

01/00

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 0A 202/03

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SECTION OFFICER (Judl.)

Kalits
22.11.17

FORM NO.4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDERSHEET

Original Application : 202/03

Misc Petition No. : _____

Contempt Petition No : _____

Review Application No: _____

Applicants:- Satisfy Cd. patgare

Respondents:- UOI & ONS

Advocate for the Applicants:- Mr Adil Ahmad

Advocate for the Respondents:- Case

FORM NO.4

Notes of the Registry

Date

Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL

29.8.03

GUWAHATI BENCH

Present: Hon'ble Mr. Justice.,

D.N.Chowdhury, Vice-Chairman.

ORDERSHEET

Heard learned counsel for the parties.

his application is in
form but not in time
ndonation Petition is

d/notified Application :

Rs. 50/- deposited

IPO/B/ No. 99/14/278

25/8/03

Contempt Petition No :

Review Application No:

Issue notice on the respondents

to show cause as to why the appli-
cation shall not be admitted.

Returnable by four weeks.

List on 24.10.03 for Admission.

Applicants:-

Satisfy Cd. patgare

Respondents:-

lm

Vice-Chairman

Notice is prepared and

Sent 16. Despatch Section 24.10.03

for issuing to the respondents

2.

10/9/03

Memo No-1933 to 1937.

dt. 11/9/03

25/9.

Then in no Bench Today
Advised to 28.10.03.

1870
la.

Order of the Tribunal

28.10.03 Heard Mr A.Ahmed, learned counsel for the applicant. Application is admitted. Call for the records. The respondents are ordered to file written statement on or before 28.11.03.

No. Written Statement has been filed.

List on 28.11.03 for order.

Vice-Chairman

pg

18.12.2003 List on 3.2.2004 for orders.

6.2.04

W/s filed by the Respondent Nos. 2 to 5.

mb

20.2.2004 Written statement has been filed by respondent nos.2 to 5. List the case for hearing on 3.3.2004.

Member (A)

bb

3.3.2004 Post the matter on 11.3.2004 for hearing.

Member (A)

bb

11.3.2004 The matter pertains to payment of SDA. List the matter before the next available Division Bench alongwith other SDA matters.

Member (A)

mb

30.3.2004 Present: The Hon'ble Shri Kuldip Singh Judicial Member.

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

Mr.A.Ahmed, learned counsel for the applicant, seeks for adjournment. Respondents have no objection. So adjourned.

List before the next Division Bench

Member (A)

Member (J)

28.8-04

W/s has been filed.

Case 5 ready for hearing

3

25.8.04. Present: Hon'ble Mr.D.C.Verma, Vice-Chairman.

Hon'ble Mr.K.V.Prahladan, Administrative Member.

Heard learned counsel for the parties.

This application involves common question of law and facts and it would be heard to-gether. The learned counsel for both sides prays that this case may be fixed before the next available Division Bench. Let this case be listed before the next available Division Bench as prayed for.

Case is ready for hearing.


Member


Vice-Chairman

lm

23.03.2005

Present by The Hon'ble Mr. Justice C. Sivarajan, Vice-Chairman.

The Hon'ble Mr. K.V.Prahladan
Administrative Member.

Heard Mr. A. Ahmed, learned counsel for the applicant and also Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents.

Mr. A. Ahmed, learned counsel for the applicant seeks time to verify the legal position with regard to maintainability^{of} the application in case of employee of Prasar Bharati inspite of a direct decision on this point by a Division Bench of this Tribunal. List on 24.03.2005 for hearing.


Member (A)


Vice-Chairman

mb

24.3.2005. Present : The Hon'ble Mr. Justice
G. Sivaraman, Vice-Chairman
The Hon'ble Mr. K. V.
Prahlanan, Member (A).

Heard Mr. A. Ahmed, learned
counsel for the applicants and also
Mr. A.K. Chaudhuri, learned Addl. for
the respondents.

Hearing concluded. Judgment
delivered in open Court, kept in
separate sheets. The application is
dismissed. with liberty to the
applicant to approach the High Court.

Member (A)

Vice-Chairman

mb

3.5.05

Copy of the order
has been sent to the
D/Sec for issuing the
same to the applicant.

O.A. 202/03

The Counsel for the petitioners in O.A 202/03 has been submitted an application w/c (f) of sub section (3) read with sub section (1) of Section 22 of the CAT Act, 1985 read with Rule 17 of the Central Administrative (Procedure) Rule, 1987 for review the order dated 24.3.05 passed by this Honble Tribunal in O.A 202/03.

Laid before the Honble V.C. for circulation and if approved we may register the same as review petition.

DR (J) i/c 11.5.05 Pano.

Honble V.C.

May be posted before the DB
get the approval of the Honble Member (A) also.

Varejane
1.6.2005

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./7/4.No. 202/2003

DATE OF DECISION 24.3.2005.

S.C. Patgiri & Ors......APPLICANT(S)

Mr. A. Ahmed......ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India & Ors......RESPONDENT(S)
~~Mr. A.K. Chaudhuri & Ors.~~

Mr. A.K. Chaudhuri......ADVOCATE FOR THE
RESPONDENT(S).

JUSTICE

THE HON'BLE MR. **G. SIVARAJAN, VICE CHAIRMAN.**

THE HON'BLE MR. **K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.**

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgment ?
 4. Whether the judgment is to be circulated to the other benches ?
- Judgment delivered by Hon'ble **Vice-Chairman.**
- L
W
JPS

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 202/2003

Date of Order : This the 24th day of March, 2005

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Sri Satish Ch. Patgiri,
Junior Engineer,
Office of the Executive Engineer (Electrical)
Civil Construction Wing,
All India Radio,
Rajgarh Road, Guwahati - 3.
2. N. Izamo Yanthan
ASW (Electrical) Office of the
Executive Engineer (Electrical)
Civil Construction Wing,
All India Radio,
Rajgarh Road, Guwahati - 3.
3. Sanjay Kumar Dey
S.O. (Electrical),
Office of the Executive Engineer (Electrical)
Civil Construction Wing,
All India Radio,
Rajgarh Road, Guwahati - 3.
4. Sarvodoy Aditya,
Draftsman Grade - II,
Office of the Superintending Engineer (Civil) Civil
Construction Wing, All India Radio,
Ganesh Guri Chariali, Kakati Building First Floor,
P.O. - Sachivalaya, Guwahati - 6.

... Applicants.

By Advocate Mr. A. Ahmed.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Information and Broadcasting,
New Delhi.

2. The Director General,
Prasar Bharati (Broadcasting)
Corporation of India,
Civil Construction Wing,
All India Radio,
Govt. of India, New Delhi - 1.
3. The Chief Engineer - I (Civil),
Civil Construction Wing,
All India Radio, Suchana Bhawan,
Sixth Floor, CGO Complex,
New Delhi - 3.
4. The Superintending Engineer,
(Electrical) Civil Construction Wing,
All India Radio,
Dooradarshan Staff Quarter Complex, VIP Road,
P.O. - Hengrabari,
Guwahati - 781 036.

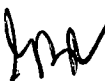
... Respondents.

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

ORDER (ORAL)

SIVARAJAN, J (V. C.):

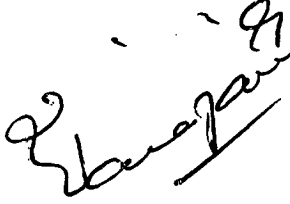
The matter relates to grant of Special Duty Allowance. The case is posted alongwith a batch of cases relating to Special Duty Allowance. When this case was taken up for consideration, Sri A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents raised a preliminary objection that since the applicants are employed in All India Radio, which is under the Prasar Bharati, this Tribunal has no jurisdiction, unless a notification under Section 14(2) of the Central Administrative Tribunals Act (for short the Act) is issued. Learned Standing Counsel further submits that no notification has been issued with regard to question of jurisdiction in case of employees of Prasar Bharati and decisions have been rendered to the effect that this Tribunal has no jurisdiction to consider the case of the employees of Prasar Bharati. The standing counsel in support of his contention relied on the earlier Division Bench and Single Bench decisions of this

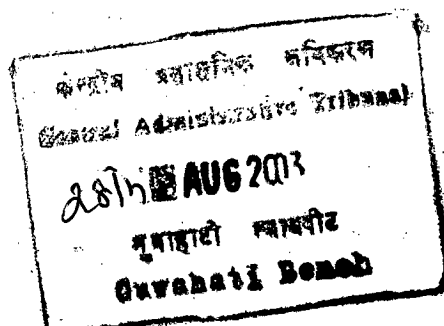


Tribunal in O.A. No. 2/03 and O.A. No. 253/02. Mr. A. Ahmed, learned counsel for the applicants relied upon a Division Bench decision of this Bench rendered in O.A. No. 24/2003 decided on 13.05.2004 in case of employees of BSNL.

2. We have gone through the decisions of this Bench mentioned above. We find that the decisions relied on by the Central Government Standing Counsel relate to employees of Prasar Bharati and that a Division Bench has already taken the view that in the absence of a notification under Section 14(2) of the Central Administrative Tribunals Act, 1985, the Tribunal has no jurisdiction to entertain applications in the matter of BSNL. We have bound by the said decision. We also find that the decision relied on by the counsel for the applicant rendered by another Division Bench relates to employees of BSNL but the said decision is no longer good law in view of the Full Bench decision of the Principal Bench of the Tribunal in O.A. Nos. 401 of 2002 and connected cases in the case of BSNL employees where it was held that the Tribunal has no jurisdiction over BSNL employees unless a notification is issued under Section 14(2) of the Act. In the circumstances, we dismiss this application for lack of jurisdiction with liberty to the applicants, if so advised, to approach the Hon'ble High Court.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 202 OF 2003.

B E T W E E N

Sri Satish Chandra Patgiri

And Others -Applicants

-Versus-

The Union of India

And Others

-Respondents

1. Application — 1 to 18
2. Verification — 19

LIST OF DATES AND SYNOPSIS

Annexure-A is the Photocopy of the Office Memorandum issued by the Govt. of India, Ministry of Finance, Department of Expenditure vide O.M. No. 20014/3/83-4 dated 14-12-1983 by which the Govt. of India Granted certain improvements and facilities including the Special Duty Allowance to the Central

Adel 35

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Government Civilian Employees
serving in North Eastern Region.

Page. 20 to 21

Annexure-B is the Photocopy of Office Memo.
No. F. No. 11(2)/97-E -11 (B)
dated 22-07-1998 issued by the
Government of India, Ministry of
Finance, Department of Expenditure
for continuation of the above said
facilities including Special Duty
Allowances as per recommendation
of fifth Central Pay Commission.

Page - 22 to 24

Annexure-C is the Photocopy of transfer Order
of the applicant No. 1 from
Kolkata Circle to Dibrugar vide
Office Order No. 1(7)/SE(E)/93-
94/3652 dated 14-10-1993. Page - 25

Annexure-D is the photocopy of posting order
applicant No. 2 vide Office Order
No. A-12011/1/92/CW.1 Dated New
Delhi, 6th August 1992. Page - 26

Annexure-E is the Photocopy of transfer and

Sd/-

relieve order of the Applicant No. 2 vide office order No. A 2013 /1/92-CW.1 dated 13 Nov. 1992.

Page - 27

Annexure-F is the Photocopy of Transfer Order of the applicant No. 3 to Siliguri vide Office Order No. CWS/EE(E) - 1(3)/93-5/86 dated 16th January 1993.

Page - 28

Annexure-G is the photocopy of transfer Order of the applicant No. 3 from Siliguri to Silchar Sub-Division vide Office Order No. GHY-EE(E)/1 (3)/94-S/1386-92 dated 23rd/ 24th July 1994.

Page - 29

Annexure-H is the Photo copy transfer order of the applicant No. 4 to Kolkata Circle vide Office Order No. AIR/CCW/SE(E)/Cal/E-3/56 dated 05-01-1993.

Page - 30

Annexure-I Is the Photocopy of Transfer Order of the Applicant No. 4 to Guwahati from Kolkata Circle vide Office

Sd/- 30

14

Order No. 45011/4/97-CW-V dated
25-04-1997. Page - 31

Annexures- are the photocopies of Sanction
J & J/1 letters for granting Special Duty
Allowance to the applicant vide
Order No. AIR/CCW/SE-GH/SDA/1917-
21 dated 30-08-2001 and Order No.
GHY/EE(E)/2(3)/00-01/P & A/G/1531-
34 Dated 7th Sept. 2001. Page - 32 to 33

Annexure-K is the photocopy of Cabinet
Secretariat letter No. 20-12-1999-
EA-1-1799 dated 02-05-2000. Page 34 to 36

ANNEXURE-L & M. are the photocopies of Judgment order
passed in O.A No 56 of 2000 & 11/2003 Page 37 to 41

This Original application is made
for seeking a direction from this Hon'ble
Tribunal to the Respondents to pay Special Duty
Allowance to the applicants as per Govt. of
India Cabinet Secretariat letter No. 20-12-
1999-EA-1-1799 dated 02-05-2000 and also as per
other similar judgments passed by this Hon'ble
Tribunal in OA No. 56 of 2000 and OA No. 11 of
2003. The applicants are Group-C employee
working under the Ministry of Information and

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Q

Broadcasting. They were posted out from North Eastern Region and also reposted from out side North Eastern Region to North Eastern Region. As per Government of India, Cabinet Secretariat decision dated 02-05-2000 the applicants are entitled for Special Duty Allowance and they fulfill the conditions criteria laid down by the Cabinet Secretariat. Accordingly, sanction order for payment of Special Duty Allowance were granted to them. But suddenly the Respondents stopped the payment of Special Duty Allowance to them. Hence, applicants have filed this Original Application for seeking a direction from this Hon'ble Tribunal to the Respondents for payment of Special Duty Allowance to the applicant as per direction of the Cabinet Secretariat. Moreover, similar judgments have been passed by this Hon'ble Tribunal in similarly situated cases regarding payment of Special Duty Allowance.

Sh. J. S.

- 1 -

Filed by 16
Shree J. L. (Satish ch. Patgiri)
Thayl. L. L. (Applicant's No.)
(Asic AHMS) Kharata
28.8.2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. 202 OF 2003.

B E T W E E N

- 1) Sri Satish Ch. Patgiri,
Junior Engineer, Office of
the Executive Engineer
(Electrical) Civil
Construction Wing,
All India Radio, Rajgarh
Road, Guwahati-3.
- 2) N. Izamo Yanthan,
ASW (Electrical) Office of
the Executive Engineer
(Electrical) Civil
Construction Wing,
All India Radio, Rajgarh
Road, Guwahati-3.

- 3] Sanjay Kumar Dey,
S.O. (Electrical),
Office of the Executive
Engineer (Electrical) Civil
Construction Wing,
All India Radio, Rajgarh
Road, Guwahati-3.
- 4] Sarvoday Aditya,
Draftman Grade-II.
Office of the Superintending
Engineer (Civil) Civil
Construction Wing all India
Radio, Ganesh Guri Chariali,
Kakati Building First floor,
P.O. Sachivalaya, Guwahati-6.

-Applicants.

-AND-

- 1] The Union of India,
represented by the Secretary
to the Government of India,
Ministry of Information and
Broadcasting, New Delhi.

sd/-js

- 2) The Director General,
Prashar Bharati (Broadcas-
ting) Corporation of India,
Civil Construction Wing,
All India Radio,
Govt. of India, New Delhi-1.
- 3) The Chief Engineer-I (Civil),
Civil Construction Wing, All
India Radio, Suchana Bhawan,
Sixth Floor, CGO Complex,
New Delhi-3.
- 4) The Superintending Engineer,
(Electrical) Civil
Construction Wing, All India
Radio, T.V. Complex GOLF
GREEN, Kolkata-1995.
- 5) The Superintending Engineer
(Civil) Civil Construction
Wing, All India Radio,
Dooradarshan Staff Quarter
Complex, VIP Road,

Shas Z.

