

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 109/03

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Applicants: - P.M. Kithan

Respondants: - U.O. I form

Advocate for the Applicants: - S.C. Boroway, H.K. Majumdar, S.Das

Advocate for the Respondants: - Case

Notes of the Registry	Date	Order of the Bench
<p>Application is not admitted but not in order.</p> <p>Admitted by C.F.</p> <p>Rs. 500 deposited.</p> <p>No. 2654909</p> <p>20.4.03</p> <p><u>[Signature]</u></p> <p>Dy. Registrar</p> <p>mb</p> <p>Notice not yet served - responsibility</p> <p>20.6.2003</p> <p><u>[Signature]</u></p> <p>21/5/03</p> <p>Notice prepared & sent to D/S for issuing the respondent No. 1 of 4 by Regd. A/D.</p> <p>K/No 1104 & 1107</p> <p>Dtd 29/5/03</p> <p>26/5/03</p> <p>mb</p> <p>Service report are still awaited.</p> <p>29/6/03</p>	23.5.2003	<p>Heard Mr. M.K. Mazumdar, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted.</p> <p>List on 20.6.2003 for admission.</p> <p>Endeavour shall be made to dispose of the same at the admission stage.</p> <p><u>[Signature]</u></p> <p>Vice-Chairman</p> <p>Heard Mr. M.K. Mazumdar, learned counsel for the applicant and also Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.</p> <p>The application is admitted. Call for the records.</p> <p>List again on 22.7.2003 for written statement.</p> <p><u>[Signature]</u></p> <p>Vice-Chairman</p>

22.7.2003 Present : The Hon'ble Mr. Justice
D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. N.D. Dayal,
Member (A).

No. written statement
has been filed.

21.7.03

Put up again on 22.8.2003 to
enable the respondents to file written
statement.

Member

Vice-Chairman

mb

22.8.2003 It has been stated by Mr. B.C.
Pathak, learned Addl. C.G.S.C. for the
respondents that written statement has
been filed and a copy of the same has been
served to Mr. M.K. Mazumdar, learned
counsel for the applicant. Mr. Mazumdar,
also stated that he has received the
same. Office to connect the same in
the case file. Accordingly, list the
matter for hearing on 29.8.2003. The
applicant may file rejoinder, if any.

No. written statement
has been filed.

21.8.03

25.8.03

W/s submitted
by 1st Respondent Nos.
1 and 4.

Vice-Chairman

mb

12.9.2003 Present: The Hon'ble Mr. K.V. Prahalada
Administrative Member.

On the prayer made by Mr. B.C. Pathak,
learned Addl. C.G.S.C. the case is ad-
journed and again listed for hearing
on 31.10.2003.

No. rejoinder has
been filed.

11.9.03

Member


bb

31.10.2003 On the prayer made by Mr. B.C.
Pathak, learned Addl. C.G.S.C. the case
is adjourned. List the case on 8.12.
2003 again for hearing.

Vice-Chairman


bb

1.1.2004 On the prayer made by Mr. M.K. Mazumdar, learned counsel for the applicant the case is adjourned and listed on 8.1.2004 again for hearing. 7


Member (A)

bb


8.1.2004 List on 9.1.2004 for hearing.


Member (A)

mb


9.1.2004 Heard Mr. M.K. Mazumdar, learned counsel for the applicant, Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents and also perused the records.

Hearing concluded. Judgment reserved.


Member (A)

nkm

21.01.2004 Judgment delivered in open Court, kept in separate sheets. The application is allowed. No order as to costs.


Member (A)

mb

20/2/04

copy of the
judgment has been
sent to the office
for issuing the same
to the applicant as
well as to the
addl. C.G.S.C. for the
Respondent

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Recd. 1/3/04

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./R.A.No. 1111 109/2003

DATE OF DECISION 21.01.2004.

Sri Pariyarathu Madhavan KittamAPPLICANT(S).

Sri M.K.MazumdarADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

Union of India & Ors.RESPONDENT(S)

Sri B.C.Pathak, Addl.C.G.S.C.ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE

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

Judgment delivered by Hon'ble Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 109 of 2003.

Date of Order : This the 21st day of January, 2004.

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

Shri Pariyarathu Madhavan Kittam,
Upper Division Clerk,
MES/223980, Tezpur.

... Applicant.

By Advocat Sri M.K.Mazumdar.

- Versus -

1. Union of India
represented by the Secretary to the
Government of India,
Ministry of Defence,
New Delhi.
2. The Controller General of Defence Accounts,
West Block - V,
R.K.Puram, New Delhi-56.
3. Area Accounts Officer,
Bivar Road, Shillong-1.
4. Garrison Engineer, Tezpur,
P.O. Dekargaon (Solmara)
Dist. Sonitpur

... Respondents.

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

O R D E R

K.V.PRAHLADAN, ADMN.MEMBER,

The applicant joined as LDC under the Ministry of Defence at Borjhar. In 1975 he was transferred to Rangia. On 16.11.76 he was transferred to West Bengal and posted at Kalaikunda. After 16 years of service he was brought back to North Eastern Region and posted in the office of the Garrison Engineer, Tezpur. The applicant was allowed to draw Special Duty Allowance (SDA) since 1993. It was discontinued in July 1998 and the respondents started recovery of the SDA already paid. The applicant alongwith two others approached the Guwahati Bench of the Tribunal by preferring Original Application No.238/2000. The Tribunal by its order dated

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25.9.2001 allowed the application with the following observation :

"The applicant No.1 who was appointed as Lower Division Clerk in the year 1964 and posted at Borjhar. In the year 1976 he was transferred to West Bengal where he worked upto 1993. In the year 1993, he was again transferred and posted at Tezpur. Similarly, the applicant No.2 was appointed as Superintendent Grade II in the year 1970 and posted at Tezpur and he was transferred from Tezpur and posted at West Bengal. He was retransferred to N.E.Region in the year 1990 and again transferred to Calcutta in the year 1993 and he was reposted in Tezpur in 1997. The applicant No.3 was also similarly situated person. Initially he was appointed at Chabua in 1964 and in June 1984 he as transferred and posted at Kumbhirgram and thereafter he was transferred to Jammu and Kashmir. In September, 1993 he was repostd. As per Government instruction issued time to time all the Civilian Employees who are transferred from outside the Region and subsequently posted in the N.E. Region are entitled to Special Duty Allowance.

there is no dispute that a person who are posted from outside to N.E. Region and reposted to the N.E. Region is entitled to the Special Duty Allowance.No written statement had been filed. In the circumstances, we direct the respondents to examine the case of the applicants individually and if it is found that the applicants were posted from outside to N.E. Region and thereafter transferred and posted in the N.E. Region, in that event the respondents shall take steps for payment of Special Duty Allowance to the applicants from the date of reposting in the respective places. If any deduction was made from the applicants these are to be refunded to them forthwith on completion of the exercise."

