region. Hence permanent Residential Address should be verified for entitlement, as per para 6 Clarification for

Affested
Suryakishore Ray
Advocate

contd...p/2

(2)

Annexure-VI (contd..2)

sanctioning SDA of Central Govt. Civilian employees. All India Transfer liability of member of any service/cadre has to be determined by applying the test of Recruitment Zone, Promotion Zone based on common seniority of Service Cadre/Post as a whole.

Sir as per para 11 Supreme Court judgment Applicant are not entitled of SDA as they are hailing from N.E. Region and are locally recruited in case of CRP C & D staffs of Geological Survey of India. It mean I am entitle SDA as I am not Resident of North East nor locally recruited.

I therefore request your kind honour to please consider my case for getting S.D.A. sympathetically as allowed by Para 12 of CAT dt. 22.12.00, because a contradictory view has been taken for my SDA and recovery has been done without proper determination and justification.

This is submitted to your kind necessary action and onward submission to higher authority please.

Thanking you in anticipation.

Yours ~~faithfully~~ faithfully,

Sd/- Illegible
10.8.02

Enclosed- as above.

Lab Tech

NO.GCT/0531/2002-03/SDA/ 12601Government of India,
Ministry of Home Affairs,
Special Service Bureau,
O/O the Commandant, GC Tezu,Dated, the 05/10/02

46/W

MEMORANDUM

Please refer to your letter ending No. 1506 dt'd. 13/8/02 and further our Memo. No. 11484-85 dt'd. 4/9/02 regarding grant of SDA to Lab. Tech. M. Viswakarma.

In this connection, it is intimated that his case was examined at our Higher Hqrs. and the official is not eligible for Special Duty Allowances vide their Memo. No. NGE/F-9(A)/2002/361 dt'd. 19/9/02.

The individual may be informed accordingly and advise him not to make unnecessary correspondence in this regard which created wastage of time of staff at GC HQ and also stationery.

Enccl : 11 Sheets

To

Received 05/10/02
ASSTT. COMMANDANT/000
GROUP CENTRE SSB TEZU.

The Adhoc Commandant,
~~Exxxx~~ Birpur, Bihar.

Enccl

*Shanti w/o
Mewat
the 16/10/02*

*Revd
Lew. M. Viswakarma
(M. Viswakarma)
GC Tezu*

MP

*Attested
Surajbhanwar Singh
Advocate*

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

16

Original Application No. 84 of 2001

Date of order : This the 10th day of August, 2001.

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

Hon'ble Mr. K.K.Sharma, Member (A).

Shri Jagmohan Singh
Son of Sri Magan Singh
Working as Senior Field Assistant (Homeo)
O/o the Sub Area Organiser, Changsari
Rangia,
District-Kamrup, Assam.

....Applicant

By Advocate Mr. M. Chanda.

-versus-

1. The Union of India
Represented through the Secretary
to the Government of India
Ministry of Home Affairs
New Delhi.
2. Directorate General of Security
Office of the Director, SSB,
West Block-V,
R.K.Puram,
New Delhi-110066.
3. The Divisional Organiser
North Assam Division
SSB, Tezpur.
4. Area Organiser,
SSB, North Kamrup Area,
Howly.
5. Area Organiser (Staff)
North Assam Division,
Tezpur.

...Respondents

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

O R D E R

CHOWDHURY J. (V.C.).

The applicant was initially working as Constable Group Central at SSB, Tehri Garowal, UP. He applied for the post of Senior Field Assistant (Homeo) and he was selected in due course on all India recruitment basis. The said recruitment was made vide order dated 16.9.1996 by the Director General of