P.O.-Hengrabari,

Guwahati-781036.

-Respondents.

DETAILS OF THE APPLICATION:

- 1) PARTICULARS OF THE ORDER AGAINST
WHICH THE APPLICATION IS MADE:

The application is not made against any particular order but praying for a direction from this Hon'ble Tribunal to the Respondents to pay the Special Duty Allowance to the applicants as per Government of India, Cabinet Secretariat Letter No. 20-12-1999-EA-1-1789 dated 02-05-2000 and also as per other similar judgments passed by this Hon'ble Tribunal in O.A. No. 56 of 2000 and O.A. No. 11 of 2003.

- 2) JURISDICTION OF THE TRIBUNAL:

The applicants declare that the Subject matter of the instant application is within the jurisdiction of this Hon'ble.

[Signature]

3) LIMITATION:

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

4) FACTS OF THE CASE:

4.1 That the applicants are citizen of India and as such, they are entitled to all the rights and privileges guaranteed under the Constitution of India.

4.2 That your applicants beg to state that they are working under the Ministry of Information and Broadcasting. They are all Group-C employees.

4.3 That your applicants beg to state that as the grievances and reliefs prayed in this application are common, therefore, they pray for grant of permission under Section 4 (5) (a) of the Central Administrative Tribunal (Procedure) rules, 1987 to move this application jointly.

[Signature]

4.3) That the applicants beg to state that the Government of India, Ministry of Finance, Department of Expenditure granted certain improvements and facilities to the Central Government Civilian Employees of the Central Government serving in the States and Union Territories of North Eastern Region vide Office Memorandum No. 20014/3/83-IV dated 14-12-1983. In clause II of the said office memorandum Special (Duty) Allowance was granted to Central Government Civilian Employees, who have all India Transfer Liability at the rate of Rs. 25% of the basic pay subject to ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region The relevant portion of the office Memorandum dated 14.12.1983 is quoted below:

(iii) Special (Duty) Allowance:

Central Government Civilian employee who have all India Transfer Liability will be granted a Special (Duty) Allowance at the rate of Rs. 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North East Region.

[Handwritten signature]

Such of these employees who are exempted from payment of Income Tax, will however not be eligible for the Special (Duty) Allowance, Special (Duty) Allowance will be in addition to any Special Pay and for allowances already being drawn subject to the condition that the total of such Special (Duty) Allowance plus Special Deputation (Duty) Allowance will not exceed Rs. 400/- per month. Special Allowance like Special Compensatory (Remote) Locality Allowance, Construction Allowance and Project Allowance will be drawn separately."

The Govt. of India, Ministry of Finance, Department of Expenditure vide its Office Memorandum No. F. No. 11(2)/97-E-II(B) dated 22-07-1998 continued the said facilities as per recommendation of the Fifth Central Pay Commission.

An Extract of Office Memorandum dated 14-12-1983 is annexed hereto and marked as Annexure-A.

Sd/-

Annexure-B is the photocopy of Office Memorandum No. F. No. 11(2)/97-E-II(B) dated 22-07-1998.

4.5] That your applicants beg to state that they have All India Transfer liability and their seniority are ~~on~~ fixed ^{on} All India Basis. The Applicant NO.1 Satish Chandra Patgiri was transferred from Kolkata Circle to Dibrugarh vide Office Order No. 1(7)/SE(E)/93-94/3652 dated 14-10-1993. The Applicant No. 2, namely, Mr. N. Izamo Yanthan, was posted as Assistant Engineer, (Electrical) at New Delhi Head Quarter vide Office Order No. A-12011/1/92.CW.1 New Delhi dated 6th August 1992. Again he was transferred and relieved from New Delhi Head Quarter on 13th Nov. 1992 vide Office Order No. A 22013/1/92-CW.1 New Delhi dated 13th Nov. 1992 and he was posted as Assistant Engineer (Electrical) Itanagar Sub-Division under Guwahati Electrical Sub-Division. The Applicant No. 3, namely, Sri Sanjay Kumar Dey was transferred to Siliguri vide Office Order NO.CWS/EE(E)-1(3)/93-5/86 dated Silchar 16th Jan. 1993. After serving at Siliguri he was

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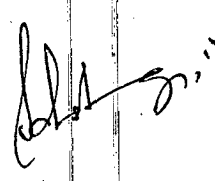
again posted Silchar Sub-Division vide Office Order No. Ghy-EE(E)/1(3)/94-S/1386-92 dated 23rd/24th July 1994. The applicant No. 4 Sri Sarvoday Aditya was transferred to Kolkata Circle vide Office Order No. AIR/CCW/SE(E)/Cal/E-3/56 dtd. 05-01-1993. Thereafter, he was transferred to Guwahati vide Office Order No. 45011/4/97-CW-V dated 25-04-1997.

Annexure-C is the photocopy of Office Order No. vide Office Order No. 1(7)/SE(E)/93-94/3652 dated 14-10-1993.

Annexure-D is the photocopy of Office Order No. A-12011/1/92.CW.1 New Delhi dated 6th August 1992.

Annexure-E is the photocopy of Office Order No. A 22013/1/92-CW.1 New Delhi dated 13th Nov. 1992.

Annexure-F is the photocopy of Office Order NO.CWS/EE(E)-1(3)/93-5/86 dated Silchar 16th Jan. 1993.



Annexure-G is the photocopy of Office Order No. Ghy-EE(E)/1(3)/94-S/1386-92 dated 23rd/24th July 1994.

Annexure-H is the photocopy of Office Order No. vide Office Order No. AIR/CCW/SE(E)/Cal/E-3/56 dtd. 03-01-1993.

Annexure-I is the photocopy of Office Order No. Office Order No. 45011/4/97-CW-V dated 25-04-1997.

Accordingly they were transferred from North Eastern Region to other places of India. Again they were transferred from outside to North Eastern Region to Assam. As such, with reference to the said Office Memorandum dated 14-12-83 and 22-07-1998 your applicants had approached the appropriate authorities for payment of Special (Duty) Allowance in terms of said Office Memorandum Dated 14-12-83 and 22-12-1998 as the applicant fulfilled the criteria laid down in the Office Memo. Dated 14-12-83 and 22-12-1988. Your applicants demanded for payment of Special (Duty) Allowance before the Respondents. Accordingly, the Respondents accorded sanction for granting Special Duty

[Handwritten signature]

Allowance to the applicants vide Order No. AIR/CCW/SE-GH/SDA/1917-21 dated 30-08-2001 and also Order No. GHY/EE(E)/2(3)/ 00-01/P & A/G/1531-34 Dated 7th Sept. 2001.

Annexures-J and J/1 are the photocopies of Order No. AIR/CCW/SE-GH/SDA/1917-21 dated 30-08-2001 and Order No. GHY/EE(E)/2(3)/00-01/P & A/G/1531-34 Dated 7th Sept. 2001.

4.6 That your applicant begs to state that they are saddled with All India Transfer Liability in terms of their offer of appointment and with the said liabilities they accepted the transfer order of posting from North Easter Region to outside of this region and also from outside of this region to the North Eastern Region. Therefore, the applicants are in practice saddled with all India Transfer Liability and in terms of Office Memorandum dated 14-12-1983 they are legally entitled for grant of Special (Duty) Allowances.

4.7 That your applicants beg state that as per cabinet Secretariat letter No. 20-12-1999-EA-1-1799 dated 02-05-2000 it has been clearly stated that an employee hailing from N E

[Handwritten signature]

Region, posted to N E Region from outside will also be entitled for Special Duty Allowance.

Annexure-K is the photocopy of letter No. 20-12-1999-EA-1-1799 dated 02-05-2000.

4.8 That the applicants beg to state that similarly situated persons have earlier approached this Hon'ble Tribunal by filing O A No. 56/2000 and this Hon'ble Tribunal vide its Judgment dated 19-3-01 ~~in the said case~~ has stated that an employee hailing from N E Region initially but subsequently transferred out of NE Region but reposted to N E Region would also be entitled to S.D.A. and similar other copy of judgment passed by this Hon'ble Tribunal is also annexed herewith for ready reference of this Hon'ble Court.

It is worth to mention here that similarly situated person who is working under the same Ministry and same office of the applicants has already been given the similar relief by this Hon'ble Tribunal in OA No. 11 of 2003.

Sd/-

Annexure-L & M are the photocopies of Judgment and order dtd 19-03-2001 and 25-04-2003 in OA Nos. 56/2000 and 11/2003 respectively passed by this Hon'ble Tribunal.

4.9] That your applicant begs to state that the Office of the Respondents has suddenly stopped the Special Duty Allowance to the applicants which has been paid to them vide earlier sanction letter.

4.10] That your applicants state that they have fulfilled all the criteria laid down in the aforesaid Memorandum regarding payment of Special duty allowance, hence the Respondents can not deny the same to the applicants without any justification.

4.11] That your applicants beg to state that similarly situated persons have already been granted the said benefit as such the action of the Respondents is arbitrary, malafide, whimsical and also not sustainable in the eye of law as well as on facts.

Let go

4.12] That your applicants submit that there is no other alternative remedy and the remedy sought for if granted would be just, adequate and proper.

4.13] That this application is filed bona fide and for the cause of justice.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1] For that on the reason and facts which are narrated above the action of the Respondents is prima facie illegal and without jurisdiction.

5.2] For that the action of the Respondents are mala fide and illegal and with a motive behind.

5.3] For that the applicants are practically having all India Transfer liability and they have been transferred from outside of the North Eastern Region and also from outside of North Eastern Region to North Eastern Region.

[Handwritten signature]

- 5.4] For that that the applicants are having All India Seniority. As such, they are legally entitled to draw the Special (Duty) Allowance as per Office Memorandum dated 14-12-83, 01-12-88 and 22-07-1998.
- 5.5] For that there is no justification in denying the said benefit to the applicants and denial has resulted in violation of Articles 14 and 16 of the Constitution of India.
- 5.6] For that similarly situated persons who are working under various Ministry of Government of India have already been given the reliefs but the Respondents are not giving the same reliefs to the instant applicants. As such, the action of the Respondents are bad in the eye of law and also not maintainable.
- 5.7] For that similarly situated persons who are working with the applicants have already been granted this relief by this Hon'ble Tribunal in OA No. 11 of 2003.

Handwritten signature

5.8] For that being a model employer the Respondents can not deny the same benefits to the instant applicants which have been granted to other similarly situated persons. As such, the Respondents should extend this benefit to the instant applicants without approaching this Hon'ble Tribunal.

5.8] For that in any view of the matter the action of the Respondents are not sustainable in the eye of law.

The applicants crave leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of instant application.

6) **DETAIL REMEDY EXHAUSTED:**

That there is no other alternative and efficacious remedy available to the applicants except invoking the jurisdiction of this Hon'ble Court under Section 19 of the Administrative Tribunal Act, 1985.

Subd. 5.8]

7) MATTERS NOT PREVIOUSLY FILED OR
PENDING BEFORE ANY OTHER COURT:

The applicants further declares that they have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this Hon'ble Tribunal nor any such, application, writ petition or suit is pending before any of them.

8) RELIEF PRAYED FOR:

Under the facts and circumstances stated above your Lordships may be pleased to admit this petition, call for the records of the case, issue notice to the Respondents as to why the relief and reliefs sought for by the applicants may not be granted and after hearing the parties and the cause or causes that may be shown your Lordships may be please to direct the Respondents to give the following reliefs:

Let go

8.1 That the Hon'ble Tribunal may be pleased to direct the Respondents to Grant the Special Duty Allowance to the Applicants.

8.2 That the Hon'ble Tribunal may be pleased to pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.

8.3 Cost of the application.

9) INTERIM ORDER PRAYED FOR:

At this stage no interim is prayed for, if the Hon'ble Tribunal deem fit may pass any order or orders.

10) APPLICATION IS FILED THROUGH ADVOCATE.

11) PARTICULARS OF I.P.O./BANK DRAFT

I.P.O.No./Bank Draft:

Date of Issue : 25.07.2003

Issued from : Guwahati G.P.O

Payable at : Guwahati

12) LIST OF ENCLOSURES:

As stated in index.

[Handwritten signature]

Verification

I, Sri Satish Ch. Patgiri, Junior Engineer, Office of the Executive Engineer (Electrical) Civil Construction Wing, All India Radio, Rajgarh Road, Guwahati-3 I am one of the applicants of the instant application the other applicants is authorized me to sign this verification on their behalf. I do hereby verify the statements made in accompanying application and in paragraphs 4.1, 4.2, 4.3, 4.6, 4.9, 4.10, 4.11 — are true to my knowledge and those made in paragraphs 4.4, 4.5, 4.7, 4.8 -

— are true to my information being matter of records and which I believe to be true and those made in paragraph 5 are true to my legal advise and I have not suppressed any material facts.

And I signed this verification on this day 28th of ^{August} ~~September~~, 2003 at Guwahati.

Satish Ch. Patgiri

Declarent.

1: 8
20-
No. 20014/2/83/E.IV
Government of India
Ministry of Finance
Department of Expenditure

Annexure-1 (Extract)

ANNEXURE - A

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 some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and Staff Administrative Reforms, to review the existing allowances & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows :-

i) Tenure of posting/deputation.

x x x x x x x x

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

x x x x x x x

iii) Special (Duty) Allowance :

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

Contd..

Attended
File
Signature

be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and pre 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 Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

XXXXXXXX

XXXXXXXX

XXXXXXXXXX

XXXXXXXXXX

XXXXXXXXXX

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

Contd..

Attested
[Signature]
Advocate

New Delhi, Dated July 22, 1998.

OFFICE MEMORANDUM

Subject: Allowances and Special Facilities for Civilian Employees of the Central Government serving in the States and Union Territories of the North-Eastern Region and in the Andaman & Nicobar and Lakshadweep Groups of Islands --- Recommendations of the Fifth Central Pay Commission.

With a view to attracting and retaining competent officers for service in the North-Eastern Region, comprising the territories of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, orders were issued in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 extending certain allowances and other facilities to the Civilian Central Government employees serving in this region. In terms of paragraph 2 thereof, these orders other than those contained in paragraph 1(iv) *ibid.* were also to apply *mutatis mutandis* to the Civilian Central Government employees posted to the Andaman & Nicobar Islands. These were further extended to the Central Government employees posted to the Lakshadweep Islands in this Ministry's O.M. of even number dated March 30, 1984. The allowances and facilities were further liberalised in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988 and were also extended to the Central Government employees posted to the North Eastern Council when stationed in the North-Eastern Region.

2. The Fifth Central Pay Commission have made certain recommendations suggesting further improvements in the allowances and facilities admissible to the Central Government employees, including Officers of the All India Services, posted in the North-Eastern Region. They have further recommended that these may also be extended to the Central Government employees, including Officers of the All India Services, posted in Sikkim. The recommendations of the Commission have been considered by the Government and the President is now pleased to decide as follows:

(i) **Tenure of Posting/Deputation**

The provisions in regard to tenure of posting/deputation contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read with O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(ii) **Weightage for Central Deputations/Training Abroad and Special Mention in Confidential Records**

The provisions contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read with O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(iii) **Special [Duty] Allowance**

Central Government Civilian employees having an "All India Transfer Liability" and posted to the specified Territories in the North-Eastern Region shall be granted the Special [Duty] Allowance at the rate of 12.5 per cent of their basic pay as prescribed in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, but without any ceiling on its quantum. In other words, the ceiling of Rs 1,000 per month currently in force shall no longer be applicable and the condition that the aggregate of the Special [Duty] Allowance plus Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs 1,000 per month shall also be dispensed with. Other terms and conditions governing the grant of this Allowance shall, however, continue to be applicable.