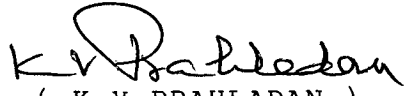
The respondents made an appeal before the Hon'ble Gauhati High Court in W.P.C.3491/2002. The Hon'ble Gauhati High Court by its judgment dated 29.5.2002 directed as under :

Admittedly, there is no dispute that a person who are posted from outside to N.E.Region and reposted to the N.E.Region is entitled to the Special Duty

Allowance. Since no written statement had been filed, in the circumstances, we direct the respondents to examine the case of the applicants individually and if it is found that the applicants were posted from outside to N.E.Region and thereafter transferred and posted in the N.E.Region, in that event the respondents shall take steps for payment of Special Duty Allowance to the applicants from the date of reposting in the respective cases. If any deduction was made from the applicants these are to be refunded to them forthwith on completion of the exercise.

The Writ Petition was accordingly dismissed by the Hon'ble Gauhati High Court with the direction to carry out the directions given by the Central Administrative Tribunal now if already not carried out. Accordingly, the order of the respondents dated 21.2.2003 (Annexure-V) is set aside and quashed.

In the facts situation the respondents are directed to implement the order dated 25.9.2001 passed by the Tribunal in O.A.238/2000 as expeditiously as possible, preferably within a period of 3 months from the date of receipt of this order. No order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER

O.A. 109/2003

Shri P.M.Kittan

Date of filing of application

20 MAY 2003 Applicant

- Versus -

Union of India & Others. Respondents.

SYNOPSIS

List of date

Facts of the case

1964	Applicant joined as L.D.C.
1975	Applicant transferred to Rangiya
1976	Applicant transferred to West Bengal
1993	Applicant brought back to Tezpur
1993-1998	Applicant was paid S.D.A.
August 1998	Payment of S.D.A. Stopped and recovery started
1-9-98	Office Communication to recover S.D.A.
22-7-1998	O.M. clarifying eligibility to S.D.A.
5-5-2000	Cabinet Secretariat's clarification regarding S.D.A.
25-9-2001	Judgment and Order passed in O.A. No. 238/2000.
29-5-2002	Judgment & Order passed in W.P.(C) No.3491/2002 upholding C.A.T.'s Judgment
January 2003	C.P. No. 4/2003 filed.
21-2-2003	Order rejecting the claim of the Applicant.

Filed by

M.K. Majumdar
Advocate

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20 MAY 2003
GENERAL SECRETARY
CENTRAL ADMINISTRATIVE TRIBUNAL

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

(An application under Section of the Administrative
Tribunal Act 1985)

O.A. NO. 109 /2003

Shri Pariyarathu Madhavan Kittam

.... Applicant.

- Versus -

Union of India & Ors.

.... Respondents.

I N D E X

<u>Sl. No.</u>	<u>Documents</u>	<u>Pages</u>
1.	Application	
2.	Verification	
3.	Annexure - A/I	
4.	Annexure - B/II	
5.	Annexure - C/III	
6.	Annexure - D/IV	
	- E/V	

For use in the office :-

Signature :-

Date :-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUMAHATI BENCH

(An application under Section 19 of the Administrative
Tribunal Act 1985)

BETWEEN

1. Shri Pariyarathu Madhavan Kittam
Upper Division Clerk
MES/223980, Tezpur.

..... APPLICANT.

- AND -

1. Union of India represented
by the Secretary to the Govt.
of India, Ministry of Defence,
New Delhi.
2. The Controller General of
Defence Accounts,
West Block - V
R.K. Puram, New Delhi - 110056.
3. Area Accounts Officer,
Bivar Road, Shillong - 1
4. Garrison Engineer, Tezpur,
P.O. - Dekargaon (Solmara)
Dist. - Sonitpur.

..... RESPONDENTS.

contd..... p/2.

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Filed by the Applicant
Through M.K. Majumdar
Advocate
19-05-03

1. Particulars of orders against which this application is directed :-

This application is made due to non-payment of Special duty allowance to the applicants since August 1998.

2. Jurisdiction :-

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

3. Limitation :-

That the applicant also declares that this application is made within the time limit as has been prescribed under section 21 of the Administrative Tribunal Act 1985.

4. Fact of the Case :-

1) That the applicant being aggrieved by the action of the respondent the applicant have preferred this Original Application for the second time while the similarly situated persons who were party to the earlier Original Application be considered for payment of S.D.A.

2) That the applicant joined in service as lower division clerk in the year 1964 under the respondent and posted at Borjhar.

In the year 1975 he was transferred to Rangliya thereafter as 16.11.1976 he was transferred to West Bengal and posted at Kalaikunda. After

completion of 16 years of service he was brought back to North East Region and posted in the office of G.E. Tezpur, i.e. respondent No. 4.

3) That the applicant states that he was transferred and posted from West Bengal to this region again on administrative ground to serve this region and accordingly he was allowed to draw special duty allowance since 1993 as per the Govt. of India policy till July, 1998.

Thereafter since August, 1998 the payment of S.D.A. to the applicant was stopped and the respondent started deducting the amount already paid ~~in~~ without any order in respect of deduction from salary.

4) That the applicant states that an enquiry he learnt that as the basis of instruction from the respondent No. 3 vide D.D. letter dated - 01.09.98 the recovery from the salary has been started. He stated that in the said letter the respondent No. 3 made a mention the Govt. of India's memorandum No. P.NO. 11(2)/97.E.11(B) dated 22 July, 1998.

Copy of the D.D. letter is
annexed as ANNEXURE - I and
the Memorandum dated 22nd July,
1998 as ANNEXURE - II.

contd.... p/4.

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5) That the applicant states that according to memorandum he is fully eligible for S.D.A. is as much as, he has been re-posted with a view to attracting and retaining for serving in North East region and as per the service agreement the applicant having all India ~~transf~~ transfer liability.

6) That the applicant states that it is a fact that as per agreement entered into between the applicant and the respondent, the applicant was appointed by the Garrison Engineer, Borjhar, Division but later on he was transferred to outside the region where he served for 16/17 years together and thereafter he has been re-posted in the North East region as the administrative ground and, as such, he being brought from outside the North East region his eligibility for enjoyment of S.D.A. can be questioned and denied and not to speak of any recovery.

7) That, being aggrieved the applicant submitted his representation for a number of times. But the respondent neither issued any order regarding payment of S.D.A. nor to stop the recovery of the amount already granted in the form of special pay on the basis of the decision of the authority and the amount already utilised by the applicant as salary and being aggrieved the present applicant

along with two other applicant approached to this Hon'ble Tribunal by filing an Original Application which is being numbered as O.A., 238/2000.