*Affected
Sri Jagmohan Singh
Advocate*



Security. The applicant was appointed as SFA(H) on transfer basis. Pursuant to the notice dted 16.9.1996 personnel of Group Central SSB Chamma selected for the post of SFA(H) on transfer basis were relieved from the Group Central with effect from 30.11.1996 (AN) with a direction to report to their respecive unit as shown. The applicant was advised to report to S.A.O. Rangia. Accordingly he joined to the post of Senior Field Assistant (Homeo), Rangia. The applicant was provided with Special (Duty) Allowance as was paid to the Civilian Central Government employees serving in the North Eastern States. While things rested at this stage an impugned communication dated 13.11.2000 was served on the applicant indicating that the payment of SDA made to the applicant was irregular and accordingly ordered for recovery of the amount already paid to the applicant with effect from 21.09.1994 in suitable instalments. Consequent thereto the impugned Memorandum dated 19.1.2000 issued by the Area Organiser, SSB,

is reproduced below :

"....It is apparent that Shri Jagmohan Singh, SFA(H) was appointed on selection from Group Centre on "Transfer basis" therefore, this is a case of first appointment in Civil side as SFA (H). As such. SDA is not admissible to him as per clarifications vide para (1) (a) of Cabinet Secretariat U.O. No. 20/12/99-EA-I-1-1799 dated 2.5.2000.

The copy of Memo No. D/SSB/A2/89(9)2375 dated 16.9.96 furnished by Shri Singh, SFA(H) with his representation speaks that he was selected for appointment as SFA (H) "on transfer basis", so this order does not indicate his transfer from outside N.E. region to N.E.

Shri Jagmohan Singh, SFA (H) may please be informed accordingly, and recovery of irregular payment of SDA may be made with immediate efect."

Heard Mr. M. Chanda, learned counsel for the applicant and Mr. B.C. Pathak, learned Addl. C.G.S.C.

The order dated 19.1.2001 per se is not sustainable in law. The appointment and posting order itself indicated that the applicant who was working in Tehri Garowal was selected for appointment as SFA (H) on transfr basis and he was posted from outside the N.E. Region. The applicant was not selected from

Contd..

N.E. Region, he was selected on the basis of all India recruitment basis. The inter se seniority of the applicant is also maintained on all India basis and having all India Transfer Liability. The case of the applicant is squarely covered by the O.M. dated 14.12.1983 issued by the Government of India, Ministry of Finance, and the clarification issued on 12.1.1996. The issue is also squarely covered by the decision of this Bench rendered in O.A. No.136 of 2000 on 20.12.2000.

In the circumstances, in our opinion the impugned orders dated 13.11.2000 and 19.1.2001 cannot be sustained in law and accordingly the same are set aside. The respondents are directed to pay SDA to the applicant from the date from which the applicant was denied with the SDA. The above exercise shall be completed by the respondents as early as possible preferably within a period of two months from today.

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

Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

Certified to be true
अमाधिक अधिकारी

11/11/03

Section Officer (J)
C.A.T. GUIWAHATI BANCH
Guwahati-781005

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Filed by
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SL DEB ROT
S. C. S. C
Guwahati Bench

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Deb Kumar Baru

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

O.A. NO. 103 OF 2003.

Shri M. Viswakarma

- Vs - Applicant.

Union of India and Ors.

..... Respondents.

- And -

In the matter of :

Written Statement submitted by the
respondents.

The humble respondents beg to submit the para-wise
written statement as follows :-

1. That with regard to para 1 to 3 and 4.1 to 4.2, of the application the respondents beg to offer no comments.
2. That with regard to the statement made in para 4.3, of the application the respondents beg to state that as per provision containing in relaxation of SR-105 of FRSR-part-II (Travelling Allowances) journey for taking up initial appointment restricted to ordinary bus/rail fare on the same analogy the applicant was paid T.A. to join at Division Headquarters Itanagar.

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3. That with regard to the statement made in para 4.4, of the application the respondents beg to state that submit the following :-

(a) Government of India, Ministry of Finance, Department of Expenditure vide their O.M. No. 20014/2/33-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 Government of India Based on the decision, the applicant was drawing Special (Duty) Allowance on the analogy of having All India Transfer Liability including all other SSB employees posted in N.E. Region.

(Copy of Ministry of Finance O.M. No. 20014/2/93-E.IV dated 14.12.1983 is enclosed herewith and marked as Annexure "A".