In terms of the orders contained in this Ministry's O.M. No. 20022/2/88-E.II(B) dated May 24, 1989, Central Government Civilian employees having an "All India Transfer Liability" and posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands are presently entitled to an Island Special Allowance at varying rates in lieu of the Special [Duty] Allowance admissible in the North-Eastern Region. This Allowance shall continue to be admissible to the specified category of Central Government employees at the same rates as prescribed for the different specified areas in the O.M. dated May 24, 1989, but without any ceiling on its quantum. This Allowance shall also henceforth be termed as Island Special (Duty) Allowance. Separate orders in regard to this Allowance have been issued in this Ministry's O.M. No. 12(1)/98-E.II(B) dated July 17, 1998.

Attention is also invited in this connection to the clarificatory orders contained in this Ministry's O.M. No. 11(3)/95-E.II(B) dated January 12, 1996, which shall continue to be applicable not only in respect of the Central Government employees posted to serve in the North-Eastern Region but also to those posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands.

Attested
J.L.
Secretary

(iv) Special Compensatory Allowances

Orders in regard to revision of the rates of various Special Compensatory Allowances, such as Remote Locality Allowance, Bad Climate Allowance, Tribal Area Allowance, Composite Hill Compensatory Allowance, etc., which are location-specific, have either been separately issued or are under issue based on the Government decisions on the recommendations of the Fifth Central Pay Commission relating to these allowances. These orders shall apply to the eligible Central Government employees posted in the specified localities in the North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands, depending on the area(s) of their posting and subject to the observance of the terms and conditions specified therein. Such of those employees who are entitled to the Special [Duty] Allowance or the Island [Special Duty] Allowance shall also be entitled, in addition, to the Special Compensatory Allowance(s) as admissible to them in terms of these separate orders.

Central Government employees entitled to Special Compensatory Allowances, separate orders in respect of which are yet to be issued, will continue to draw such allowances at the existing rates with reference to the 'notional' pay which they would have drawn in the applicable pre-revised scales of pay but for the introduction of the corresponding revised scales till the revised orders are issued on the basis of the recommendations of the Fifth Central Pay Commission and the Government decisions thereon.

(v) Travelling Allowance on First Appointment

The existing concessions as provided in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 and further liberalised in O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(vi) Travelling Allowance for Journeys on Transfer; Road Mileage for Transportation of Personal Effects on Transfer; Joining Time with Leave

The existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 shall continue to be applicable.

(vii) Leave Travel Concession

In terms of the existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, the following options are available to a government servant who leaves his family behind at the old headquarters or another selected place of residence, and who has not availed of transfer travelling allowance for the family :

- (a) the government servant can avail of the leave travel concession for journey to the Home Town once in a block period of two years under the normal Leave Travel Concession Rules;

OR

- (b) in lieu thereof, the government servant can avail of the facility for himself/herself to travel once a year from the station of posting to the Home Town or the place where the family is residing and for the family [restricted only to the spouse and two dependent children of age up to 18 years in respect of sons and up to 24 years in respect of daughters] also to travel once a year to visit the government servant at the station of posting.

These special provisions shall continue to be applicable.

In addition, Central Government employees and their families posted in these territories shall be entitled to avail of the Leave Travel Concession, in emergencies, on two additional occasions during their entire service career. This shall be termed as "Emergency Passage Concession" and is intended to enable the Central Government employees and/or their families [spouse and two dependent children] to travel either to the home town or the station of posting in an emergency. This shall be over and above the normal entitlements of the employees in terms of the O.M. dated December 14, 1983, and the two additional passages under the Emergency Passage Concession shall be availed of by the entitled mode and class of travel as admissible under the normal Leave Travel Concession Rules.

Further, in modification of the orders contained in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, Officers drawing pay of Rs 13,500 and above and their families, i.e. spouse and two dependent children [up to 18 years in respect of sons and up to 24 years in respect of daughters] will be permitted to travel by air on Leave Travel Concession between Agartala/Aizawl/Imphal/Litlabari/Silchar in the North East and Calcutta and vice versa; between Port Blair in the Andaman & Nicobar Islands and Calcutta/Madras and vice versa; and between Kavaratti in the Lakshadweep Islands and Cochin and vice versa.

Attested
[Signature]
Advocate

20-24-9

(viii) Children Education Allowance and Hostel Subsidy

The existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 shall continue to be applicable. The rates of Children Education Allowance and Hostel Subsidy having been revised in the Department of Personnel & Training O.M. No. 21017/1/97-Estt.(Allowances) dated June 12, 1998, the Allowance and Subsidy shall be payable at the revised monthly rates of Rs 100 and Rs 300 respectively per child.

(ix) Retention of Government Accommodation at the Last Station of Posting

The facility of retention of Government accommodation at the last station of posting by the Central Government employees posted to the specified territories and whose families continue to stay at that station is available in terms of the orders contained in the erstwhile Ministry of Works & Housing O.M. No. 12035/24/77-Vol. VI dated February 12, 1984, as amended from time to time. This facility shall continue to be available to the eligible Central Government employees posted in the North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands. In partial modification of these orders, Licence Fee for the accommodation so retained will be recoverable at the applicable normal rates in cases where the accommodation is below the type to which the employee is entitled to and at one and a half times the applicable normal rates in cases where the entitled type of accommodation has been retained. The facility of retention of Government accommodation at the last station of posting will also be admissible for a period of three years beyond the normal permissible period for retention of Government accommodation prescribed in the Rules.

(x) House Rent Allowance for Employees in Occupation of Hired Private Accommodation

The orders contained in this Ministry's O.M. No. 11016/1/E.II(B)/84 dated March 29, 1984, and extended in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(xi) Retention of Telephone Facility at the Last Station of Posting

As provided in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, Central Government employees who are eligible for residential telephones may be permitted to retain their residential telephone at their last station of posting, provided the rental and all other charges are paid by the concerned employees themselves.

(xii) Medical Facilities

Families and the eligible dependants of Central Government employees who stay behind at the previous stations of posting on the employees being posted to the specified territories shall continue to be eligible to avail of CGHS facilities at stations where such facilities are available. Detailed orders in this regard will be issued by the Ministry of Health & Family Welfare.

3. The President is also pleased to decide that these orders, in so far as they relate to the Central Government employees posted in the North-Eastern Region, shall also be applicable *mutatis mutandis* to the Civilian Central Government employees, including Officers of the All India Services, posted to Sikkim.

4. These orders will take effect from August 1, 1997.

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

6. Hindi version will follow.

N. Sunder Rajan

(N.SUNDER RAJAN)

Joint Secretary to the Government of India

To

All Ministries/Department of the Government of India [As per standard Distribution List]

Copy [with usual number of spare copies] forwarded to C&AG, UPSC, etc. [As per standard Endorsement List]

Copy also forwarded to Chief Secretary, Andaman & Nicobar Islands and Administrator, Lakshadweep.

Attested
File
Advocate

35

40
ANNEXURE - C

Government of India
Office of the Superintending Engineer (Elect.)
Civil Construction Wing : All India Radio

5th. Floor, Sochna Bhawan,
Lodhi Road Complex,
New Delhi- 1100 03.

No. 1(7)/SE(E)/93-94/13652

Dated:- 14/8/93

ORDER

The following transfer/postings of JE(E)'s are hereby ordered with immediate effect in Public Interest for necessary compliance :-

<u>Srl. No.</u>	<u>Name</u>	<u>From</u>	<u>To</u>	<u>Remarks</u>
1.	Sh. S.C. Patgiri	Circle office Dibrugarh Calcutta.		Against existing vacancy.
2.	Sh. N. Sikdar	Gauhati	Aizwal	vice Sh. R.V. - Mazumdar ttd.
3.	Sh. R.V. Mazumdar	Aizwal	Gauhati	Vice Sh. N. - Sikdar ttd.

The posting order of Sh. R.V. Mazumdar has been issued after considering his request made to SE(E), Delhi during tour to Gauhati between 11.10.93 to 12.10.93. Hence, No TA/DA and joining time is admissible.

This is issued with the approval of SE(E) New Delhi.

Copy to :-

1. S.S.W.II, CCE, AIR, New Delhi.
2. EE(E); CCW, AIR, Gauhati.
- ✓ 3. SW(E) O/o SE(E), CCW, AIR, Calcutta.
4. EA to SE(E), CCW, AIR, Calcutta.
5. AE (E), CCW, AIR, Gauhati/Dibrugarh/Silchar.
6. All Individuals.

Kumar
Tulola
(Suresh Kumar)
E.A. to SE (Elect.)

Kumar
Tulola
E.A. to SE (Elect.)

Attended
Adm to

No.A-12011/1/92.CW.I

New Delhi-1, the 6th August, 1992.

O R D E R

On being selected as Asstt. Engineer(Civil)/(Elect.) in the Pay Scale of Rs.2000-60-EB-75-3200-100-3500/- from Union Public Service Commission on the basis of Engineering Services Examination, 1990, the following officers have joined their duty in Civil Construction Wing(H.Qrs) as per detail below :-

S.No.	Name & Design.	Date of joining
1.	Sh.Kamlesh Kumar Singh, AE(E)	- 29.6.92 (F.N.)
2.	Sh.Naveen Bhagat, AE(C)	- 23.7.92 (F.N.)
3.	Sh.Sanjay Kumar Sinha, AE(C)	- 24.7.92 (F.N.)
4.	Sh.N. Izamoll Yanthan, AE(E)	- 24.7.92 (F.N.)
5.	Sh.Praveen Kumar Markan, AE(C)	- 4.8.92 (F.N.)

2. All the above officers have been deployed to undertake the 15 weeks 'On Job Training' Course in SE(Trg.) Unit from the date of their joining in CCW(H.Qrs.).

3. During the period of training at H.Qrs their salary shall be chargeable to vacant posts of ASW(Civil)/Chief Estimator/Asstt. Architect.

(S.K. Mohindra)
Engineer Officer to CE(Civil)-I
for Director General
Tel: 3710054

Copy to :-

1. The Pay & Accounts Office, All India Radio, New Delhi.
2. Sr.PA to E-in-C/CE(C)-I/CE(C)-II/Chief Architect/SSW.I/SSW.II/SSW.III.
3. SE(Trg.), CCW, AIR, Sookna Bhavan, New Delhi.
4. Cash Section(CCW) alongwith the CTC/HRA Form etc. for draw of salary. It is also certified that all the above Asstt. Engineer(Civil) have been medically examined and found 'FIT', their C&A verification have also been done and they are suitable for government services.
5. The Secretary, UPSC, Oholpur House, New Delhi w.r.t. this Directorate's endorsement No.A-12011/1/92-CW.I dated 26.6.92.
6. The Secretary, M/O Railways(Railway Board), New Delhi.
7. Under Secretary(BD), M/O I&B, Shastri Bhavan, New Delhi.
8. Persons concerned and their personal files.
9. Vig. Section/WL Section/Security Cell.
10. C.R. folder in CW.I Section.
11. Spare copies - 15 Nos.

(Manojit Dey)
Section Officer
for Director General.
Tel: 3710382

Dhaliwal

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ANNEXURE-E

Governor of India
Directorate General : All India Radio
(Civil Construction Wing)

No. A-22013/1/92-CW.I

New Delhi-1, the 13th Nov., 1992

C R D FR

Consequent upon completion of 'On Job Training' in Civil Construction Wing (H.Qrs.), New Delhi, Shri N. Izamo Yanthan, Asstt. Engineer (Elect.) is hereby relieved from the strength of CCW (H.Qrs.) on the Afternoon of 13th Nov., 1992 and posted as Asstt. Engineer (Elect.), Itanagar Sub-Division under Gauhati Elect. Division.

(S.K. Mohindra)

Suptt. Surveyor of Works-II
Tel: 3710054

Copy to : -

1. The Pay & Accounts Officer, All India Radio, New Delhi/Gauhati.
2. PS to E-ib-C/CE(C)-I/CE(C)-II/Chief Architect.
3. SE (Trg.), CCW, AIR, Soochna Bhavan, New Delhi.
4. SE (Elect.), CCW, AIR, Calcutta for information.
5. SE (Civil), CCW, AIR, Gauhati Circle/Gauhati Div.
6. Sh. N. Izamo Yanthan, AE (Elect.).
7. Cash Section (CCW) with the instructions to issue LPC in respect of Sh. Yanthan.
8. Personal file of Sh. Yanthan.
9. Vig Section/UL Section/Security Cell.
10. All Sections/Units of CCW (H.Qrs.).

M.S. Nagra

(M.S. Nagra)
Section Officer
for Director General.
Tel: 3711417.

Dhaliwal

Alfred
Jil
Adante

- 28 -

ANNEXURE - II

GOVERNMENT OF INDIA
OFFICE OF THE EXECUTIVE ENGINEER(ELECT.)
CIVIL CONSTRUCTION WING : ALL INDIA RADIO
CENTRAL ROAD :::: SILCHAR :::: 788001

NO: CWS/EE(E)-1(3)/93-S/86

Dated Silchar, the 16/1 Jan/93.

OFFICE ORDER

In accordance with the transfer order issued by the SE(E), CCW, AIR, Calcutta No. AIR/CCW/SE(E)/CAL-E/3/3489 dt. 5/9-12-92, Shri S. K. Dey, JE(E) of this Division is relieved of his duties at this office on the afternoon of 18th January, 1993. He is hereby instructed to report himself for duty to the AE(E), CCW, AIR, Siliguri after availing of usual joining time etc.

Shri Dey, JE(E) should return the identity card, Library books and other office materials, if any issued to him and should ensure that no dues remains outstanding against him so far as this Division is concerned. He is also directed to hand over office files, documents etc. to the concerned authority before his leaving.

To
Shri S.K.Dey, JE(E),
CCW, AIR, Silchar

(A. P. John)
Executive Engineer(Elect.)

Copy for kind information to :-

1. The Superintending Engineer(Elect.), CCW, AIR, Doordarshan Bhavan, Golf Green, Calcutta-45.
2. The Superintending Engineer(Elect.), CCW, AIR, 5th Floor, Sookhana Bhavan, CGO Complex, New Delhi-3.
3. The Executive Engineer(Elect.), CCW, AIR, Patna. The service book, L.P.C, casual leave and Earned leave account of S.K. Dey, JE(E) are being sent separately.
4. The AE(E), CCW, AIR, Elect. Sub-Division, Siliguri.
5. Shri S. Chakraborty, CG-I, CCW(E), AIR, Silchar for necessary action. (in duplicate).
6. Shri B. Suklabaidya, CG-II for necessary action.
7. Personal file/service book of Shri Dey, JE(E).
8. Steno to JE(E) for necessary action.

EXECUTIVE ENGINEER(ELECT)

Attested
Adv. to

29 -

ANNEXURE - G

44

GOVERNMENT OF INDIA
OFFICE OF THE EXECUTIVE ENGINEER (ELECT.)
CIVIL CONSTRUCTION WING: ALL INDIA RADIO
RAJGARH ROAD::: GUWAHATI.

NO. GHY-EE(E)/1(3)/94-s/386-92, Dated Guwahati, the 23rd July '94.
29,

OFFICE ORDER

In accordance with SE(E), New Delhi order No. 1(7)/SE(E)/94-95/1573 dated 17-5-94, Sri S. K. Dey, SO(E) has joined for duty at the electrical sub-division of CCW, AIR, Silchar w.e.f 27-5-94 (TH).

(Signature)
Executive Engineer (Elect.)
CCW::: AIR::: Guwahati.

To
✓ Shri S. K. Dey,
Sectional Officer (E),
CCW, AIR, Silchar.