8) That the applicant states that the said O.A. was entertained by this Hon'ble Tribunal and since the matter being covered by the provision of the policy, disposes the O.A. vide order dated 25.9.2001.

Copy of the order is annexed as ANNEXURE - III.

9) That after receiving copy of the afore-said order, the petitioner furnished the same before this Hon'ble Court with an application requesting compliance of the order of this Hon'ble Tribunal, but finding respondents inaction to implement, the petitioner sent legal notice on 20th April, 2002 but the same failed to make any response.

10) That the petitioner states that the matter was kept abeyance without any decision of the respondent preferred writ petition before Hon'ble High Court challenging the order dated 25.9.2001 vide W.P.(C) No. 3491/2002 and when the matter came up for consideration, the Hon'ble High Court vide order dated 29.5.2002 observed

contd.... p/6.

that there is uniformity in the order of the Tribunal and consequently dismissed writ petition with the direction to comply with the order of the Hon'ble Tribunal with ~~19~~ 16.7.2002.

Copy of the order dated 29.5.2002
is annexed as ANNEXURE - IV.

11) That the petitioner states that even after the direction by the Hon'ble High Court, the respondent remain oblivious in compliance with the order and the applicant sent a legal ~~notice~~ notice on 25.9.2002. Thereafter the respondent vide to communication dated 30.10.2002 replied the Advocate of the applicant that since he is locally recruited, he is not entitled to S.D.A. and in this manner they wiped out all the findings of this Hon'ble Tribunal as well as the order of the Hon'ble High Court upholding the decision of Hon'ble Tribunal. They even did not bother to criticise the order of the Court in wrong fashion which is sufficient to show their deliberate negligence attitude towards the decision findings.

12) That the applicant states that, thereafter an contempt petition was filed which is numbered as C.P. No. 4/03 and during pendency of the C.P. the Respondent Authority passed impugned order dated 21.2.2003 rejecting to grant S.D.A. in

contd.... p/7.

otherwards the Authority out of which explained the meaning of their choice.

A copy of the order dated

21.2.03 is annexed as ANNEXURE - V.

5. Grounds for Reliefs :

(i) For that non payment of S.D.A. to the applicant is discreminatory treatment in as much as they have also been transferred and posted to this region on administrative ground.

(ii) For that as the simillary situated persons of the other organisation is entitled to S.D.A. as is clear from the action the applicants, being a civilian employees of Central Govt. is also entitled to the same benefit and that should not be denied.

(iii) For that though he was recruited in this region initially, but later on he was transferred to out side of this Region and served there for more than 16/17 years to-gether and after a long gap he has again transferred and posted to this N.E. Region on a administrative ground and hence he is entitled to S.D.A.

(iv) For that as his service is "All India Transfer Liability" and have been transferred and posted to this region on administrative ground, the respondents are duty bound to pay the S.D.A.

contd.... p/8.

(v) For that the office Memorandum dated July, 22nd 1998 in no way prevent the respondents to pay S.D.A. to the applicant and hence the D.O. Letter dated 1.9.98 has been issued by mis-interpreting the office Memorandum dated July, 22, 1998 and also other relevent circulars of Govt. of India.

(vi) For that the action of the respondents is arbitrary, whimsical and illegal and hence is not maintainable in the eye of law.

(vii) For that the action of the respondents completely violates the Article 14 of the Constitution of India.

(viii) For that the action of the respondents is illegal in as much as it violates the principle of natural justice and administrative fair play.

(ix) For that at any rate, the action of the respondents is not maintainable in the eye of law and liable to be quashed.

6. Detail of remedies availed :

That the applicant declares that they have taken recourse to all the remedies ~~xxx~~ available to them but failed to get justice and hence there is no other alternative efficacious remedy open to them other than to approach this Hon'ble Tribunal.

contd.... p/9.

~~7. Matter not previously filed and/or pending~~

7. Matter not previously filed and/or pending
before any Court :-

That the applicants further declare
that they have not previously filled any appli-
cation, Writ petition or suit regarding the
matter before any court, authority or any other
bench of this Hon'ble Tribunal, nor any such
application, writ petition or suit is pending
before any court.

8. Reliefs sought for :-

Under the circumstances stated above
the applicants pray for the following reliefs :-

- (i) To direct the respondents to pass necessary
order for payment of Special Duty Allowance
to the applicant since August 1998 onwards.
- (ii) To direct the respondents to pay the S.D.A.
amount which has already been deducted.
- (iii) To grant any other relief as Your Lordships
may deem fit and proper.
- (iv) Cost of the application.

9. Interim reliefs, if any :-

Under the circumstance stated above Your
Lordships may please to direct the respondents
to stop the deduction of amount of SDA which
has already been paid, from the salary of the
applicants.

contd.... p/10.

10.

11. Particulars of Indian Postal Order :-

i) I.P.O. NO. :-

ii) Date of issued :-

Payable at : Guwahati.

12. List of enclosures :-

As stated in the index.

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

I, Shri Pariyarathu Madhavan Kittan, Upper Division Clerk, NES/223980, Tezpur, resident of C/O. Garrison Enginner, Tezpur, P.O:- Dekar Gaon, Dist:- Sonitpur (Assam) do hereby verify that the contents of Para 1, 2, 3, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 4.9, 4.11, 6, 7 are true to my knowledge and those made in Para 4.4, 4.8, 4.10 true to my information being matter of record and rests are my humble submissions before this Hon'ble Tribunal and that I have not suppressed any material fact of the case.

And I sign this verification on this the 22nd Day of May, 2003.

PM Kittan

ANNEXURE - A

Shri S.C. Prasad
Accounts Officer.

D. No. RM/III/301/P &
Area Accounts Office,
Bivar Road,
X Shillong - 793001.

Dated - 01.09.98.

Dear Shri Kardong,

I am writing this in connection with some anomalies noticed in regular pay Bills of your unit. The same is enumerated below.

1. SPECIAL DUTY ALLOWANCE : The same is to be regulated as per ~~XXXX~~ G.O.I order from time to time, only to the employees recruited outside the NER and posted to NER @ 12.5% of B.P. w.e.f 8/97. Please refer to G.O.I No. F.11(2)/97-El1(B) dt. 22.07.98. Any payment made to ineligible persons may please be stopped and intimate, recovery, with full details under intimation to this Office. Please quote the Nos and date and forward a c-copy of the said alongwith the names of the listed case, if in any case order for stoppage of recovery ~~is~~ is obtained.
2. LICENCE FEE : Off late ~~ix~~ it is observed that, Licence Fee is being deducted at your level, without mentioning the L.F Bill No. & date at the Foot Note of the .P.B. on the other hand, AAO GE/AAO BSC is also floating L.F/A.C Bills direct to AAO/Shillong for necessary recovery which creates confusion and some times double recovery at time. You are requested to quote the L.F No. & date clearly if any made at your level in the future.
3. (C/D & NER) a house ent. allowance are being admitted at the new rate as per classification of City w.e.f 8/97, to the individuals who are not occupying Govt. accomodation. House rent allowance (old duty station) which is applicable to the officials who are posted to NER from outside NER, is ~~now~~ being ~~is~~ admitted at old rate only, to those individuals, who have before the declaration of the '97.