(b) That the Hon'ble Supreme Court in their Judgement delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993) incorporated in Government of India Ministry of Finance, Department of Expenditure O.M. No. 11(3)Y95-E.II(B) dated 12.1.1996 held that "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

-3-

from outside the region and Special Duty Allowance, 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 officers transferred from outside the region to N.E. Region would not be violative of the provisions contained in Article 14 of the Constitution as well as the equal pay doctrine".

(Copy of the Judgement of Hon'ble Supreme Court delivered on 20.9.1994 in Civil Appeal No. 3251 of 1993 - Union of India Vs S. Vijaykumar and Others, 1995 (1) SLP 139 (SC) as Annexure - 'B').

4. That with regard to the statement made in para 4.5, of the application the respondents beg to state that as a result as explained at para 4.4(b) above, the Ministry of Finance decided that the amount already paid on accounts of Special Duty Allowance to the in eligible persons on or before 20.9.94 will be waived and payments made after this date will be recovered.

(Copy of the Ministry of Finance, Department of Expenditure O.M. No.11(3)/95-E.II(B) dated 12.1.1996 is enclosed herewith and marked as Annexure - 'C').

5. That with regard to the statement made in para 4.6, of the application the respondents beg to state that Cabinet Secretariat vide para 2(i) Xa of their U.O. No. 20/12/99-EA-1-1799 dated 2.5.2000 clarified that "a person belongs to outside N.E. Region

N.E. Region but he is appointed and on first appointment posted in 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 Liabilities is not entitled for Special Duty Allowance. Accordingly petitioner is not entitled for SDA as he belongs to outside N.E. Region and on initial appointment he has joined in N.E. Region.

(Copy of Cabinet Secretariat U.O. No. 20/12/99-EA-1-1799 dated 2.5.2000 is enclosed herewith and marked as Annexure- 'D'.

6. That with regard to the statement made in para 4.7, of the application the respondents beg to state that on careful scrutiny of Cabinet Secretariat U.O. dated 2.5.2000 and MOF OM dated 12.1.1996 based on the Judgement dated 20.9.1994 of Hon'ble Supreme Court in Civil Appeal No. 3251 of 1993 titled UOI Vrs. S. Vijaykumar and others recovery of SDA has been made from the applicant is very much correct.

7. That with regard to the statement made in para 4.8, of the application the respondents beg to state that Div. Hqrs., Itanagar have clarified the provision for granting SDA to the applicant through Respondent No.5 vide Div. Hqrs. Itanagar Memo No. NGE/F-9(A) 96/Vol-I/343 dated 22.5.2002.

(Copy of Div. Hqrs., Itanagar Memo No. NGE/F-9(A) 96/Vol-I/343 dated 22.5.2002 is enclosed herewith and marked as Annexure -'D').

8. That with regard to the statement made in para 4.9, of the application the respondents beg to offer no comments.

9. That with regard to the statement made in para 4.10, of the application the respondents beg to state that in terms of the judgement dated 11.01.2001 delivered by the Hon'ble CAT Guwahati Bench in the O.A. No. 43/2000 titled Shri Mathuresh Nath and Others Vrs. UOI, that 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 N.E. 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.

In this connection, it is pertinent to mention here that Hon'ble Supreme Court in their judgement delivered on 5.10.2001 (Civil Appeal No. 7000 of 2001 filed by Telecom Department) incorporated in Government of India, Ministry of Finance, Department of Expenditure OM No. 11(5)/97-E.II(B) dated 29.5.2002 held that "The Special Duty Allowance shall be admissible to Central Government Employees having All India Transfer Liability on posting to N.E. Region (including Sikkim) from outside the region" and as per direction of Hon'ble Supreme Court it has also been decided that :-

1. The amount already paid on account of SDA to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.01 which is the date of judgement of the Supreme Court, will be waived. However, recoveries if

if any, already made need not be refunded.

ii. The amount paid on account of SDA to ineligible person after 5.10.2001 will be recovered.