Copy forwarded to :

1. The JAO/~~SE(E)~~, CCW, AIR, Guwahati for information and necessary action.
2. The Assistant Engineer (E), CCW, AIR, Silchar.
3. The Superintending Engineer (E), CCW, AIR, New Delhi with reference to the above order for favour of kind information.
4. Sri D. Chankakati, CG-I for necessary action.
5. Steno to EE(E).
6. Personal file.

Executive Engineer (Elect.)
CCW::: AIR::: Guwahati.

jdutta/

Attest
(Signature)
Asstt

-30-

us

ANNEXURE - H

Government of India
Office of the Superintending Engineer(Elect)
Civil Construction Wing::: All India Radio
Doot Harshan Complex: Golf Green: Calcutta-45

* * *

No. AIR/CCW/SE(E)/CAL/E-3/57

Dated:- 05/01/1993/

O R D E R

Sri S. Aditya, D/Man Grade-II, CCW, AIR, Silchar, is hereby transferred in the same capacity to the office of the Superintending Engineer(Electrical), Civil Construction Wing, All India Radio, Calcutta, with immediate effect, in the public interest.

[Signature]

(K.N. Manjunatha)
Superintending Engineer(Elect)

To
Sri S. Aditya,
D/Man Grade-II,
CCW, AIR, Silchar.

- Copy to:-
- (1) The Chief Engineer(Civil), CCW, AIR, New Delhi-1.
 - (2) The Superintending Surveyor of Works(Civil)-I, CCW, AIR, New Delhi-3, The order No. SSW-1/25(3)/92-S/3062 dated 9/11/92 issued earlier transferred in D/Man Grade-II of Siliguri Division may kindly be cancelled with immediate effect.
 - (3) The Executive Engineer(Elect), CCW, AIR, Silchar.
 - (4) The Surveyor of Works(Elect), CCW, AIR, Calcutta.

SUPERINTENDING ENGINEER.(ELECT)

B. BISWAS/

[Signature]
Adm E

31-
Government of India
Directorate General : All India Radio
(Civil Construction Wing)

46
ANNEXURE - I

No. 45011/4/97-CW-V

6th Floor,
Soochna Bhavan,
New Delhi,
Date: 25.04.97

O R D E R

It has been decided with the approval of CE-II to divert one post of Draftsman Grade-II from the sanctioned strength of Circle office-II, Calcutta to the office of SE(C), Guwahati Circle with effect from 1.5.1995 to 31.3.2000.

2. Shri S. Aditya, Draftsman Grade-II is hereby transferred in the same capacity from the strength of SE(C)-II, Calcutta and posted against the diverted post in the office of SE(C), Guwahati with immediate effect. Further it is also decided, with the approval of CE-II, to divert one post of Draftsman Grade-III from the sanctioned strength of Patna Civil Division to Calcutta Circle-II.

3. SE, Guwahati will debit the salary expenditure of Shri S. Aditya, Draftsman Grade-II to the sanctioned budget grant of SE(C)-II, Calcutta office salaries and will complete all the formalities in this regard at the earliest. The salary head will be intimated by SE(C)-II, Calcutta to SE(C), Guwahati.

4. Similarly, SE(C), Circle-II, Calcutta will debit the salary expenditure in respect of Draftsman Grade-III to the sanctioned budget grant of Patna Civil Division office salaries and will complete all the formalities in this regard at the earliest. The salary head will be intimated by Patna Civil Division to SE(C)-II, Calcutta.

4. This issues with the approval of CE-II.

(Signature)
28/4/97

(T. NANKAN)

Engineer Officer to CE-II

Copy to:-

1. Shri S. Aditya, Draftsman Grade-II
2. SE(C)-II, Calcutta.
3. SE(C), CCW, AIR, Guwahati.
4. PS to CE(C)-I, CCW, AIR, New Delhi.
5. PS to CE-II, CCW, AIR, Soochna Bhavan, New Delhi.
6. SSW-I, CCW, AIR, New Delhi.
7. EE(C), CCW, AIR, Patna.
8. P&AO, AIR, Calcutta.
9. P&AO, AIR, Guwahati.
10. Guard File.
11. Spare copies-10.

(Signature)
Advocate

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ANNEXURE - J

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
OFFICE OF THE SUPERINTENDING ENGINEER (CIVIL)
CIVIL CONSTRUCTION WING: ALL INDIA RADIO
GUWAHATI: CIRCLE

No: ATR\CDWASE-SH\SDA\ 12/7-21,

Dated: 30.8.2001

////SANCTION ORDER////

Sanction is hereby accorded for SDA to the following staffs, as per finance division, Cabinet Secretariat Dy no. 1349 dated 11.10.99 of ministry of Finance (Expenditure) I.D. no. 1304/E-II(8)-99 dated 30.3.2000, para -II (iii) & (ix) w.e.f. their joining date in this office after serving outside the N.E. Zone.

S.N.	Name & Designation	Date	Rate
1.	Sri M. Sengupta, DM-I	Dec 97	12.5% of Basic
2.	Sri S. Aditya, DM-II	Aug 97	12.5 of Basic

The above mentioned official will be entitled to get arrears of said allowance as per rule II and CCS (Revised Pay) rules 1997 and it is subject to the post audit observation if, over payment is made in the forms of arrears or otherwise shall be recovered from the amount due to person concerned subsequently without any notice.

This issues as per the approval of SE(C), ~~code~~ ~~code~~

To
1. Sri Manik Sengupta, DMI
2. Sri S. Aditya, DM II

EA to Superintending Engineer (C)

Attested
Jil
Aditya

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ANNEXURE - 5(1)

PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
C/O THE EXECUTIVE ENGINEER (ELECTRIC)
CIVIL CONSTRUCTION WING: ALL INDIA
RADIO: RAJGARH ROAD: CHANDMARI: GH-3

NO. GHY/EE(E)/2(3)/00-01/P&A/C/153/34

Dated Guwahati, the
7th of Sept 2001.

SANCTION ORDER

Sanction is hereby accorded for SDA to the following staff, as per Finance Division, Cabinet Secretariat Dy. No.134 dated 11-10-99 of Ministry of Finance (Expenditure) I.D. No.134 E-II(B)-99 dated 30-03-2000, Part-II(iii) & (iv) w.e.f. their joining date in this office after serving outside the N.E. Reg

SL.NO.	NAME & DESIGNATION	DATE OF ADMISSI- BILITY.	RATE
1	2	3	4
1.	Shri N.I. Yanthan, ASH, CCW(E), AIR, Guwahati	20-11-94 F.N.	12.
2.	Shri S.C. Patgiri, JE(E), CCW(E), AIR, Guwahati	01-01-94 F.N.	12.
✓ 3.	Shri S.K. Dey, JE(E), CCW(E), AIR, Silchar	22-03-94 F.N.	12

The above mentioned official will be entitled to get arrears of the said allowance as per rule II and CCS (Revised rules of 1997 and it is subject to the post audit observation over payment is made in the forms of arrears of SDA or otherwise shall be recovered from the amount due to person concerned subsequently without any notice.

It is also to be observed that when their arrear is made, then any amount to the said allowance paid to the above mention staff should be adjusted from their arrear payment when the bill is prepared.

Copy to :-

The JAO, Accounts Section,
for necessary action.

EXECUTIVE ENGINEER (E)
CCW: : : : AIR: : : : :

Executive Engineer (Elect)
CCW: AIR; Guwahati.

W. AIR, Guwahati

sd/-
EXECUTIVE ENGINEER (E)
Executive Engineer (Elect)
CCW: AIR; Guwahati.

Attest
[Signature]

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ANNEXURE-K

COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(E.A.I. Section)

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

SSB Directorate may kindly refer to their US No. 42/80 AI/99(18)-2369 dated 31.3.2000 on the subject mentioned above.

2. The points of doubt raised by SSB in their US No. 12/ AI/99(18)-5232 dated 2.9.1999 have been examined, in consultation with our Integrated Finance and Ministry of Finance (Department Expenditure) and clarification to the points of doubt is given under for information, guidance and necessary action :

- 1) The Hon'ble Supreme Court in their judgement delivered on 26.11.95 in Writ Petition No. 794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their US No. 11(3)/95 E.I. (B) dated 1.5.97.
 - a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on All India basis and having a common/centralised seniority list and All India Transfer liability.
 - b) An employee hailing from the NE Region selected on the basis of an All India recruitment test, and borne on the Centralised cadre/ service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer liability.
 - ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no ceiling rules for the post (prior to grant of DA vide Ministry of Finance US No. 22911/93-E.I. (B) dated 14.12.93 and 10.6.97 read with

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35-2-2001
ON 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 SPA 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 MOP, Deptt. of Expt. vide their 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 SPA to any central Govt. Civilian employees having All India Transfer Liability will be by applying tests:

In case the employee hailing from NE Region is posted within NE Region or is not eligible to SPA if transferred out of that Region.

(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 SSA/DGS, there is a common recruitment system and on All India basis and promotion is 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 SPA irrespective of the fact that the employee hails from NE Region or posted to NE Region from outside the NE Region.

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

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

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

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

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

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

1. Shri R.S. Bedi, Director, ARC
2. Shri R.P. Kurdel, Director, SSB
3. Brig (Retd) G.S. Uban, IG, SFF
4. Shri S.R. Mehra, JD (P&C), DCS
5. Shri Ashok Chaturvedi, JS (Pers), DEAW
6. Shri B.S. Gill, Director of Accounts, DACS
7. Sat. J.M. Menon, Director Finance (S), Cab. Secy.
8. Col. K.L. Jaspal, CMA, CTA

Cabinet Secretariat No. no. 20/12/99-EA-

Attest
[Signature]
[Signature]

Original Application No. 56 of 2000

Date of decision : This the 19th day of March, 2001.

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

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

Shri Manoj Kumar,
Lower Division Clerk,
Office of the Deputy Director,
Subsidiary Intelligence Bureau,
Basistha Road, Guwahati-28 & 167 Ors.

... Applicants.

By Advocate Mr. A. Ahmed.

-versus-

1. Union of India,
represented by the Secretary to the
Government of India, Ministry of
Home Affairs, North Block,
New Delhi.
2. The Director,
Intelligence Bureau,
North Block, New Delhi.
3. The Deputy Director,
Subsidiary Intelligence Bureau,
Basistha Road,
Guwahati-28.

... Respondents

By Advocate Mr. A. Deb Roy, Sr. C.G.S.C.

ORDER (ORAL)

CROWDHURY J. (V.C.).

The applicants are one hundred and sixty eight in number serving under the Deputy Director, Subsidiary Intelligence Bureau, in different capacities, like Lower Division Clerk, Assistant, Stenographer, Security Assistant, ACIO-I/G, P.S., JIO-II/G, Section Officer, Upper Division Clerk etc. Their grievance is common in nature claiming Special Duty Allowance (hereinafter referred to as SDA) payable to the Central Government employees serving in the North Eastern Region. By now the issue is involved is settled on the basis of numerous decision of the Supreme

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Advocate

Court subsequently clarified by the department. Cabinet

Secretariat (EA.I Section) clarified the matter by a Notification dated 2.5.2000. The civilian employees who have all India transfer liability are entitled for grant of SDA on being posting to any station in the NE Region from outside the Region. An employee hailing from the North Eastern Region selected on the basis of all India recruitment test and borne on the centralised cadre/service common seniority on first appointment and posted in the N.E. region per se is not entitled for the SDA. He or she would be entitled to SDA only if posted outside NE Region on transfer. An employee hailing from NE Region initially but subsequently transferred out of the NE Region but reposted to NE Region would also be entitled to SDA.

From the materials made available in this application, it is difficult for the Tribunal to determine/evaluate as to nature of posting of each individual applicant.

In the circumstances upon hearing the learned counsel Mr. A.Ahmed for the applicant and Mr. A.Deb Roy, learned Sr. C.G.S.C. we are of the view that ends of justice will be met if a direction is issued to the applicant to submit individual representation before the concerned authority narrating the factual position. Accordingly we direct the applicants to make individual representations within a period of one month from the date of receipt of certified copy of this order. The respondents on receipt of such application consider the same in the light of the OM issued from time to time more particularly on the basis of the Clarification issued by the Director(SR), Cabinet Secretariat dated 2.5.2000 with the concurrence of the Finance Division as early as possible at any rate within the

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Advocate

period of two months from the date of receipt of individual representation from the applicants.

The application is disposed of accordingly. There shall however, no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Copy
प्रमाणित प्रतिलिपि

trd

N. S. 31/9/2007

Dection Officer (J)
आयुक्त अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench, Guwahati-0
गुवाहाटी न्यायालय, गुवाहाटी-0

K. 31/9/07

Attended
J.S.
Advocate

ORDER SHEET

Original Application No : 11/03
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

ANNEXURE - M

Applicant(s): Manik Sengupta

- Vs. -

Respondent(s): U. C. I. Jom

Advocate for the Applicant(s): Adil Ahmed

Advocate for the Respondent(s): CAF C

Name of the Registry	Date	Order of the Tribunal
----------------------	------	-----------------------

25.4.2003 . . . Heard Mr. A. Ahmed, learned

counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

The controversy pertains to granting of Special Duty Allowance (SDA) to the applicant. The respondents in its written statement contended that SDA is admissible only to the Civilian Employees posted from outside the region and not to others. Admittedly, the applicant who belongs to North East Region was initially posted at Siliguri and by order dated 8.3.1995 the applicant was re-posted at Guwahati from Siliguri. Therefore, as per memorandum issued by the Cabinet Secretariat an employee hailing from N.E. Region, posted to N.E. Region initially but subsequently transferred out N.E. Region after some time serving in non N.E. Region is entitled SDA. As a matter of fact, the respondent admitted the same in the written statement and asserted that in terms of the memorandum of the Cabinet Secretariat the respondents continued to pay the SDA to the applicant from 28.2.2001. However, the same was stopped later on in the light of the observation made in the Swamynews in terms of the Supreme Court judgment. The aforementioned considerations are totally irrelevant on the facts situations in the context of the decisions of the Central Govt. The impugned action of the respondents in withholding the SDA due to the applicant and consequent recovery of the same is thus unsustainable in law.

In the circumstances and in the light of the decision rendered by the Tribunal, the impugned office order No.AIR/CCWSE-GH/2(2)/2002-A/6830-34 dated 09.12.2002 issued by the respondent No.4 is thus set aside and quashed.

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Adil Ahmed

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25.4.2003 and the respondents are directed to pay the SDA to the applicant forthwith.

The application is allowed.
No order as to costs.

SD/VICE CHAIRMAN

Notified to be true Copy

અધિકારી, અધિકારી

Section Officer (A)

આદરશાસનિક અધિકારી (અધિકારી)
Tribunal Administrative Tribunal,
Gandhinagar, Gandhinagar,
Gandhinagar, Gandhinagar

Attest
J.S.
Adm. to

4/12 FEB 2004

Filed by
32
30/1/04
(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench : Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI

O.A. No. 202/2003

Satish Chandra Patgiri & 3 others ...Applicant

- Vs -

Union of India & Others ...Respondents

(Written statements filed by the respondents No.2 to 5)

The written statements of the respondents are as follows:

1. That a copy of the above noted O.A. No. 202/2003 (hereinafter referred to as the "Application") has been served in the respondents. The respondents have gone through the same and understood the contents thereof.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.
3. That before traversing the various paragraphs of the application, the respondents beg to state a brief resume to the facts and circumstances of the case and the basis for entitlement for payment of Special Duty Allowance (referred to as the "SDA") as under:

- (a) That the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi, vide Office Memorandum No. 20014/3/83-E.IV dt.14.12.1983 brought out a scheme thereby extending certain facilities and allowances including the SDA for the civilian employees of the Central Govt. serving in the North-Eastern States and Union Territories etc. This was done to attract and retain the services of officers coming from outside the N.E. Region due to inaccessibility and difficult terrain. On bare reading of the provisions of the said O.M. it is clear that these facilities and allowances are made available only to those who are to be attracted from outside meaning thereby that they are not local residents of the North-East Region (defined area) and posted in the region from outside on transfer.