Cont ... P/2.

Attested by

[Signature]
12/7/2000
Advocate



4

7

Verona, N.J. Jan. 12, 1901

8. (A) ARREARS OF PAY AND ALLOWANCES UNDER RPR 1997.

Claims must be supported due and drawn statements together Photo copy of pay ~~KM~~ Fixation Proforma duly approved by the audit authorities.

(B) CLAIMS FOR T/P, CEA AND NDA : Claims must be supported with certificate as required under rules and No and date of Vr under which last claims submitted may also be indicated to enable this Office to take prompt action.

9. CONTRIBUTION OF GPF : It is seen that contribution to GPF is not being made at the prescribed minimum rate of at least of 6% of B.P is so many cases. This creates unnecessary correction in the schedule. It is also observed that GPF A/C No. is not quoted in the schedule, ~~hence~~ hence discrepancy is noticed in CC - 9.

10. SPECIAL PAY FOR SMALL FAMILY NORMS :

Special pay for small family norms should be admitted at the pre-revised rate only, prior to the 1.1.96 and RPK - 97. The same may please be regulated at your end and necessary recovery is to be worked out under ~~the~~ intimation to this under subjected schedule.

11. INCOME TAX : Recovery of Income Tax may please be initiated for eligible person to avoid financial hardship at the end of the assessment year.

In view of the above ~~max~~ points, I request your good Office to co-operate with A.A.O/Shill-ong for better and effective service from this end. Your kind intervention and co-operation on the above subjects will be highly appreciated.

With regards.

Yours Sincerely,

Sd/-

S.R. KARDONG
AO II
CWE Tezpur
POST. Dekargaon
Dist. Sonitpur (Assam)

Cont

Attested by
[Signature]

13-15-

ANNEXURE - II

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ANNEXURE - B

P.NO. II(2)/97-E-N(B)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF EXPENDITURE

New Delhi, Dated July 22, 1998.

OFFICE MEMORANDUM

Subject : Allowances and Special Facilities for civilian employees of (illegible) and Union Territories of North Eastern Region and Andaman & Nicobar and Lakshadweep Groups of Island - Recommendations of the Fifth Central Pay Commission.

With a view to attracting and retaining competent Officers for serving 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 Dec. 14, 1983 extending certain allowances and other facilities to the civilian Central Government employees serving in this region in terms of paragraph 2 thereof of these orders other than those contained in paragraph 1(iv) ibid were also to apply (illegible) to the civilian Central Government employees posted to the Andaman & Nicobar Island. These were further extended to the Central Government employees posted to the Lakshadweep Island in this Ministry's O.M. of even number dated (illegible) 1994. The allowances and facilities were further liberalised of this Ministry's O.M. No. 200114/10/88/E.IV/E.N(B) dated Dec. 1, 1988 and were also (illegible) posted in the North Eastern Council when stationed in the North Eastern Region.

2. The fifth Central Pay Commission have made certain recommendations suggesting further improvements of 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

Cont P/2.

Attested by
[Signature]
22/7/98

[Signature]
22/7/98

- 16 -

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: 2 :

recommended that these may also be extended to the Central Government employees, including Officers of the All India Services, posted at Shikim. The recommendations of the Commission have been considered by the Government and President of India (illegible) decide as follows :-

(i) Tenure of posting/Deputation :

(illegible)

(ii) Weightage for Central Deputations/Training Abroad and Special mention in Confidential Records :

(illegible)

(iii) Special (Duty) Allowances :

Central Government civilian employees having an All India transferability and posted in the specified Territories in the North Eastern Region shall be granted the Special (Duty) Allowances at the rate of 9.5% of their basic pay as prescribed in this Ministry's O.M. No. 20014/16/88.E.IV/E.N(B) dated Dec. 1, 1988 (illegible). In other words, the ceiling Rs. 1,000 per month (illegible) in force shall no longer be applicable and the condition that the aggregate or the option (illegible) Special Duty/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 as "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 categories of Central Government employees at the same rate as prescribed for the different specified areas in the O.M. dated May 24, 1988 but without any ceiling on its quantum. This allowance shall

Cont ... P/3.

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Estt
Sub-branch

Rev. 4/14/6
Dated 22 MAY 2000
D.I.G.
Comdt.
Adjt.

COURT CASE/MOST IMMEDIATE

No. 42/SSB/AI/99(18) 3486-2508
Directorate General of Security
Office of the Director, SSB,
East Block-V, R.K. Puram,
New Delhi - 110066.

Dated the, 8/5/2000

Memorandum

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

.....

Enclosed please find herewith a copy of Cabinet Secretariat UO No. 20/12/99-EA-I-1799 dated 2.5.2000 clarifying the position of points raised by SSB Directorate vide UO No. 42/SSB/AI/99(18)-5282 dated 2.9.1999 on the above subject for further necessary action at your end.

2. Please acknowledge receipt.

S.S. BORA
(S.S. BORA)
JOINT DEPUTY DIRECTOR (EA)

To,

1. The Divisional Organisers, HP/UP/AP/NA/NB&S/M&N/SHG/R&G/J&K/SB
2. The DISG, TC Haflong/TC Sarahan/TC Salonibari/TC Jammu/TC Kumarsain/PA Gwaldam.
3. The Commandant, TC Faridabad/CSD&W Bhopal/CSD&W Salonibari/CSD&W Sarsawa.
4. The Section Officers, A-2/A-4 Branch.
5. Office Guard file.

Endst. No. TCS/II/SDA/2000/6489 Dated 27/5/2000

Copy to the Accounts Officer for information and necessary action, please.

Adjutant
Training Centre SSB
Salonibari
26/5/2000

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COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(EA.I Section)

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

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

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

- i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region. and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.
 - 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. NO
 - 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. NO
 - ii) An employee belongs to N.E.Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-E.IV dated 14.12.83 and 20.4.87 read with

Contd...2/-...

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

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

YES

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

YES

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

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

Contd...3/-....