From above, it is abundantly clear from the judgement dated 11.01.2001 passed by the CAT Guwahati Bench, in common connection with OA No. 43/2000 titled Shri Mathuresh Nath and others - Vs- Union of India and others and Ministry of Finance, Department of Expenditure O.M. No. 11(5)/97-E-II(B) dated 29.5.2002 based on the judgement of Hon'ble Supreme Court in Civil Appeal No. 7000 of 2001 dated recovery made ~~xxxxxx~~ on account of Special Duty Allowance by the Respondents is very much correct and fair.

(Copy of the Judgement dated 11.1.2001 of OA No. 43/2000 is enclosed as Annexure-'F' and Ministry of Finance, Department of Expenditure OM No. 11(5)/97-E.II(B) dated 29.5.2002 is enclosed as Annexure-'G')

10. That with regard to the statement made in para 4.11, of the application the respondents beg to state that stoppage for drawal of SDA in respect of the applicant was not illegal and arbitrary and it was based on the specific orders of the competent authority when drawal of SDA itself was irregular and therefore recovery of the same can not be termed as "Malafied Intention", "arbitrary", "unfair and unjust". Over payment from the Government exchequer, if any has to be recovered to save Government money.

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11. That with regard to the statement made in para 4.12, of the application the respondents beg to offer no comments.
12. That with regard to the statement made in para 5.1 to 5.6, of the application the respondents beg to state that as explained in earlier paras.
13. That with regard to para 6 and 7 of the application, the respondents beg to offer no comments.
14. That with regard to the statement made in para 8.1 to 8.6, of the application the respondents beg to state that the applicant of this OA is not entitled to relief as per the submission made by the declarant in the aforesaid paras. The OA is therefore, liable to be quashed and dismissed out right being devoid of merit.

Verification.....

VERIFICATION

I, Shri DEB KUMAR BASU
working as INSPECTOR GENERAL PATNA
, presently
, being duly
authorised and competent to sign this verification, do hereby
solemnly affirm and state that the statements made in paras 1, 2,
6, 8, 10 to 14 are true to my knowledge and belief and those
made in paras 3, 4, 5, 7, 9 being matter of records, are true to my
information derived therefrom and the rest are my humble sub-
mission before this Hon'ble Tribunal. I have not suppressed
any material fact.

And I sign this verification on this 30th day of
August
July, 2003.

Deb Kumar Basu

Deponent.

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, Nagaland, 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 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 to be 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.

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

(iii) Special (Duty) Allowance:

Central Government Civilian employees who have
assumed 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 Compensation
(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 sub-
ject 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/-
pay upto Rs. 260/-

Rs. 40/- p.m.
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) Other Areas

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 Spec-
Compensatory Allowances admissible in the Arunachal Pradesh, Nagaland
and Mizoram and the existing rate of Dis. Allowance admissible
in the 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

(11)

(39)

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.

With family
With concurrence
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:

W. Time
family

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

(12)

(40)

(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, those orders issued after consultation with the Comptroller and Auditor General of India.

Sd/-

(S.O. MAHALIK)

To

CHIEF SECRETARY TO THE GOVERNMENT OF INDIA

All Ministries/Departments of the Government of India.

(13)

APPENDIX

APPENDIX

E
41

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

Facts: This type of Leave Appeal is against the judgment of the Tribunal which upheld the contention of the respondents/petitioners that for purpose of payment of Special Duty Allowance it is not only the staff who recruit outside the North-Eastern Region who are eligible, but also the residents of the region that the latter has also the incidence of the duty. It is contended that the petitioners/respondents contended in this SLA that it is illegal to pay persons from outside the North-Eastern Region this Allowance as introduced and, therefore, the object sought to be achieved was frustrated in view of the judgment of the Tribunal and pay was set aside the same.