A true copy of the said O.M.Dt.14.12.83 is annexed as ANNEXURE-R₁.

- (b) That after coming and introduction of the said O.M.Dt.14.12.83, some departments sought certain clarifications about the applicability and entitlement of the benefits of the said O.M. dt.14.12.83. In response to the said clarification, the Govt. of India issued another Office Memo. Vide No.20014/3/83-E.IV dt. 20.4.1987. The relevant portion of the said O.M. is quoted below:

"2. Instances have been brought to the notice of this Ministry where Special (Duty) Allowance has been allowed to Central Govt. employees serving in the North East Region without the fulfillment of the condition of all India Transfer liability. This is against the spirit of the orders on the subject. For the purpose of sanctioning Special (Duty) Allowance, the all India transfer liability of the members of any service/cadre or incumbents of any posts/group of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on

all India basis and whether promotion is also done on the basis of the all-India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of special (duty) allowance."

A true copy of the said O.M. dt.20.4.87 is annexed as ANNEXURE-R₂.

- (c) That the Govt. of India again brought out another Office Memo. Vide F.No.20014/16/86/E.IV/E.II(B) dt. 1.12.88. By the said O.M. the special (duty) allowance was further extended to the central Govt. employees at the rate prescribed therein.

A true copy of the said O.M. dt.1.12.88 is annexed as ANNEXURE-R₃.

- (d) That in the meantime, several cases were filed in the court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 20.9.94 in **Union of India & others -vs- S. Vijoykumar & others** (C.A. No.3251/93) (reported in 1994(3) SCC 649 and 1995(1)SLJ 139 [SC]) upheld the provisions of the O.M. dt.20.4.87 and also made it clear that only those employees who were posted on transfer from outside to the N.E. Region were entitled to grant of SDA on fulfilling the criteria as in O.M.dt.20.4.87. Such SDA was not available to the local residents of the N.E. Region. The Hon'ble Supreme Court while laying down the ratio also went into the object and spirit of the O.M.dt.14.12.83 as a whole and also held that such differential treatment is not discriminatory and not violative of the provisions of the Art.14 and 16 of the Constitution of India.

- (e) That in another case, **"Chief General Manager (Telecom), N.E.Telecom. Circle etc. -vs- Shri R.C.Bhattacharjee & others"** (reported in AIR 1995 SC 813) the Hon'ble Supreme Court while passing the judgment on 18.1.95 re-iterated the meaning of "attracting and retaining the services of competent officer in the North -Eastern region" and held that the provisions of O.M. dt.14.12.83 are not applicable to the local residents of the defined area.
- (f) That the Hon'ble Supreme Court in another decision dated 23.2.1995, in Case No.3034/95 (**Union of India & ors -vs- Executive Officers Association Group-C**) held that the spirit of the O.M. dt. 14.12.83 is to attract and retain the services of the officers from outside posted in the North-Eastern Region, which does not apply to the officers belonging to the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. Therefore, the incentives granted by the said O.M. is meant for the persons posted from outside to the North-Eastern Region, not for the local residents of the said defined region. The Hon'ble Supreme Court in this decision also held that the spirit of the O.M dt.14.12.83 is to attract and retain the services of the officers posted in the N.E Region from outside and therefore, application of these provisions to the local residents of N.E. Region does not arise. While passing the said judgment the Hon'ble Supreme court referred to and relied upon its earlier decisions held in **"Chief General Manager (Telecom)-vs- Shri Rajendra Ch. Bhattacharjee & others** and also the **"S.Vijaykumar"** case as stated above.

A true copy of the judgment dt. 23.2.1995
is annexed as ANNEXURE-R₄.

- (g) That the Hon'ble Supreme court in another judgment dt.7.9.95 passed in **Union of India & others -vs- Geological Survey of**

India Employees' Association & others (CA No. 8208-8213) held that the Group C and D employees who belong to the N.E. Region and whose transfer liability is restricted to their region only, they do not have all India transfer liability and consequently they are not entitled to grant of SDA.

A true copy of the said order dated 7.9.1995 is annexed as ANNEXURE-R₅.

- (h) That after the judgment of the Hon'ble Supreme Court, the Govt. of India brought yet another Office Memo. Vide No. 11(3)/95-E.II(B) dt.12.1.96 and directed the departments to recover the amount paid to the ineligible employees after 20.9.94 as held by the Hon'ble Supreme Court.

A true copy of the O.M. dated 12.1.1996 is annexed as ANNEXURE-R₆.

- (i) That in another case vide Writ petition No.794/1996 filed by the applicant directly under Art.32 of the Constitution of India as in "**Sadhan Kumar Goswami & others -vs- Union of India & others**", the Hon'ble Supreme Court vide order dated 25.10.1996 again put reliance on the earlier decision as in S. Vijoykumar case and held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D and there is no distinction. By the said judgment, the said Hon'ble court also held that the SDA paid to the ineligible employees after 20.9.94 be recovered as the Govt. of India has limited the recovery of SDA to the ineligible employees from the date of the judgment dt.20.9.94 passed in "**S. Vijay Kumar & others**" and in terms of the O.M. Dt. 12.1.96.

A true copy of the order dated 25.10.1996 is annexed as ANNEXURE-R₇.

- (j) That in another case, namely, "United Bank of India-vs-Meenakshi Sundaram & others" (reported in [1998] 2 SCC 609), judgment dated 21.1.1998, the Hon'ble Supreme Court again held that differential treatment by extending some incentives to a class of officers posted on transfer from outside to the North-eastern region is not discriminatory.
- (k) That the Ministry of Finance further in connection with query made by the Directorate General of Security, New Delhi gave some clarification to the questions raised by some employees regarding eligibility of SDA. This was done vide I.D No.1204/E-II(B)/99 and which was duly approved by the Cabinet Secretariat U.O. No.20/12/99-EA.I-1798 dt.2.5.2000. According to that clarification, an employee belonging to the N.E. Region, posted in the N.E. Region having all India transfer liability as a condition of service, shall not be entitled to grant of SDA. But if such employee is transferred out of the N.E. Region and reposted to N.E. Region on transfer from outside, in that case such employee would be entitled to SDA. But, from the decisions of the Hon'ble Supreme Court, it is clear that even such employees are also not entitled to SDA and the clarification can not stand on the face of the law laid down by the Hon'ble Supreme Court. Moreover, the said communication/clarification is an executive order and not a presidential order or rule under Art.309 whereas the decisions of the Hon'ble Supreme is a law binding on all subordinate courts of the country including itself and also the different authorities as provided by Article 141 of the Constitution of India. On the other hand law is well settled by the Hon'ble Supreme Court (as reported in AIR 1981 SC 1990) that the rule made under the Article 309 of the Constitution of India cannot be modified by an executive order.

After 20.9.94, a catena of decisions as stated above, have come from the Hon'ble Apex Court in the same line thereby holding that only those civilian employees who are not residents of North-Eastern States (defined area) and are posted to the North-Eastern States on transfer from outside would be entitled to

grant of SDA. The SDA is not meant for the local residents of North-Eastern region as read from the term of the phraseology used in the preamble of the O.M. dt.14.12.83 " for attracting and retaining the services of those officers". The law is well settled as in "**Rupa Ashok Hurra-vs- Ashok Hurra**" (reported in [2002]4 SCC 388) that the law declared by Supreme Court is the law of the land. It is a precedent by itself and for all courts/Tribunals and authorities in India.

The true copy of the clarification dated 2.5.2000 is annexed as ANNEXURE-R₈.

- (l) That in a recent decision dt. 5.10.2001, as in "**Union of India & others -vs- National Union of Telecom Engineering Employees Union & others**" (CA No. 7000/2001) the Hon'ble Supreme court once again clinched on the vexed question of grant of SDA to the central govt. employees and by relying on the earlier decision of "S.Vijoykumar" and the "Executive Officers' Association Group C" was pleased to allow the appeal in favour of the Union of India and held that the amount already paid to such ineligible employees should not be recovered.

The copy of the order-dated 5.10.2001 is annexed hereto as ANNEXURE-R₉.

- (m) That pursuant to the said judgment passed in CA No. 7000/2001, the Govt. of India, Ministry of Finance, Department of Expenditure, brought out another Office Memo. F.No. 11(5)/97-E.II(B) dt.29.5.2002 and thereby directed all the departments to recover the amount of SDA already paid to such ineligible employees with effect from 6.10.2001 onwards and to waive the amount upto 5.10.2001 i.e. the date of the said judgment.

The true copy of the O.M. dt. 29.5.2002 is annexed as ANNEXURE-R₁₀.

- (n) That this Hon'ble Tribunal, vide order dated 23.5.2003 passed in O.A. No. 249/02, 316/02, 342/02 and 367/02 rejected the claim of SDA by the employees of the Central Government who were either residents of the North-Eastern States or initially posted in the North-Eastern State under the above facts and circumstances which are similar in the instant case also.

The true copy of the order dated 23.5.2003 annexed as ANNEXURE-R₁₁.

From the above facts and circumstances of the case and the clarification made in the matter, it is very much clear that only those employees, irrespective of their groups in A, B, C or D shall be entitled to the grant of SDA if they fulfill the criteria as underlined in O.M. dated 20.4.87 and such employees are in fact posted in the North Eastern Region actually on transfer and they are not residents of North-Eastern States as defined from time to time. Therefore, the amount paid to the ineligible employees upto 5.10.2001 would be waived. However, the amount paid after 5.10.2001 would be recovered. This aspect of the matter is clear as indicated by the Hon'ble Supreme Court in its all-earlier decisions.

4. That with regard to the statements made in para 1 of the application, the answering respondents state that by the passing of the various judgments and orders by the Hon'ble Supreme Court on the issue of grant of SDA as indicated hereinabove, the law has been laid down by the Hon'ble Supreme Court that an employee who is a local resident of the North Eastern Region is not entitled to the grant of SDA. This is a law binding on all the courts and authorities. The decisions of the Hon'ble Supreme Court are binding on all states and their officers and all persons whether they are parties thereto or not and to all pending proceedings as provided under Article 141 of the Constitution of India. Therefore, the answering respondents respectfully submit that there is no cause of action in filing the instant application and the same is liable to be dismissed with cost.

In this connection, the respondents state that as per service book records, all the applicants are local residents of the North-eastern Region. From the service records it is also found that all of them had posting/ transfer to or from outside the region. But none of them are entitled to get the SDA as all of them are residents of the region.

A statement prepared by the respondents on the basis of records indicating the transfer and posting of the applicants are annexed hereto as the ANNEXURE-R₁₂.

5. That with regard to the statements made in para 2, the answering respondents state that the respondents 2 to 5 are the authorities under the "Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (referred to as the "Prasar Bharati") which came into force on and from 23.11.1997. The officers and the employees working under the Prasar Bharati are no longer holding any civil posts/services under the Union of India. In absence of any notification in aid of power conferred under sub-section 2 of the section 14 of the Central Administrative Tribunal Act, 1985 (referred to as the "CAT Act") applying the CAT Act to the Prasar Bharati, the application under section 19 of the said CAT Act is not maintainable and hence the application filed by the applicants suffers from want of jurisdiction. The Hon'ble Central Administrative Tribunal, Allahabad Bench in OA No.1192/96 (order dated 10.11.2000), Bangalore Bench in OA No.409/2002 (order dated 29.4.2002) and this Guwahati Bench in OA No.253/02 (order dated 14.5.2003) have held that the Tribunal has no jurisdiction to entertain application filed by the employees of Prasar Bharati, which was earlier known as All India Radio. Therefore the application is liable to be dismissed with cost.

The copies of the said decisions dt. 10.11.2000, 29.4.2002 and 14.5.2003 are annexed as ANNEXURE- R₁₃, R₁₄ & R₁₅ respectively.

6. That with regard to the statements made in para 3 of the application, the answering respondents state that the application is liable to be dismissed as the same is barred by limitation. There is nothing to show on record that the application has been filed within the period of limitation as claimed by the applicants.
7. That with regard to the statements made in para 4.1 and 4.3, the respondents have no comments to offer. But the respondents deny the correctness of the statements made in para 4.2 of the application and state that they are employees under the administrative control of Prasar Bharati. The respondents reiterate the foregoing statements made in this written statements.
8. That with regard to the statements made in para 4.3 (there are two paragraphs marked as para 4.3), 4.4., 4.5, 4.6 and 4.7, the respondents state that these are matter of records and the same have already been settled by law as indicated hereinabove. Hence nothing is admitted which is not covered by records or the settled principles of law.
9. That with regard to the statements made in para 4.8, the respondents state that in view of the above settled provisions of law, nothing is admitted by the answering respondents. In the case referred to and the decision pronounced in that regard is to be examined in the light of the above noted decisions of the Hon'ble Supreme Court and the settled provisions of law. There are other decisions passed by this Hon'ble Tribunal after the order dated 25.4.2003 settling the position of such employees who are similarly situated with the present applicants. Therefore, the decisions referred to by the applicants no longer hold the field to regulate the entitlement of SDA.
10. That with regard to the statements made in para 4.9, the respondents state that the application has been filed with a vague and imaginary claim without indicating any date or any

such order to be impugned thereof. Such application is therefore, liable to be dismissed with cost.

11. That with regard to the statements made in para 4.10, 4.11, 4.12 and 4.13, the respondents reiterate and reassert the foregoing statements and state that in any view of the matter the applicants are not entitled to grant of SDA.
12. That with regard to the statements made in para 5.1 to 5.8 showing the alleged grounds, the respondents state that in view of the facts and circumstances of the case and the settled position of law as indicated above, the grounds shown by the applicants can not sustain in law and therefore, the application is liable to be dismissed with cost.
13. That with regard to the statements made in para 6 and 7, the respondents state that the applicants have not exhausted the available alternative remedy as claimed by them.
14. That with regard to the statements made in para 8.1 to 8.3 of the application, the answering respondents state that under the facts and circumstances of the case and the provisions of law and also the law laid down by the Hon'ble Supreme Court, the applicants are not entitled to the grant of SDA and the SDA already paid to them is liable to be recovered as in terms of the law laid down by the Hon'ble Supreme Court. Therefore, the application is liable to be dismissed with cost as devoid of any merit.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records, shall also be pleased to dismiss the application with cost.

VERIFICATION

I, Shri **K. Ponniah**, at
present working as **Superintending Engineer(Civil)** at
CCW, AIR, Guwahati, who is taking steps in this
case, being duly authorized and competent to sign this
verification, do hereby solemnly affirm and state that the
statements made in para 1, 2, 3, 6, 7, 10, 13 and 14 — are
true to my knowledge and belief, those made in para 3
4, 5, — being matter of records, are true to my
information derived therefrom and the rest are my humble
submission before this Hon'ble Court. I have not suppressed any
material fact.

And I sign this verification on this **30th** day of January, 2004 at
Guwahati.


DEPONENT

Superintending Engineer (c)
C.C.W. All India Radio,
Guwahati

New Delhi, th 14th. Decembar, 1983.

OFFICE MEMORANDUM

Subject :- Allowances and facilities for civilian employees of the Central Government serving in the states and Union Territories of North-eastern Region - improvement thereof.

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

1) 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 2 years at a time for officers with more than 10 years of 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 employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

1i) Weightage for Central deputation/training abroad and special mention in Confidential Records.