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

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

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

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

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

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

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

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ANNEXURE - II
ANNEXURE - A 32

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 238 of 2000

Date of Order: This the 25th Day of September 2001

HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN
HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Shri Pariyarathu Madhavan Kittan
Upper Division Clerk
NES/223980, Tezpur
2. Shri Ashim Kumar Bhattacharjee
Superintendent, BIR, Grade-1
MES/236465, Tezpur.
3. Shri Binoy Bhusan Das
Supervisor, B/S, Grade-1
NES/242236, Tezpur. Applicants.

By Advocate Mr. A.K. Roy, Mr. I Gogoi.

-Vs-

1. Union of India represented by the
Secretary to the Govt. of India,
Ministry of Defence, New Delhi
2. The Controller General of Defence Accounts,
West Block V, R.K. Puram,
New Delhi-1100056.
3. Area Accounts Officer,
Bivar Road, Shillong-1
4. Garrison Engineer, Tezpur
P.O. - Dekargaon (Solmara)
Dist-Sonitput. Respondents.

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

O R D E R.

CHOWDHURY J. (VC):

The three Civilian Employees are working under the Ministry of Defence. Their grievances are common as to the entitlement of Special Duty Allowance. All the applicants were initially appointed in the N.E. Region subsequently they were transferred outside and posted.

contd/-

[The Applicant No.1 ~~who~~ was appointed as Lower Division Clerk in the year 1964 and posted at Barjhar. In the year 1976 he was transferred to West Bengal where he worked up to 1993. In the year 1993, he was again transferred and posted at Tezpur. Similarly, the Applicant No.2 was appointed as Superintendent Grade II in the year 1970 and posted at Tezpur and he was transferred from Tezpur and posted at West Bengal. He was retransferred to N.E. Region in the year 1990 and again transferred to Calcutta in the year 1993 and he was reposted in Tezpur in 1997. The applicant No.3 was also similarly situated person. Initially he was appointed at Chabua in 1964 and in June 1984 he was transferred and posted at Kumbhirgram and thereafter he was transferred to Jammu and Kashmir. In September, 1993 he was reposted. As per Government instructions issued from time to time all the Civilian Employees who are transferred from outside the Region and subsequently posted in the N.E. Region are entitled to Special Duty Allowance.]

We have heard Mr. I Gogoi learned counsel appearing on behalf of the applicant and Mr. B. C. Pathak, Addl. C. G. S. C. for the Respondents. Admittedly, (there is no dispute that a person who are posted from outside to N.E. Region and reposted to the N.E. Region ~~is~~ is entitled to the Special Duty Allowance. Since no written statement had been filed, in the circumstances, we direct the respondents to examine the case of the applicants individually and if it is found that the applicants were posted from outside to N.E. Region and thereafter transferred and posted in the N.E. Region, in that event the respondents shall take steps for payment of Special Duty Allowance to the applicants from the date of reposting in the respective places. If any deduction was made from the applicants these

contd/-

-3-

are to be refunded to them forthwith on completion of the exercise.)

The applicants may file fresh representations individually or collectively narrating all the relevant facts within three weeks from the receipt of the order. The Respondents are directed to complete the exercise preferably within 3 months from the date of receipt of this order. "

Application is allowed to the extent indicated.

There shall however, be no order as to costs.



LM

Sd/VICE CHAIRMAN

Sd/MEMBER (A)

TRUE COPY

प्रतिलिपि

Section Officer (A)
 कानूनशास्त्र अधिकारी (अ) (न्यायिक शाखा)
 Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायालय
 Guwahati Bench, Guwahati-8
 गारोवादी न्यायालय, गारोवा-८

27/9/2007

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Name of the Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	
			W.P.(C) No. 3491/02
			Before.

The Hon'ble the Chief Justice Mr. RS Moxia.
The Hon'ble Mr. Justice Ranjan Gogoi.

29-9-2002

The Central Administrative Tribunal, Guwahati Bench by the judgment dated 25.9.2001 disposed of the O.A.No.238/2000 by giving the following directions :-

"We have heard Mr. I Gogoi, learned counsel appearing on behalf of the applicant and Mr. BC Pathak, Addl. C.G.S.O. for the Respondents. Admittedly, there is no dispute that a person who are posted from outside to NE Region and reposted to the NE Region is entitled to the Special Duty Allowance. Since no written statement had been filed, in the circumstances, we direct the respondents to examine the case of the applicants individually, and if it is found that the applicants were posted from outside to NE Region and thereafter transferred and posted in the NE Region, in that event the respondents shall take steps for payments of Special Duty Allowance to the applicants from the date of of reposting in the respective places. If any deduction was made from the applicants these are to be refunded to them forthwith on completion of the exercise."

The applicants may file fresh representations individually or collectively narrating all the relevant facts within three weeks from the receipt of the order. The respondents are directed to complete the exercise preferably within 3 months from the date of this order.

Application is allowed to the extent indicated. There shall however, be no order as to costs."

[Handwritten signature]

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W.P.(C) No. 3491/2002

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
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29-V-2002
Contd-(2)

From the above, it is evident that what the Tribunal has directed the present petitioner is to examine the case of each individual applicant in original Application as to whether they were outsiders; meaning thereby they did not belong to NE Region and they have been posted in the NE Region and thereafter transferred outside the NE Region and retransferred them to NE Region. For the period such outsiders worked in NE region, they are entitled to Special Duty Allowance.

We do not find any infirmity in the aforesaid direction. Consequently, we dismiss the Writ Petition.

However, we find that the period granted to the petitioner to carry out the direction was 3 (three) months from the date of receipt of the order. We issue notice to the Respondents for 16.7.2002 only qua regarding extension of the period for comply with the direction. However, the petitioners would carry out the directions given by the Central Administrative Tribunal now if already not carried out.

Sd/- Rajiv Singh
Judge

Sd/- R. S. Singh
Chief Justice

P No 10283

CERTIFIED TO BE TRUE COPY
K. S. Singh
Date *6.11.2002*
Superintendent (Copying Section)
Gauhati High Court
Authorised U/S 76, Act I, 1872

21/11/02

No.90237/7521/EIC Legal-C/86-LC/D(Civ.I)/03
Government of India
Ministry of Defence

New Delhi, the 21st February, 2003.

To

MES/223980,
Shri P.M. Kittan, UDC
C/o GE, Tezpur

Subject: OA No.238/2000 filed by Shri P.M. Kittan, UDC and others v/s UOI and others.

The Hon'ble CAT Guwahati Bench in their order dated 25.9.2001, in OA No.238/2000 has given the following directions:-


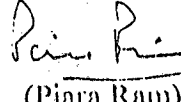
"Admittedly, there is no dispute that a person who are posted from outside to NE Region and reposted to the NE Region is entitled to SDA. No written statement had been filed. In the circumstances, we direct the respondents to examine the case of the applicants individually and if it is found that the applicants were posted from outside to NE Region and thereafter transferred and posted in the NE Region, in that event the respondents shall take steps for payment of SDA to the applicants from the date of reporting in the respective places. If any deduction was made from the applicants these are to be refunded to them forthwith on completion of the exercise."