Held: We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor-General for the reasons. The first is that, a close perusal of the two aforesaid memorandums, along with what was stated in the memorandum, dated 27-3-1986, which has been quoted in the memorandum, dated 20-4-1987, clearly shows that allowance in question was meant to attract officers outside the North-Eastern Region to work in that Region to cure of inaccessibility and difficult terrain. We have seen it because in the 1986 memorandum starts by saying that the need for the same is to attract "attracting and retaining" the services of the officers of officers for service in the North-Eastern Region. Mention of the services has been made because it was found that incumbents posted in that Region on deputation used to come back after joining there on 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. It is clear from the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Government employees who have All India Transfer Liability would be given the allowances on posting to any station to the North-Eastern Region. It is clear that this is made clear beyond doubt by the 1987 memorandum that allowances would not become payable in respect of the clause 7 in the appointment order, in respect of the transfer liability. Merely, as quoted above, it is clear that the same subject was mentioned Ghosh.

The submission of the respondents that the denial of the allowance to the respondents was in violation of the equal pay doctrine is inadequately met by relying upon the judgment in *Union of India v. Reserve Bank of India Staff Officers and others*, [1991 (4) SCC 132] in which an argument was advanced by the learned Additional Solicitor-General in which provision of the Remunerative Allowance or Remunerative Allowance was held to be valid as transferred from outside to Gaithali Unit of the Reserve Bank of India, while denying as violative of Article 14 of the Constitution. The submission of Dr.

In view of the aforesaid, it is held that the respondents were not entitled to the allowance and the judgment of the Tribunal is, therefore, set aside. Even so, the fair stand taken by the Additional Solicitor-General in that the whatever amount has been paid to the respondents, should be paid to other similarly situated employees, would be followed by the Commission in so far as the allowance is concerned, for the time being accordingly.

[Union of India and others v. Reserve Bank of India and others, 1995 (1) SLJ 139 (SC), date 5-1-1995]

2-12
24/3/96

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 Department's OM No. 20014/3/83-E.IV dated 14.12.83 20.4.1987 read with OM No. 20014/16/86-E.IV/E.II(B) 1.12.88 on the subject mentioned above.

2. The Government of India vide the abovementioned 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. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the 'All India Transfer Liability' of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

4. Some employees working in the NE Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment letters carried the clause of All India Transfer Liability and accordingly, directed payment of SDA to them.

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministries/Departments against the Orders of the CAT.

6. The Hon'ble Supreme Court in their judgement 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.

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

i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived.

ii) the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94 but payments were made after this date i.e. 20.9.94) will be recovered.

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

9. In their application to employees of Indian Audit and 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

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

16

COURT CASE
MOST IMMEDIATECabinet 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

AI/99(18)-2369 dated 31.3.2000 on the subject mentioned above

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 1995 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.

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

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/DGS, 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 with NE Region is not entitled to SDA till is once transferred out of that F

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v.i) 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.

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.

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, ARC
2. Shri R.P.Kureel, Director, SSB
3. Brig (Retd) G.S.Uban, IG, SFF
4. Shri S.R.Mehra, JD (P&C), DGS
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-EA-I-1799

dated 2.5.2000

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.

The payment made to employees hailing from NE Region and 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.

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NO.NGE/F-9(A)/96/Vol.I/343
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE DIVISIONAL ORGANISER
SSB ARUNACHAL PRADESH DIVISION
KHATING HILL, ITANAGAR-791111

Dated, the 22nd May, 2002

MEMORANDUM

Offg. Commandant, GC, SSB, Tezu may please refer to his letter No.CCT/ACS/0531/2002-03/5343 dated 02-5-02 under which a representation submitted by Shri Mahanth Vishwakarma, Lab. Tech. for entitlement of S.D.A. was forwarded to this office for necessary action.

2. In this connection, reference is made to this office Endst. No.NGE/F-9(A)/2000/265 dated 26-5-2000 vide which Cabinet Secretariat U.O. No. 20/12/99-EA-I-1799 dated 02-05-2000 containing clarifications with regard to entitlement of S.D.A. for Civilian employees of Central Government serving in States & Union Territories of N.E. Region was forwarded to all Area Organisers and Commandants of A.P. Division for guidance.