- a) promotion in cadre posts;
- b) deputation of 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 the C.R. of all employees rendered a full tenure of service in the North Eastern Region to that effect.

iii) Special (Duty) Allowance :

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

iv) Special Compensatory Allowance :

1. Assam and Meghalaya.

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

2. Manipur

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

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

3. Tripura

The rates of the allowance will be as follows :

(a) Difficult areas

25% of pay subject to a minimum of Rs. 50/- and 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 Special Compensatory Allowance admissible in Arunachal Pradesh, Nagaland and Mizoram and the existing rate of Disturbance Allowance admissible in specified areas of Mizoram.

(v) Travelling Allowance on first appointment.

In relaxation of the present rules (S.R. 105) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in cases 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 and his family will be admissible.

(vi) Travelling Allowance for Journey on transfer :

In relaxation of orders below S.R. 116, if on transfer to 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 personal 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 accompanied 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.

(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 be 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 traveling exceeds of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) & Leave Travel Concession :

A government servant who leaves his family behind the old duty station or another selected place or 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-Eastern to his home town or place where the family is residing and in addition the facility for the family is (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employees 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 (400 kms/150 kms.) will not be borne by the officer.

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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 :

When 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 Andhra and Nichobar Islands.

3. These orders will take effect from 1st November, 1933 and will remain in force for a period of three years upto 31st October, 1936.

4. All existing special allowances, facilitation and concession 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 recommendation of the committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

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

Sd/-

(S C BHALLIK)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

To,

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ANNEXURE R2

(Sh) m

14612

No. 20014/3/83-E. IV
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE R2

New Delhi, the 20th April 1987.

OFFICE MEMORANDUM

Subject:- Allowances and facilities for civilian employees of the Central Government serving in the Station and Union Territories of North-Eastern Region and N. & N. Islands and Lakshadweep - Improvement thereof.

The undersigned is directed to refer to para 1(iii) of Ministry of Finance, Department of Expenditure O.M. No. 20014/3/83-E. IV dated 14th December 1983 as amended vide Office Memorandum of even number dated 29.10.1986 on the above subject, which is reproduced below:-

1(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% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North-Eastern Region. 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/- per month. Special Allowance like special compensatory (remote locality) allowance, construction allowance and Project Allowance will be drawn separately".

2. Instances have been brought to the notice of this Ministry where special (Duty) Allowance has been allowed to Central Government employees serving in North East Region without the fulfilment of the condition of all India transfer liability. This is against the spirit of orders on the subject. For the purpose of sanctioning special (Duty) allowance, the all India transfer liability of the members of any service/cadre or incumbents of any posts/grades of posts has to be determined by applying tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all-India basis and whether promotion is also done on the basis of the all-India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of special (Duty) allowance.

Contd.../..

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3. Financial Advisers of the administrative Ministries/Departments are requested to review all such cases where special (duty) allowance has been sanctioned to the Central Government employees serving in the various offices including those of autonomous organisations located in the North East Region which are under administrative control of their Ministries/Departments.

(A.N. SINHA)
DIRECTOR (EG)
TELE: 3011019

To

Financial Advisers of all Ministries/Departments.

11-12-19-20
F.No. 20014/16/UG/E.17/E.11(D)
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE : R₃

ANNEXURE : R₃

New Delhi, the 1 December, 1953

OFFICE MEMORANDUM

Subject: Improvement in facilities for civilian employees of the Central Govt. serving in the States of North-Eastern Region, Assam & Naga Hills and Lakshadweep.

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/UG-E.IV dt. 14th December, 1953 and with March, 1954 on the subject mentioned above and to say that the question of making suitable improvements in the allowances and facilities to Central Govt. employees posted in North-Eastern Region comprising the States of Assam, Nagaland, Manipur, Meghalaya, Tripura, Arunachal Pradesh and Mizoram has been engaging the attention of the Govt. Accordingly the President is now pleased to decide as follows:-

(i) Regime of posting/deputation

The existing provisions as contained in this Ministry's O.M. dated 14.12.53 will continue.

(ii) Conditions for Central deputation and posting abroad

The existing provisions as contained in this Ministry's O.M. dated 14.12.53 will continue. Extra remuneration will be paid to give due weightage for satisfactory performance of duties for the period of Central deputation to Central Govt. post and abroad if training abroad.

(iii) Special (Duty) Allowance

Central Govt. Civilian employees who have All India Seniority will be granted Special (Duty) Allowance at the rate of 12% of basic pay subject to a ceiling of Rs. 1000/- per month on posting to any station in the North-Eastern Region. 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. 1000/- p.m. Special allowance like Special Compensation (House Rent) Allowance, Construction Allowance and Project Allowance will be drawn separately.

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tion of Children Education Allowance/Hotel subsidy will be
the D.O. No. 10011/1/07-Sub. (Allowance) dt. 31.12.07
amended from time to time.

Concession regarding grant of House Rent Allowance to
officers posted in the States of North Eastern Region,
Andaman & Nicobar Island and Lakshadweep Island.

The present concession as contained in this Ministry's
O.M. No. 11016/1/E.I.(N)/04 dt. 29.3.05 is amended from time to
time will continue to be applicable.

(xli) Tel. Expenditure

The officers who are eligible to have residential telephone
may be allowed to retain their telephone at their residences in
their last place of the posting subject to the condition that the
rental and all other charges are paid by such officers.

2. The above orders will also apply mutatis mutandis
to the Central Govt. employees posted in Andaman & Nicobar
Islands and Lakshadweep Island. These orders will also apply
mutatis mutandis to officers posted to N.E. Command, when they
are stationed in the N.E. Region.

3. These orders will take effect from the date of issue.

4. In as far as the persons carrying the Indian Audit &
Accounts Deptt. are concerned these orders issue after consultation
with the Comptroller & Auditor General of India.

5. A copy of this Memorandum is attached.

(A. P. JAYARAMAN)

JOINT SECRETARY TO THE GOVT. OF INDIA.

To

All Ministries/Departments of Govt. of India, etc.

Copy (with serial number of order copy) forwarded to
C.E.A.O., U.P. & S. etc, etc, for their endorsement
list.

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ANNEXURE-1A

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ANNEXURE-1B

CIVIL APPEAL NO. 3721 OF 1993

ANNEXURE-1C R4

Union of India and others

Appellants

VERSUS

S. Vijayakumar and others

Respondents

With Civil Appeal Nos. 6163-61

SLP(C) Nos. 16724/91, 10070-79/93, 10461/93, 9240/94, 10461/93, 9240/94, 10461/93, 9240/94

JUDGMENT

HANSARIA, J.

The point for determination in this appeal
and in the special leave petitions (which have our leave)

18-21-25-
-24-22-
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whether the respondents are entitled to special allowance (hereinafter referred to as "the allowance"), even though they are residents of the North-Eastern Region merely because of the posts to which they were appointed were of "All India Transfer Liability". The Tribunal has answered the question in affirmative. These appeals have been preferred by the Union of India.

2. The Tribunal took the aforesaid view because of the office memorandum dated 17.12.1905 which is the subject of "Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of the North-Eastern Region-Improvement thereof" had stated that "allowance shall be payable if the posts be those which have 'All India Transfer Liability'. The stance of the Union of India, however, is that this office memorandum, if it is read along with what was stated subsequently in office memorandum dated 20.4.1907, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the aforesaid service condition and not to those who were residents of this region. The office memorandum of 1907 has clearly stated that the allowance

of inaccessibility and difficult terrain. It would be because even the 1983 memorandum stated that the need for the allowance was to be "on duty and retaining the service of the competent officers for service in the North-Eastern Region". Mention about attention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 year to claim the allowance depending upon the period of service of the incumbent. The 1983 memorandum makes this position clear by stating that "Civilian employees who have All India Transfer Liability would be granted the allowance 'on posting to station to the North Eastern Region'. This aspect made clear beyond doubt by the 1987 memorandum" which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1983 the subject was mentioned as quoted above is not enough to concede the submission of Dr. Ghosh.

not be become payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India.

3. Dr. Ghosh appearing for the Government contends that the office memorandum of 1903 having not stated what is contained in the memorandum of 1907, a rider cannot be added to the former that the allowance could be payable only to those who had been given posting in the North-Eastern Region, and not to those who were residents of this Region. It is also contended that denial of the allowance to the residents, while permitting the same to the non-residents, would be a violation of doctrine of equal pay for equal work and also such of Articles 14 and 16 of the Constitution.

4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, in view of what was stated in the memorandum dated 23.10.1903 which has been quoted in the memorandum of 20.9.1907, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region.

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The submission of Dr. Ghosh that the denial of allowance to the respondents would violate the equality doctrine is adequately met by what was held in Reserve Bank of India vs. Reserve Bank of India Staff Officers' Association and others, 1991 (1) 107 SC 227 - 228.

which an objection has been invited by the learned Additional Solicitor General. In which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

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

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Annexure R-6 43
C/3026
ANNEXURE: R5

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2 & 3 - 5713
(Arising out of S.L.P. Nos. 12450-55/92)

Union of India & Ors.

..appellants

versus

Geological Survey of India
Employees' Association & Ors.

..respondents

O R D E R

Delay condoned.

Leave granted.

Mr. P. K. Gowami, learned senior counsel appears for Geological Survey of India Employees' Association and Mr. S. K. Handy, Advocate, appears for the other respondents in all the matters.

Heard learned counsel for the parties. It appears to us that although the employees of the Geological Survey of India were initially appointed with an all India transfer liability, subsequently Government of India framed a policy that Class C and Class D employees should not be transferred outside the region in which they are employed. Hence, all India transfer liability no longer continues in respect of group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having all India transfer liability is not to be paid to such group C and group D employees of Geological Survey of India who are residents of the region in which they are posted. We may also indicate that such question has been considered by this Court in Union of India and Others Vs. S. Vijay Kumar & Others (1994, (3) SCC 649).

Filed to be true copy
(27/1/95)
At New Delhi (Judl.)
27 JAN 1995
Supreme Court of India

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Accordingly, the impugned order is set aside. It is, however, directed that the appellant will not be entitled to recover any part of payment of special duty allowance already made to the concerned employees. Appeals are accordingly disposed of.

Sd/-
(G. H. Ray)

Sd/-
(S. B. Maumdar)

New Delhi
September 7, 1995

39-37-
C.A. - Special Annexure R-1/87
30-30-
ANNEXURE: R6

No. 11(31)/95-E.II(D)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20011/10/86-E.IV/E.II(D) dt. 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 tents 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 Ministers/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

FA/
All Ministries/Departments of the Govt. of India, etc.
etc.

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

all communications should be
sent to the Registrar,
Supreme Court, by description,
NOT by name.
Telegraphic address:-
"SUPREMACY"

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ANNEXURE R
No. 3300/96/A
SUPREME COURT
INDIA
28th November, 1996
19

FROM: ASSISTANT REGISTRAR (JUDL)

ANNEXURE: R 7
R 8

1. The Union of India,
Represented by the Cabinet Secretary,
Government of India, North Block,
New Delhi.
2. The Director, SSB,
Office of the Director, SSB,
East Block- V, R.K. Puram,
New Delhi - 110 066
3. The Divisional Officer,
SSB Shillong Division,
A.P. Secretariat Building,
Shillong, Meghalaya.
4. Commandant, Group Centre, SSB,
Tripura, Salween, Agartala,
Tripura West.

Writ Petition No. 124 of 1996
(Under Article 32 of the Constitution of India)

WITH
Interlocutory Application No. 1
(Application for ex-parte stay)

Sadan Kumar Goswami & Ors.

.. PETITIONERS
.. RESPONDENTS

Union of India & Ors.

Sir,

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

Yours faithfully,
Assistant Registrar (JUDL)

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Supreme Court of India
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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
PETITION NO. 724 OF 1976
(Under Article 32 of the Constitution of India)

Sub-Inspector Sadhan Kumar Goswami &
Ors.

v.

The Union of India & Ors.

...Petitioners

...Respondents

THE 25TH DAY OF OCTOBER, 1976

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

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

O_R_D_E_R

The following order of the Court was delivered:

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRT PETITION NO. 783 OF 1996

Sub-Inspector Sadhan Kumar Goswami &
Ocs. ... Petitioners
Versus
The Union of India & Ocs. ... Respondents

O R D E R

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

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

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

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learned Additional Solicitor General Shri Tuli for two reasons. The first is that on close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 28.10.1966 which has been quoted in the memorandum of 26.4.1967, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1963 memorandum starts by saying that the need for the allowance was felt for attracting and retaining the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining thereby taking leave and. Therefore, the memorandum stated that this period of leave would be excluded when counting the period of tenure of posting which was required to be of 2 1/2 years to claim the allowance depending upon the period of service of the incumbent. The 1966 memorandum makes this position clear by stating that Central Government civilian employees who have All India transfer liability would be granted the allowance on posting to any station in the North-Eastern Region. This aspect is made clear beyond doubt by the 1967 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India transfer liability. Merely because in the office memorandum of 1962 the subject was mentioned as quoted above is not be enough to concede to the submission of Mr. Ghosh.

The submission of Mr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is completely not valid as was held in

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

In view of the above, this Court allowed the
appeals of the State and held that the respondents
were not entitled to the allowances but whatever amount
was paid upto the date of the judgment, was directed
not to be recovered from them. The petitioners are
relying upon the Office Memorandum dated July 11, 1990
which provided that "it is not applicable from one
station to another station within the region of Group A
and B staff will further continue to get the
facilities". They have filed this writ petition
contending that while the Group C and D employees have
been denied the benefit of the above judgment, special
allowance benefit is being granted to Group A and
B. It tantamounts to violation of Article 14 and,
therefore, the writ petition should be allowed so as to
give them the same benefit. Admittedly, the
petitioners are Group C and D employees and are bound

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

Of late, we have been coming across this type

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

It is next contended that the Government is recovering as per Memorandum dated January 17, 1986 the amounts paid which is contrary to the direction issued

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

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

The writ petition is accordingly dismissed.

(K. RINASHAW)

(S. P. KUPKAR)

NEW DELHI
OCTOBER 25, 1976.

SEALED IN MY PRESENCE
12/11/76

COURT CASE
MOST IMMEDIATECabinet Secretariat
(E.A.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.

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

2. The points of doubt raised by SGD in their VO No.42/SSD/ AI/99(18)-5202 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 :

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

a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralized 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 Centralized cadre/ service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.

c) 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.20014/2/03-E.IV dated 14.12.83 and 20.4.87 read with

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OM 20014/16/UG E.II(D) dated 1.12.00 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 POF, Deptt. of Ex. Adm. vide their O.O No. 11(3)/95-E.II(D) 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/DCS, there is a common recruitment system made on All India basis and promotions are also done on the basis of All India Common Seniority basis. Based on the above criteria/tests all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from NE Region or posted to NE Region from outside the NE Region.

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

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Approved

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vi) Based on point (iv) above, none 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 and all the employees eligible for the grant of SDA.

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

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

The payment made to employees hailing from NE Region & posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employees hailing from NE Region and posted in NE Region be recovered from the date of payment or after 20th Sept. 91 whichever is later.

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

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

1. Shri R.S. Bedi, Director, ARC
2. Shri R.P. Kureel, Director, SSB
3. Brig (Retd) G.S. Uban, IG, GPF
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
9. Cab. Sectt. Dy. No. 20/12/99-FA-I-1799

dated 27.5.2000

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ANNEXURE R10
Commissioner to the Union of India
Assistant Registrar (Jull.)
20-11-2001
Supreme Court of India

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7000 OF 2001
Arising out of S.L.P. (C) No. 6465 of 1999

ANNEXURE R9
504733

Union of India & Anr. Appellants
versus
National Union of Telecom Engineering Employees Union Anr. Respondents

ORDER

Leave granted.
It is stated on behalf of the respondents that this appeal of the Union of India is covered by the judgment of this Court in the case of Union of India & Ors. vs. S. V. Lakshman & Ors. reported as 1994 (Supp. 3) SCC, 649 and followed in the case of Union of India & Ors. vs. Executive Officers' Association Group 1995 (Supp. 1) SCC, 757. Therefore, this appeal is to be allowed in favour of the Union of India. It is ordered accordingly.