2. In compliance with the orders of CAT, Guwahati, your case has been examined keeping in view the orders contained in the Ministry of Finance, Deptt. of Expenditure OM dated 11(5)/97-E.II(B) dated 29.5.2002 circulated vide Ministry of Defence ID No. Ministry of Defence ID No.4(6)/2002/D(Civ.I) dated 10th October, 2002, read with all the orders issued earlier. As per the Supreme Court judgements quoted in the Ministry of Finance OM dated 29th May, 2002 ibid, the Special Duty Allowance shall be admissible to the Central Govt. Employees having All India Transfer Liability on posting to North Eastern Region(including Sikkim) from outside the region.

3. You were originally recruited as LDC in the year 1964 and subsequently promoted as UDC in the year 1985. Both the posts of LDC and UDC held by you are not having All India Transfer Liability. Therefore, you are not entitled

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to grant of Special Duty Allowance(SDA) as per the orders of the Ministry of Finance(Deptt. of Expenditure.) and Ministry of Defence mentioned above.

4. With the issue of this speaking order, the direction of the Hon'ble CAT, Guwahati Bench in OA No. 238/2000 filed by you and others has been complied with. This speaking order is issued in supersession of the earlier speaking order issued by CE, Shillong Zone, Shillong vide their letter No. 70222/OA 239/2000/Legal/ 140/E-1 dated 30.10.2002.

 
(Pinar Ram)

Under Secretary to the Govt. of India

Copy to :

- 1) E-in-C Branch (EIC Legal)
- 2) CE, Eastern Command, Kolkata
- 3) CE, Shillong Zone, Shillong
- 4) CWE, Tezpur
- 5) GE, Tezpur.
- 6) CGDA, New Delhi
- 7) CDA, Guwahati.
- ✓ 8) Area Accounts Office, Shillong

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI

O.A. NO. 109/2003

Sri P.M. Kittan

...Applicant

-versus-

Union of India & Others

...Respondents

Filed by:
Defining 24803
(B. C. Pathak)
Addl. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench

(WRITTEN STATEMENTS FILED BY THE RESPONDENT NO.1 AND 4)

The written statements of the aforesaid respondents are as follow:

1. That a copy of the O.A.No.109/2003 (referred to as the "application") has been served on 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 answering respondents.
3. That the instant application is not maintainable as the cause of action raised in the application has been finally decided between the same parties on the same matter and issues. Therefore, the application is barred by the doctrine of *res judicata*.
4. 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:

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- (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 in the region due to inaccessibility and difficult terrain. A 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 posted in the region from outside on transfer.

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

- (b) That after some time, some departments sought some clarifications about the applicability 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 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 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)

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allowance was further continued to the central Govt. employees at the rate prescribed therein.

A 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 in *Union of India & others -vs- S. Vijoykumar & others* (C.A. No.3251/93) 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 also went into the object and spirit of the O.M.dt.14.12.83 as a whole.

A copy of the said judgment dt.20.9.94 is annexed as
ANNEXURE-R4.

- (e) That the Hon'ble Supreme court in another decision dated 23.2.1995, in Ca 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 reason.

A copy of the said judgment dt.23.2.95 is annexed as
ANNEXURE-5.

- (f) 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 &*

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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 copy of the judgment dt. 7.9.95 is annexed as
ANNEXURE-R6.

- (g) 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 copy of the said O.M.dt.12.1.96 is annexed as
ANNEXURE-R7.

- (h) That in another case vide Writ petition No.794/1996 in *Sadhan Kumar Goswami & others -vs- Union of India & others*, the Hon'ble Supreme Court 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.

A copy of the judgment dt. 25.10.96 is annexed as
ANNEXURE-R8.

- (i) 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. In the instant case, there is not a

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single such employee who had ever been transferred and reposted in the N.E. Region after 14.12.1983. Hence, the applicants in the instant case have no cause of action to agitate in this Tribunal.

A copy of the said clarification of Cab. Sectt. Dt. 2.5.2000 is annexed as **ANNEXURE-R9**.

- (j) That in a recent decision dt. 5.10.2001, 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 held that the amount already paid to such ineligible employees should not be recovered.

The copy of the judgment dt. 5.10.2001 is annexed as **ANNEXURE-R10**.

- (k) 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. A statement showing the status of the applicant's file herewith as Annexure-12.

The copy of the O.M. dt. 29.5.2002 is annexed as **ANNEXURE-R11 & 12**.

Now, from the above facts and circumstances of the case and the clarifications made in the matter and the provisions of law and the Office Memorandum, more particularly the provisions laid down in the O.M. dated 20.4.87 and the Cabinet Secretariat clarification dated 2.5.2000 (as indicated above), the applicant is not entitled to the grant of SDA. The applicant initially on his first recruitment resumed his duties as LDC in the North East Region in the year 1964 and subsequently he was promoted to the post of UDC in the year 1985 in the N.E. Region itself. The post of LDC and UDC in the Departments of the respondents do not have All India Transfer Liability. Moreover, the clarification given by the Cabinet Secretariat dated 2.5.2000 makes it

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clear that if an employee joins in service on his initial posting on direct recruitment in the North Eastern Region, such employee is not entitled to grant of SDA. The object and reason behind such entitlement is that the incentive of SDA is only extended to such employees who are to be attracted and retained for their services in the North Eastern Region as experienced officers are not readily available and or otherwise not willing to come to the North Eastern Region due to its inaccessibility and difficult terrain. A new recruitee, when recruited against the available vacant post, does not come within the above consideration. In the instant case, the applicant was directly recruited against the vacant post on his initial recruitment and he served in the North Eastern states without having All India Transfer Liability and therefore he is not entitled to the grant of SDA.

5. That with regard to the statements made in para 1 of the application, the respondents state that there is no cause of action to file the instant application in view of the explanation given hereinabove.
6. That the respondents have no comment to offer to the statements made in para 2 and 3 of the application.
7. That with regard to the statements made in para 4.1, 4.2 and 4.3 of the application, the respondents state that the applicant does not have All India Transfer Liability within the meaning of O.M. dated 20.4.87 and the various principles laid down by the Hon'ble Supreme Court in its decisions, particularly as in ANNEXURE 6 of this written statement. The transfer liability of LDC and UDC as stated above are limited to the respective commands where they had been recruited. There is no provision for transferring such LDC/ UDC from one command to another. In India, there are as many as five (5) commands, namely, Southern Command, Eastern Command, Central Command, Western Command and the Northern Command. As the transfer liability of the applicant is restricted to within the Eastern Command, he is not liable to be transferred to the other commands meaning thereby that the applicant does not have All India Transfer Liability. The State of West Bengal falls within the Eastern Command. Hence, the applicant has misconstrued the provisions of the requirement for grant of SDA.
8. That with regard to the statements made in para 4.4, 4.5 and 4.6 of the application, the respondents reasserts the foregoing statements made in this written statements

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and state that the applicant is not entitled to grant of SDA under any provisions of law.