3. Shri M. Vishwakarma, Lab.Tech. joined Div.Hqrs. SSB A.P.Division, Itanagar on fresh appointment as a Lab. Tech. on 19-03-90 and thereafter he was released on transfer to GC Tezu on 19-7-95 (within N.E.Region). As such he is not entitled to draw S.D.A. For becoming entitled for S.D.A. he has to be re posted to N.E.Region.

4. The representation submitted by Shri Mahanth Vishwakarma, Lab. Tech. for entitlement of S.D.A. should have been properly examined by Offg.Commandant, GC, Tezu in the light of above referred Cabinet Sectt. U.O. before forwarding the same to Div.Hqrs. SSB Itanagar.

5. In view of above, the representation of Shri Mahanth Vishwakarma, Lab.Tech. is returned herewith.

Encl.: As stated

Jatinder Singh
(JATINDER SINGH)
AREA ORGANISER (STAFF)
DIV.HQRS.SSB ITANAGAR

To

The Offg.Commandant,
Group Centre, SSB,
Tezu.

22/5/02

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SL. No 114

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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 Mathuresh Nath and 4 others

.....Applicants

The applicants are employees of the Special Service Bureau, Andhra 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. Bachantry, Addl. C.G.S.C.

OB D E R (OBAL)

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 14.12.1983 and other Notifications issued from time to time.

2. The applicants on their own stated that though they hale 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.G.(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 20.9.1994 in Union of India and others vs. S. Vijay Kumar and others, reported in (1994) 28 ATC 598. 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)

Concord to its true copy
Attn: Asstt. Secy
Secty
Control Adminstr. Deptt.
And Adminstr. Tribunals
And Tribunals
Secty. Guwahati
Dated: 1/1/1

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F. No. 11(5)/97-E.1.(B)
GOVERNMENT OF INDIA,
MINISTRY OF FINANCE,
DEPARTMENT OF EXPENDITURE

New Delhi, dated the 29th May, 2000

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dated 14.12.83 and 20.04.1988 read with OM No. 20014/16/86-E.II(B) dated 01.12.88 and OM No. 11(3)/95-E.II(B) dated 12.01.1996 on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted in NE Region vide OM dated 14.12.83. Special Duty Allowances (SDA) is one of the incentives granted to Central Government employees having All India Transfer Liability. The necessary clarification of determining the All India Transfer Liability was issued vide OM dated 20.04.1987 laying down the All India Transfer Liability of the members of any Service/Cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone/promotion zone etc. i.e. whether recruitment to service/Cadre/post has been made on All India basis and whether promotion is also done on the basis of an All India Common Seniority list for the service/Cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in NE region who were not eligible for grant of Special Duty allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench. In certain cases CAT upheld the right of employees. The Central Government filed appeals against the orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in its judgment delivered on 20.09.94 (in Civil Appeal No. 3251 of 1993 in the case of UOI and Ors. v/s. Shri S. Vijaya Kumar and Ors) have allowed the submissions of the

Government of India that C.G. Civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North Eastern Region from outside the region and Special Duty Allowance on being posted to any station in the North Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

4. In a recent appeal filed by Telecom Department (Civil) Appeal No. 7000 of 2001 - arising out of SLP No. 5455 of 1999, Supreme Court of India has ordered on 05.10.2001 that this appeal is covered by the judgement of this Court in the case of UOI & Ors. v/s. S. Vijayakumar & Ors. reported as 1994 (Supp. 3) SCC, 649 and followed in the case of UOI & Ors. v/s. Executive Officers' Association 'Group C' 1995 (Supp. 1) SCC, 757. Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

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

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

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

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

- (i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 at or before 05.10.2001, which is the date of judgement of the Supreme Court, will be waived. However, if any, already made need not be refunded.
- (ii) The amount paid on account of Special Duty Allowance to ineligible persons after 05.10.2001 will be recovered.

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

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

Sd/-

(N.P. SINGH)

Under Secretary to the Government of India

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

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

RSD

NR