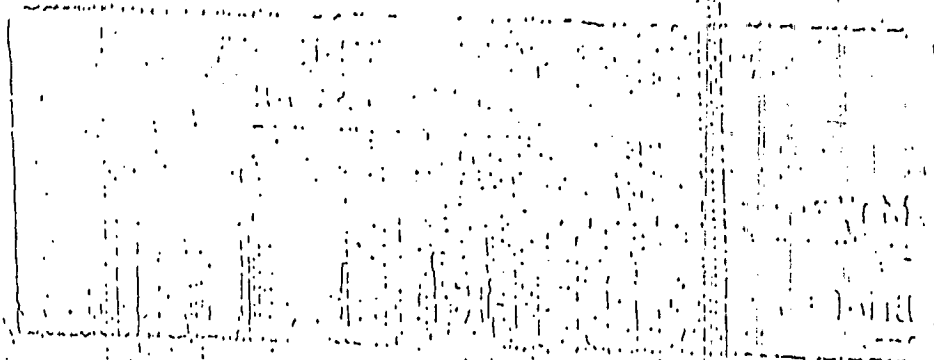
It is, however, made clear that upon this appeal being allowed for admission on 13.1.2000 the learned Solicitor General had given an undertaking that whatever amount had been paid to the respondents by way of special duty allowance will not in any case or event be recovered from them. It is on this assurance that delay was condoned. It is made clear

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The Union of India shall not be entitled to recover any
amount paid as special duty allowance in spite of the fact
that this appeal has been allowed.

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(H. SANTOSH HEGDE)

New Delhi,
October 06, 2001

(K. G. DALAKRISHNAI)



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G.I., M.F., O.M. No. 11 (5)/97-E. II (B), dated 29-5-2002 (but to
Special Duty Allowance to civilian employees posted
from outside the region only
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, and
O.M. No. 11 (3)/95-E.II (B), dated 12-1-1996 (Sl. Nos. 214 and 103
of Swamy's Annual, 1988 and 1996 respectively) on the subject men-
tioned above.

2. Certain incentives were granted to Central Government employees posted in N-E. region vide OM, dated 14-12-1983. Special Duty Allowance (SDA) is one of the incentives granted to the Central Government employees having "All India Transfer Liability". The necessary clarification for determining the All India Transfer Liability was issued vide OM, dated 20-4-1987, laying down that the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc., i.e., whether recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an All India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in N-E. region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UoI. The Hon'ble Supreme Court in judgment delivered on 20-9-1994 (in Civil Appeal No. 3251 of 1993, in the case of *UoI and Others v. Sh. S. Vijaya Kumar and Others*) have 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 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.

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Annexure R66

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July, 2002

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Swamysnews

4. In a recent appeal filed by Telecom Department (Civil Appeal No. 7000 of 2001-arising out of SLP No. 5455 of 1999), Supreme Court of India has ordered on 5-10-2001 that this appeal is covered by the judgment of this Court, in the case of *UoI and Others v. S. Vijayakumar and Others*, [reported as 1994 (Supp. 3) SCC, 649] and followed in the case of *UoI and Others v. 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 in spite of the fact that the appeal has been allowed.

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

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

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

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

(i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5-10-2001, which is the date of judgment of the Supreme Court, will be waived. However, recoveries, if any, already made, need not be refunded.

(ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5-10-2001 will be recovered.

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.249 of 2002
Original Application No.316 of 2002
Original Application No.342 of 2002

And

Original Application No.367 of 2002

Date of decision: This the 23rd day of May 2003

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

O.A.No.249/2002

Shri Bangshidhar Boro and 3 others

....Applicants

By Advocates Mr S. Ali and Mrs K. Chetri

- versus -

The Union of India and others

....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.
and Mr B.C. Pathak, Addl. C.G.S.C.

O.A.No.316/2002

Shri Khagen Ch Medhi and 80 others

....Applicants

By Advocates Mr A.C. Sarma, Mr C.M. Das
and S. Saikia

- versus -

The Union of India and others

....Respondents

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

O.A.No.342/2002

Shri Abhit Kumar Raha and 6 others

....Applicants

By Advocates Mr A.C. Sarma, C.M. Das and
S. Saikia

- versus -

The Union of India and others

....Respondents

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

O.A.No.367/2002

Shri P. Neogi and 60 others

....Applicants

By Advocates Mr A. Sarma and Mr S. Saikia

- versus -

The Union of India and others

....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.
and Mr B.C. Pathak, Addl. C.G.S.C.

O R D E R

CHOWDHURY. J. (V.C.)

All the four O.A.s were taken up together since it involves common questions of fact as well as law pertaining to the Special (Duty) Allowance.

2. The employees of different posts in the Postal Department in Assam Circle and N.E. Circle through the office bearers of various unions of the postal employees working under the Chief Post Master General, Assam Circle, Guwahati and N.E. Circle, Shillong, in O.A. No.249/2002, mainly assailed the action of the respondents as regards the recovery of Special (Duty) Allowance (SDA for short) so far paid to them. In O.A. Nos.316, 342 and 367 of 2002, the applicants in addition, also assailed the action of the respondents in stopping the payment of SDA to the applicants and more particularly assailed the Office Memorandum whereby the respondents took steps for recovery of the amount of SDA paid to ineligible persons after 5.10.2001.

3. For the purpose of adjudication of the cases, the pleadings cited in O.A.No.249/2002 and O.A.No.342/2002 shall be referred to. The Office Memorandum bearing F.No.11(5)97-E.II(B) dated 29.5.2002 recounted the background of payment of SDA, the full text of which is reproduced below:

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

2. Certain incentives were granted to Central Government employees posted in NE region vide OM dt.14.12.83. Special Duty Allowance (SDA) is one of the incentives granted to the Central Government employees having 'All India Transfer Liability'.

determining the All India Transfer Liability was issued vide OM dt.20.4.87, laying down that the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in NE region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgement delivered on 20.9.94 (in Civil Appeal No.3251 of 1993 in the case of UOI and Ors V/s Sh. S. Vijaya Kumar and Ors) have upheld the submissions of the Government of India that C.G. civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

4. In a recent appeal filed by Telecom Department (Civil) Appeal No.7000 of 2001 arising out of SLP No.5455 of 1999, Supreme Court of India has ordered on 5.10.2001 that this appeal is covered by the judgement of this Court in the case of UOI & Ors. vs. S. Vijayakumar & Ors. reported as 1994 (Supp.3) SCC, 649 and followed in the case of UOI & Ors vs. Executive Officers' Association Group 'C' 1995 (Supp.1) SCC || 757. Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them in spite of the fact that the appeal has been allowed.

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

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

All cases for grant of Special Duty Allowance including those of All India Service Officers may

be.....



be regulated strictly in accordance with the above mentioned criteria.

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

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

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

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

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

4. Mr A.C. Sarma, learned counsel for the applicants, in O.A. Nos.342 and 367 of 2002, however, strenuously urged that the applicants in the aforementioned O.A.s are entitled for SDA in view of the fact that these applicants have All India Transfer Liability, which was also admitted by the respondents in Annexure-16 annexed to O.A.No.342/2002. According Mr A.C. Sarma the aforesaid communication dated 31.3.2000/3.4.2000 clearly spelt out that SDA was paid to all categories of officers and members of the staff of the Meteorological Department posted in the North Eastern Region according to the conditions laid down in the Ministry of Finance (Department of Expenditure) O.M. No.11(3)/95-E.11(B) dated 12.1.1996 and clarificatory O.M. No.20014/3/83-E.II dated 20.4.1987 as they have actual 'All India Transfer liability'. The learned counsel for the applicants contended.....

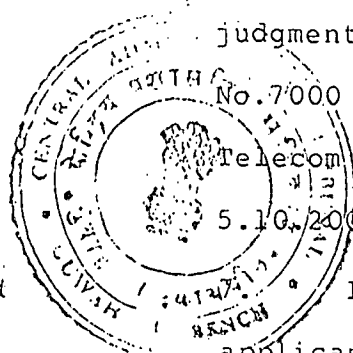
intended that in view of the aforementioned admission of facts, the respondents cannot now turn around and contend that these applicants are not entitled for SDA.

5. I have also heard Mr A. Deb Roy, learned Sr. C.G.S.C. who seriously disputed the claim of the applicants.

6. I have given my anxious consideration in the matter and also perused the lone document referred to by the applicants issued by the Deputy Director General of Meteorology (Administration & Stores). On the face of the available documents it cannot lead to the conclusion that the applicants are also entitled for the SDA. The issue raised in this application is no longer res integra in view of the consistent pronouncements made by the Supreme Court in Reserve Bank of India Vs. Reserve Bank of India Staff Officers' Association and others, reported in (1991) 17 ATC 295, Union of India and others Vs. S. Vijayakumar and others, reported in (1994) 28 ATC 598, Chief General Manager (Telecom), N.E. Telecom Circle Vs. R.C. Bhattacharjee and others, reported in AIR (1995) SC 813, Union of India Vs. Executive Officers' Association Group C, reported in 1995 SCC (L&S) 661, as well as the judgment rendered by the Supreme Court in Civil Appeal No. 7000 of 2001, Union of India Vs. National Union of Telecom Employees' Union and others disposed of on 5.10.2001.

In the fact situation, therefore, the claim of the applicants for grant of SDA cannot be entertained. The only other issue for consideration is as to the admissibility on the part of the authority in recovering the amount of SDA already paid to the applicants. The aforementioned action of the respondents goes counter to

the.....



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the legal policy as well as in view of the consistent decision of the Supreme Court. In the case of Union of India and another Vs. National Union of Telecom Employees Union referred to by the respondents as well as the decision rendered by the Supreme Court in Civil Appeal No.8208-8213 (Union of India and others Vs. Geological Survey of India Employees' Association and Others) itself indicated the concern expressed by the Apex Court in disentitling the authority from recovering any part of the payment of SDA already made to the concerned employees. Such recovery is inequitous and will invite misery to the employees. The action of the respondents for recovering the amount already paid is, therefore, held to unsustainable in law and the respondents are accordingly directed not to make any further recovery.

8. The applications are thus partially allowed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

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प्रतिलिपि

NS-26
01/7/03

Section Officer (J)
C.A.T. GUWAHATI BRANCH
Guwahati-781005

STATEMENT OF OFFICERS SHOWING THEIR TRANSFER AND POSTING IN THE NORTH EASTERN REGION (DEFINED AREA) SINCE THEIR INITIAL APPOINTMENT.

(O.A. NO.202/2003 dated - ----- filed by Shri Satish Patgiri, JE(Elect.), Sh. N.I.Yanthan, ASW(Elect.), Sh. S.K.Dey, JE(E) and Sh. S.Aditya, D/Man-II V/s Union of India regarding Special Duty Allowances.

Sl. No.	Name of Employee	Designation	Initial appointment		If transferred from outside to NER			If transferred from NER to Outside & re-transferred			Whether resident of NER	Remarks
			Date	Place	Date	Place		Retransferred date	Retransferred place		If yes, then indicate the place	
						From	To		From	To		
1	2	3	4	5	6	7	8	9	10	11	12	13
1.	Sh. Satish Patgiri	JE(Elect)	25.9.84	Silchar	-	-	-	1.1.94	Calcutta	Dib.	Rangiya(Assam)	
2	Sh. N.I.Yanthan	ASW(Elect)	24.7.92	N/Delhi	21.11.92	Delhi	Itanagar	-	-	-	Kohima(Nagaland)	
3	Sh. S.K.Dey	JE(Elect)	14.2.86	Kohima	-	-	-	21.3.95	Siliguri	Sil.	Silchar(Assam)	
4	Sh. S.Aditya	D/Man-II	18.4.85	Shillong	-	-	-	04.7.97	Calcutta	Guwahati	Silchar.	

Certified that the above data and facts are based on the Service Book/ Personal Files/ Bio-Data of the officers concerned.

Silchar
Head Clerk 15/10/03

Chakrabarty
15-10-03
EA to Superintending Engineer(Civil) / Executive Engineer(Elect)

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-54-

116 31
(66) 109

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ANNEXURE R13

निःशुल्क प्रतिलिपि

Original Application No. 1192 of 1996

Allahabad this the 10th day of November, 2000

Hon'ble Mr. S.K.I. Nagvi, Member (J).

R.B. Singh, Son of Sri Ram Chandra Singh, resident of Parsarh Post - Barhalganj, District Gorakhpur, working as Security Guard, Door Darshan Relay Kendra, Deoria.

Applicant

By Advocate Shri B. Tiwari

Versus

1. Union of India, through the Secretary, Ministry of Telecommunication, Govt. of India, New Delhi.
Station Engineer, Door Darshan Kendra, Azamgarh.

Respondents

By Advocate Shri P. Mathur

ORDER (Oral)

By Hon'ble Mr. S.K.I. Nagvi, Member (J)

Shri R.B. Singh has come up seeking relief regarding his leave account and has prayed to set aside the impugned order, copy of which has been annexed as annexure A-1. The controversy relates to a period when the applicant was posted as Security Guard, Door Darshan Relay Kendra, Deoria. After enforcement of Prasar Bharti Corporation, it



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becomes a question of jurisdiction whether it
is maintainable before this Tribunal or not
in view of the fact that Prasar Bharti Corpor-
ation has so far not been notified to be brought
under the jurisdiction of the Central Administra-
tive Tribunal to decide the service dispute of
the Corporation and, therefore, the O.A. is no
more maintainable before this Tribunal and,
therefore, dismissed on the ground of jurisdiction.



TRUE
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Sushil Kumar
Section Officer
Central Admin Tribunal
Allahabad
5.12.2000

By
STK

8/27/2002 - 56- 117
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO. 409/2002

MONDAY THIS THE 29TH DAY OF APRIL, 2002

ANNEXURE : R14

SHRI JUSTICE B.S. RAIKOTE
SHRI S.K. HAJRA

VICE CHAIRMAN
MEMBER(A)

Shri Magadum Adivappa,
S/o Shivaputrappa,
Age: Major,
R/o Nirvanahatti, Post:
Hidal Dam,
Hukkeri Tq.,
Belgaum District

Applicant

(By Advocate Shri V.S. Shastri)

v.

The Director General,
Prasara Bharati,
Ashoka Road,
New Delhi

Respondent

(By Senior Central Government Standing
Counsel Shri M.V. Rao)

ORDER

JUSTICE B.S. RAIKOTE, VICE CHAIRMAN:



In this application, the applicant questions the selection process regarding the Engineering Assistant, initiated by the Prasara Bharati. The Prasara Bharati is now constituted as a Corporation under the Prasara Bharati Act. Under Sec.3 of the Act, it is now found that Prasara Bharati, Broadcasting Corporation of India, is a corporate body, having perpetual succession and a common seal with power to acquire, hold and dispose of property and the further power to sue and be sued in its name and that the power of such Corporation vests with the Prasara Bharati Board. If that is so, if an appointment is made by such Prasara Bharati, such persons would be employees of

9
-57-

- 2 -

the Corporation and they do not hold any civil post. Moreover, the Prasar Bharati is not notified for the purpose of jurisdiction under 14(2) of the Administrative Tribunals Act. In the circumstances, it is clear that this Tribunal has no jurisdiction to entertain this application. For the above reasons, we dismiss the application as not maintainable. If a request is made by the applicant's counsel, office shall return the papers for presenting the same before the appropriate forum by keeping a copy in our record. No costs.