9. That with regard to the statements made in para 4.7, 4.8, 4.9, 4.10, 4.11 and 4.12 of the application, the respondents state that the Hon'ble Tribunal has finally decided the above matter vide order dated 25.9.2001. The respondents also state that the Hon'ble Tribunal left the matter to be decided by the respondents as per observation made by it in the final order. The respondents, being aggrieved, approached the Hon'ble Gauhati High Court through W.P.(C) No. 3491/2002. The Hon'ble Gauhati High Court rejected the plea of the respondents and upheld the order of this Hon'ble Tribunal. In the mean time, the applicant filed a contempt petition before the Hon'ble Tribunal vide C.P.(NO.3 /03 which was however dropped as there was a speaking order passed by the respondents as in Annexure 5 of the application. In the said speaking order, it was clearly stated that the applicant could not fulfill the required criteria of All India Transfer Liability. Being aggrieved by the said Annexure 5 speaking order, the applicant has come again before this Hon'ble Tribunal by filing the instant application raising the same issue as was done in the earlier application. That being the fact, the application is liable to be dismissed with cost.
10. That with regard to the statements made in para 5(i) to 5(ix) of the application, the respondents state that under the facts and circumstances of the case and the provisions of law, the applicant is not entitled to the grant of SDA. As explained hereinabove, the actions of the respondents are in no way illegal or violative of the provision of Article 14 of the Constitution of India, rules of natural justice and administrative fairplay as alleged by the applicant.
11. That the respondents have no comment to offer to the statements made in para 6 of the application.
12. That with regard to the statements made in para 7 of the application, the respondents state that the statements mad in this paragraph are misleading and false on the face of the evidence that the applicant certainly came before this Hon'ble Tribunal by filing O.A. No. 238/2000 and got the final order pronounced by this Hon'ble Tribunal on 25.9.2001. Hence, the application is liable to be dismissed on the score of this false statement itself.

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13. That with regard to the statements made in para 8(i) to 8(iv) and 9 of the application: the respondents state that on the facts and circumstances of the case and the provisions of law, as indicated above in this written statement, and on any view of the matter, the applicant is not entitled to any relief, whatsoever, and the application is liable to be dismissed with cost.

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 as devoid of any merit.

VERIFICATION

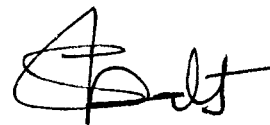
I, Sanjay Datta

GE Tezpur (Major/Army)

GE Tezpur

including this case, being competent and duly authorized to sign this affidavit, do hereby solemnly affirm and state that the statements made in para 5 to 13 — of the written statements are true to my knowledge and belief, those made in para 4 — being matter of records are true to my information derived therefrom and the rest are my humble submission on legal advice made before this Hon'ble Court.

And I sign this verification on this 20th day of August 2003 at Guwahati.



Deponent

(Sanjay Datta)

Major

Garrison Engineer

Tezpur

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ANNEXURE-I

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

46 (38)
-10-
ANNEXURE: R1
ANNEXURE: R1
Assam Circle, Guwahati-781001

New Delhi, the 14th December, 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 - Improvements thereof.

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

(i) Tenure of posting/deputation:

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years 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.

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

Satisfactory performance of duties for the

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Signature

Asst. Dir. (Vig)
o/s Mr. K. D. M. S.
K. D. M. S.

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prescribed tenure in the North East shall be given due recognition in the case of eligible officers in the matter of:-

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

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

A specific entry shall be made in the C.R. of all employees who 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 per cent of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance

1. Assam and Meghalaya

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

2. Manipur

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

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

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3. Tripura

The rates of the allowance will be as follows:-

(a) Difficult Areas 25% of pay subject to a minimum of Rs. 50/- and a maximum of Rs. 150/- p.m.

(b) Other Areas

Pay upto Rs. 260/- Rs. 40/- p.m.

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

There will be no change in the existing rates of Special Compensatory Allowances 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 the initial appointment, in case of journeys for taking up initial appointment to a post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 400 kms. for the Government servant himself 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 a station in the North-Eastern region, the family of the Government servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement fully 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 accompanies 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.

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(vii) Read in lieu 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 travel in excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) Leave Travel Concession:

A Government servant who leaves his family behind at the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North East to his home town or place where the family is residing and in addition the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North Eastern Region. In cases the option is for the latter alternative, the cost of travel for the initial distance (400 Kms./160 Kms.) will not be borne by the officer.

Officers drawing pay of Rs.2250/- or above, and their families, i.e., spouse and two dependent children (upto 10 years or boys and 24 years for girls) will be allowed air-travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance / Hostel Subsidy:

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance to class XII will be admissible in respect of children studying at the last station of posting of the employees concerned or any other station where the children reside, without any restriction on 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.

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

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

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

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

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

sd/-

(S.C. MAHALIK)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

To,

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

Copy (with spare copies) to C. & A.G., U.P.S.C. etc.

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ANNEXURE
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R-2
R-2

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

New Delhi, the 20th April, 1987.

OFFICE MEMORANDUM

Subject: Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region and A. & 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/- p.m. 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/group of posts has to be determined by applying tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all-India basis and whether promotion 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.

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Asst. Secy. (MIS)

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3. Financial Advisors 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.

[Signature]
(A.N. SINHA)
DIRECTOR (EG)
TELE: 3011819

To

Financial Advisors of all Ministries/Departments.

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ANNEXURE R3

ANNEXURE R3

F.No.20014/16/UG/E.IV/E.II(D)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 1 December, 1988

OFFICE MEMORANDUM

Subject:- Improvement in facilities for Civilian employees of the Central Govt. serving in the States of North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep.

.....

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/73-E.IV dt. 14th December, 1983 and 30th March, 1984 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, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been engaging the attention of the Govt. Accordingly the President is now pleased to decide as follows:-

(1) Tenure of posting/deputation

The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue.

(11) Maintenance for Central deputation and training abroad

The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue. Cadre authorities are advised to give due weightage for satisfactory performance of duty for the prescribed tenure in the North-East in the matter of promotion in the cadre. Also, deputation to Central tenure post and courses of training abroad.