Sd/-

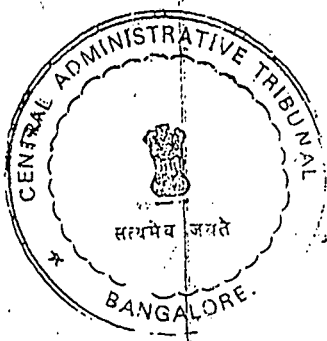
(S.K. HAJRA
MEMBER (A))

Sd/-

(B.S. RAIKOTE
VICE CHAIRMAN)

ua.

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Section Officer.
Central Administrative Tribunal
Bangalore Bench
Bangalore

AKHESHWARA S. SHASTRI

10
-38-

ANNEXURE: R15
113

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 253 of 2002.

Date of Order : This the 14th Day of May, 2003.

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

Sri Sailen Kumar Baruah,
Son of Sri Tarun Chandra Baruah,
J.E. Electrical,
Office of the Executive Engineer,
Civil Construction Wing,
All India Radio, Kohima.

...Applicant

By Advocate Sri M.Chanda.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Information & Broadcasting,
New Delhi.
2. The Director General,
All India Radio,
Ministry of Information & Broadcasting,
New Delhi.
3. The Executive Engineer (Elec.)
Civil Construction Wing,
All India Radio, Guwahati.

...Respondents

By Advocate Sri A.K.Choudhuri, Addl.C.G.S.C.

ORDER (ORAL)

CHOWDHURY J.(V.C)

Heard Mr M.Chanda, learned counsel for the applicant and Mr A.K.Choudhuri, learned Addl.C.G.S.C for the respondents. Mr Choudhuri, learned Addl.C.G.S.C. raised the issue of maintainability of the application on the score that the applicant among others sought for direction on the Prasar Bharati (Broadcasting Corporation of India) which is a corporate body established under Sub-Section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act 1990 which came into force on and from 23.11.1997. The officers and employees working under Prasar Bharati are no longer holding any civil posts/service under the Union. In the absence of any notification in aid of power conferred under Sub-Section 2 of Section 14 of the said Act applying the Act to

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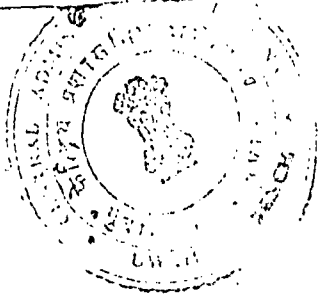
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11.4

Prasar Bharati, the application under Section 19 of the Act is not applicable submitted Mr A.K.Choudhuri, learned Addl.C.G.S.C. In support of his contention Mr Choudhuri referred to the decision rendered by the Allahabad Bench of this Tribunal in O.A.1192 of 1996 disposed of on 10.11.2000. Perused the decision of the Bench which is a co-ordinate Bench. The case is squarely covered by the same. The application is thus not maintainable, hence dismissed as not maintainable.

There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN



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26/5/13

Section Officer (I)
C.A.T. GUWAHATI (SEH)
Guwahati-781005

23/5

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.**

**REVIEW APPLICATION NO. OF 2005.
IN ORIGINAL APPLICATION NO.202 OF 2003.**

Shri Satish Chandra Patgiri & Others

... Applicants

-Versus-

The Union of India & Others

... Respondents

IN THE MATTER OF :

An Application under Clause (f) of Sub-Section (3) read with Sub-Section (1) of Section 22 of the Administrative Tribunal Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rule, 1987.

-AND-

IN THE MATTER OF:

Shri Sarvoday Aditya
Draftsman Grade-II,
Office of the Superintending Engineer (Civil)
Civil Construction Wing,
All India Radio,
Ganeshguri Chariali, Kakoti Bulding,
1st Floor, P.O.-Sachivalalya, Guwahati-6.

... Review Applicant/Original Applicant No.4

The above said Review Applicant was the Applicant No.4
in the above said Original Application of No.202 of 2003.

-VERSUS-

1. The Union of India,
represented by the Secretary to the Government of India,

Sarvoday Aditya

Filed by 115
Shri Sarvoday Aditya
Review Applicant
through L.S.L.
(Agm. AH 1912)
Advocate

Ministry of Information and Broadcasting,
New Delhi.

2. The Director General,
Prasar Bharati (Broadcasting)
Corporation of India,
Civil Construction Wing,
All India Radio,
Govt. of India, New Delhi-1.
3. The Chief Engineer-I (Civil),
Civil Construction Wing,
All India Radio, Suchana Bhawan,
Sixth Floor, CGO Complex,
New Delhi-3.
4. The Superintending Engineer,
(Electrical) Civil Construction Wing,
All India Radio,
Doordarshan Staff Quarter Complex, VIP Road,
P.O.-Hengrabari,
Guwahati-781036.

... Opposite Parties/Respondents

The Review Applicant/Original Applicant No.4 above named

MOST RESPECTFULLY SHEWETH:

1) That the Review Applicant/Original Applicant No.4 & others had filed an Original Application No.202 of 2003 before this Hon'ble Tribunal for payment of Special Duty Allowance, which is also admissible to other similarly situated Central Government Employees. This Hon'ble Tribunal finally disposed the said Original Application on 24th March 2005. The said Judgment and Order passed by the Hon'ble Tribunal was received by the learned Counsel of the Review Applicant/Original Applicant No.4 on 26-04-2005. Accordingly the said copy of the judgment and order was received by the Review Applicant/Original Applicant No.4 on 27-04-2005. The Hon'ble Tribunal vide its Judgment and Order dated 24th March 2005 passed in Original Application dismissed the said Application for lack of jurisdiction with liberty to the Applicant if so advised to

Saroday Aditya

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approach the Hon'ble High Court. While the Hon'ble Tribunal passed the aforesaid Judgment and Order on 24-03-2005, the learned Counsel of the Review Applicant/Original Applicant No.4 could not place a vital point of law and important facts of the said case before this Hon'ble Tribunal.

Annexure-X is the photocopy of Judgment and Order dated 24th March 2005 passed by the Hon'ble Tribunal in O.A.No.202 of 2003.

2) That the Review Applicant/Original Applicant No.4 is not an Employee of Prashar Bharati (Broadcasting) Corporation of India, till date he is an employee of Central Government. He has not given his option for absorption in Prashar Bharati (Broadcasting) Corporation of India and he has also not drawing the pay scale of Prashar Bharati (Broadcasting) Corporation of India. Till date the Review Applicant/Original Applicant No.4 is drawing the Central Government pay scale and also employee of Government of India. Hence being a Central Government Employee he comes under the jurisdiction of Central Administrative Tribunal Act 1985.

3) That the Judgment and Order dated 24-03-2005 of the Hon'ble Tribunal was passed without proper placing of the vital points of law and also important facts by the Instant Review Applicant/Original Applicant No.4 for satisfaction of the Hon'ble Tribunal with the provision of law. If the said Judgment dated 24-03-2005 is not reviewed on the basis of law/Rules the Instant Review Applicant/Original Applicant No.4 will suffer irreparable loss and injury.

4) That being highly aggrieved the Review Applicant/Original Applicant No.4 has filed this Review Application before this Hon'ble Tribunal for seeking review of the aforesaid Judgment on the following amongst grounds: -

- G R O U N D S -

4.1) For that the Review Applicant/ Original Applicant No.4 is not an employee of Prashar Bharati (Broadcasting) Corporation of India. Till date he is an employee of Central Government. Hence this Review Application for Review of the Judgment & Order dated 24-03-2005 passed by this Hon'ble Tribunal in case of Review Applicant/Original Applicant No.4.

Sarvoday Aditya

4.2) For that the Review Applicant/Original Applicant No.4 till date has not given any option for his absorption in the Prashar Bharati (Broadcasting) Corporation of India. Hence this Review Application for review of the Judgment & Order dated 24-03-2005 passed by this Hon'ble Tribunal in case of Review Applicant/Original Applicant No.4.

4.3) For that it is an admitted fact that those employee who are absorbed in the Prashar Bharati (Broadcasting) Corporation of India are governed by the Prashar Bharati (Broadcasting) Corporation of India Act. The Review Applicant/Original Applicant No.4 is still a Government of India employee and also governed by the Central Government. Hence this Review Application for Review of the Judgment & Order dated 24-03-2005 passed by this Hon'ble Tribunal in case of Review Applicant/Original Applicant No.4.

4.4) For that the Review Applicant/Original Applicant No.4 have not drawn the pay scale of Prashar Bharati (Broadcasting) of India and he is still drawing the pay scale of Government of India. Hence this Review Application for Review of the Judgment & Order dated 24-03-2005 passed by this Hon'ble Tribunal in case of Review Applicant/Original Applicant No.4.

4.5) For that in any view of the above facts and circumstances and the provisions of law the Judgment and Order dated 24-03-2005 passed by this Hon'ble Tribunal may kindly be reviewed in case of the Review Applicant/Original Applicant No.4 of Original Application No.202 of 2003.

4.7) For that the Review Applicant/Original Applicant No.4 state that the Grounds details above are good grounds of the Review both on legal and factual aspects of the case and if the Hon'ble Tribunal did not exercise power of review then the Review Applicant/Original Applicant No.4 will suffer irreparable loss and injury.

In the premises aforesaid it is respectfully prayed that your Lordship may be pleased to review the Judgment dated 24-03-2005 passed by this Hon'ble

Sarvoday Aditya

Tribunal in Original Application No.202 of 2003 in the case of the Review Applicant/Original Applicant No.4 and may be pleased to grant the relief/reliefs as prayed for by the Review Applicant/Original Applicant No.4 and/or a passed such further order/orders as your Lordship deem fit and proper.

And for this act of kindness the Review Applicant/Original Applicant No.4 as in duty bound shall ever pray.

Sarvoday Aditya

- AFFIDAVIT -

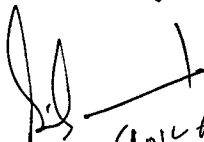
I, Shri Sarvoday Aditya, son of Late Sushil Aditya aged about 43 years Draftsman Grade-II, Office of the Superintending Engineer (Civil), Civil Construction Wing, All India Radio, Ganeshguri Chariali, Kakoti Bulding, 1st Floor, P.O.-Sachivalalya, Guwahati-6 do hereby solemnly affirm and state as follows:

1) That I am the Original Applicant No.4 in O.A.No. 202 of 2003 and also the Petitioner of the instant Review Application and as such I am acquainted with the facts and circumstances of the case.

2) That the contents of this affidavit and the statements made in paragraphs 2, 3 — of the above petition are true to my knowledge and those made in paragraphs 1 — are being matters of records derived there from I better to be true and those made in the rests are my humble submissions before this Hon'ble Tribunal.

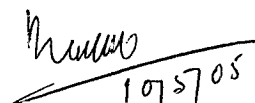
I sign this affidavit on this the 10th May day of 2005 at Guwahati.

Identified by me:


Advocate (Adil Ahmed)

Sarvoday Aditya

Solemnly affirmed before me by the Deponent who is identified by Mr. Adil Ahmed, Advocate.


10/5/05
Advocate
(D.R.M. C. SARMA)

- 7 -

Annexure - X

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 202/2003

Date of Order : This the 24th day of March, 2005

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Sri Satish Ch. Patgiri,
Junior Engineer,
Office of the Executive Engineer (Electrical)
Civil Construction Wing,
All India Radio,
Rajgarh Road, Guwahati - 3.
2. N. Izamo Yanthan
ASW (Electrical) Office of the
Executive Engineer (Electrical)
Civil Construction Wing,
All India Radio,
Rajgarh Road, Guwahati - 3.
- Sanjay Kumar Dey
S.O. (Electrical),
Office of the Executive Engineer (Electrical)
Civil Construction Wing,
All India Radio,
Rajgarh Road, Guwahati - 3.
4. Sarvoday Aditya,
Draftsman Grade - II,
Office of the Superintending Engineer (Civil) Civil
Construction Wing, All India Radio,
Ganesh Guri Chariali, Kakati Building 1st Floor,
P.O. - Sachivalaya, Guwahati - 6.

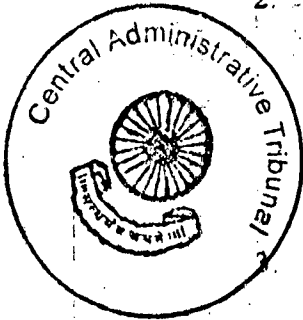
... Applicants.

By Advocate Mr. A. Anmed.

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Information and Broadcasting,
New Delhi.

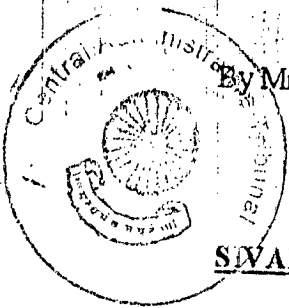
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2. The Director General,
Prasar Bharati (Broadcasting)
Corporation of India,
Civil Construction Wing,
All India Radio,
Govt. of India, New Delhi - 1.
3. The Chief Engineer - I (Civil),
Civil Construction Wing,
All India Radio, Suchana Bhawan,
Sixth Floor, CGO Complex,
New Delhi - 3.
4. The Superintending Engineer,
(Electrical) Civil Construction Wing,
All India Radio,
Dooradarshan Staff Quarter Complex, VIP Road,
P.O. - Hengrabari,
Guwahati - 781 036.

... Respondents.

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



ORDER (ORAL)

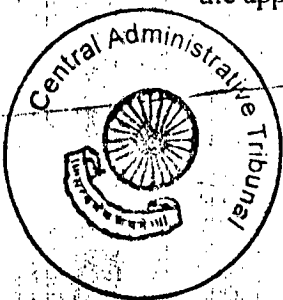
SIVARAJAN, J (V. C.):

The matter relates to grant of Special Duty Allowance. The case is posted alongwith a batch of cases relating to Special Duty Allowance. When this case was taken up for consideration, Sri A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents raised a preliminary objection that since the applicants are employed in All India Radio, which is under the Prasar Bharati, this Tribunal has no jurisdiction, unless a notification under Section 14(2) of the Central Administrative Tribunals Act (for short the Act) is issued. Learned Standing Counsel further submits that no notification has been issued with regard to question of jurisdiction in case of employees of Prasar Bharati and decisions have been rendered to the effect that this Tribunal has no jurisdiction to consider the case of the employees of Prasar Bharati. The standing counsel in support of his contention relied on the earlier Division Bench and Single Bench decisions of this

Handwritten signatures and initials at the bottom left corner.

Tribunal in O.A. No. 2/03 and O.A. No. 25/02. Mr. A. Ahmed, learned counsel for the applicants relied upon a Division Bench decision of this Bench rendered in O.A. No. 24/2003 decided on 13.05.2004 in case of employees of BSNL.

2. We have gone through the decisions of this Bench mentioned above. We find that the decisions relied on by the Central Government Standing Counsel relate to employees of Prasar Bharati and that a Division Bench has already taken the view that in the absence of a notification under Section 14(2) of the Central Administrative Tribunals Act, 1985, the Tribunal has no jurisdiction to entertain applications in the matter of BSNL. We have bound by the said decision. We also find that the decision relied on by the counsel for the applicant rendered by another Division Bench relates to employees of BSNL but the said decision is no longer good law in view of the Full Bench decision of the Principal Bench of the Tribunal in O.A. Nos. 401 of 2002 and connected cases in the case of BSNL employees where it was held that the Tribunal has no jurisdiction over BSNL employees unless a notification is issued under Section 14(2) of the Act. In the circumstances, we dismiss this application for lack of jurisdiction with liberty to the applicants, if so advised, to approach the Hon'ble High Court.



Certified to be true copy
of the original

Section Officer (J) 26/4/05
C.A.T. GUWAHATI BENCH
Guwahati-781005

Sd- vice - chairman
Sd - Member (A).

Ahmed
Sd -
Member