(111) Special (Duty) Allowance

Central Govt. Civilian employees who have All India Transferability 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 Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

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The Central Govt. Civilian employees who are members of Scheduled Tribes and are otherwise eligible for the grant of Special (Duty) Allowance under this para and are exempted from payment of Income Tax under the Income-Tax Act will also draw Special (Duty) Allowance.

(iv) Special Compensatory Allowance:-

The recommendations of the 4th Pay Commission have been accepted by the Govt. and Special Compensatory Allowance at the revised ratios have been made effective from 1.10.05.

(v) Travelling Allowance on First appointment:-

The present concessions as contained in this Ministry's O.M. dt. 14.12.03 will continue with the liberalisation that on first appointment T.A. should be admissible for the total distance, instead of for the distance in excess of first 400 kms. only.

(vi) Travelling Allowance for journey on transfer:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(vii) House Allowance for transportation of personal effect on transfer:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(viii) Joining time with leave:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(ix) Leave & Leave Encashment:-

The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

Officers drawing pay of Rs 500/- or above, and their families, i.e. spouse and the dependent children (upto 6 years for boys and 2 1/2 years for girls) will be allowed air travel between Amritsar/Allahabad/Agra/Delhi/Alwar/Jaipur and Calcutta and vice-versa; between Bombay and Calcutta/Madras and vice-versa in case of postings in A & B Islands; and between Bikaner and Cochin and vice-versa in case of postings in Lakshadweep.

(x) Children Education Allowance/Hotel subsidy

Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto Rs 100/- 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. If children studying on any other station, the Government servant concerned will be given monthly subsidy without other restriction.

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The rates of Children Education Allowance/Hostel subsidy will be as in the D.O. No. 10011/1/07-Ext. (Alloca. con) dt. 31.12.07. as amended from time to time.

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

The present concession as contained in this Ministry's O.M. No. 11016/1/E, II(D)/04 dt. 29.3.04 as amended from time to time will continue to be applicable.

(xii) Tel. phone facilities

The officers who are eligible to have residential telephone may be allowed to retain their telephone at their residences in their last place of 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. Council, when they are stationed in the N.E. Region.

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

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

5. Final version of this Memorandum is attached.

(A. SATHANAN)

JOINT SECRETARY TO THE GOVT. OF INDIA.

To

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

Copy (with serial number of serial copies) forwarded to C.S.A., U.P., S.G., etc. etc. as per standard endorsement list.

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~~ANNEXURE~~ 56
ANNEXURE: R4
~~ANNEXURE~~ R4

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3721 OF 1971

Union of India and others

... Appellants

VERSUS

S. Vijayakumar and others

... Respondents

(with Civil Appeal Nos. 6163-81
of 1971 (arising out of
SLF(C) Nos. 16794/71, 16370-79/73, 16371-82/73,
10461/73, 9240/73-75).

JUDGMENT

HANSARIA, J.

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

Is whether the respondents are entitled to special duty allowance (hereinafter referred to as 'the allowance'), even though they are residents of Northern 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 affirmatively. Three appeals have been preferred by the Union of India.

2. The Tribunal took the aforesaid view because of an office memorandum dated 14.12.1905 which on 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

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

would not 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 1983 having not stated what is contained in the memorandum of 1987, 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 violative of doctrine of equal pay for equal work and as 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 Tuli for two reasons. The first is that a close perusal of the two aforesaid memoranda, notwithstanding what was stated in the memorandum dated 25.10.1986 which has been quoted in the memorandum of 20.6.1987, 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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D. The submission of Dr. Ghosh that the denial of the allowance to the respondents would violate the equal pay doctrine is adequately met by what was held in Reserve Bank of India vs. Reserve Bank of India Staff Officers Association and others, 1991 (5) 780 (1991) 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.

E. 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 : R5

ANNEXURE : R5

Annexure

Affixed to be true copy R.H.D. Assistant Registrar (Judl.) 11/3/93 Supreme Court of India

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

579905

CIVIL APPEAL NO. 3034 OF 1995

(Arising out of S.L.P. (C) NO. 18717 of 1994)

Union of India & Ors.

.....Appellants

Vs.

Executive Officers Association
Group-D

.....Respondents

J U D G M E N T

Faizal Uddin. J.

1. Delay condoned.
2. Leave granted. The counsel for parties are heard.
3. This appeal has been directed by the appellants against the judgment dated May 28, 1993 passed by the Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as Tribunal) in O.A. No. _____ outside the region and Special Duty Allowance would be payable merely because

172 of 1972. By the said judgment the Tribunal held that the respondents are entitled to Special Duty Allowance in terms of Office Memorandum dated December 14, 1983 with effect from the date specifically indicated in the said Office Memorandum and directed the appellants herein to pay and clear the Special Duty Allowance to the respondents herein within 90 days from the date of receipt of copy of the judgment in respect of the arrears due and to release the current Special Duty Allowance with effect from the month of June, 1993.

4. The respondent No. 1 is an Association of Group (C) Inspectors of Customs and Central Excise under the Collectorate of Customs and Central Excise, Shillong and respondent Nos. 2 and 3 are its President and General Secretary respectively. The respondents approached the Tribunal claiming Special Duty Allowance on the strength of Office Memorandum No. 20014/2/83-E.IV dated December 14, 1983 and the Office Memorandum No. 20014/16/86.IV/E.11(B) dated December 1, 1986 issued by the Ministry of Finance, Government of India. The respondent-Association claimed that its members have all India transfer liability under the Central Excise and Land Customs Department Group (C) Posts Recruitment Rules, 1979 which were applicable to its members and in pursuance of which three of its members had been

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transferred and one Smt. Lisa L. Rynjan of Chillore has been posted at Goa under the said recruitment Rules and, therefore, they are eligible and entitled to claim Special Duty Allowance. The appellants herein opposed and contested the aforesaid claim of the respondents before the Tribunal. The appellants took the defence by stating that the Office Memorandum No. 20014/3/83.E/IV dated April 20, 1987 had clarified that the Special Duty Allowance is payable only to those officers, incumbents of Grade (D) of posts who are having all India transfer liability defined in the said Office Memorandum. According to view the original Office Memorandum dated March 14, 1983 and that the conditions stipulated in the Recruitment Rules, 1979 referred to above cannot be taken as basis for saddling the respondents or its members with all India transfer liability and consequent payment of Special Duty Allowance to them. The appellants also took the plea that all India transfer liability of the members of any service/cadre or incumbent of any posts/Group of posts is to be determined by applying the tests of recruitment to the service/cadre/post made on all India basis and that mere clauses in the Recruitment Rules/Appointment Order stipulating all India transfer liability does not make him/them eligible for grant of Special Duty Allowance in terms of Office Memorandum dated December 14, 1983.

5. After considering the rival contentions the Tribunal observed that the contents of Office Memorandum dated April 12, 1984 as well as the letter No. 7/47/48.EA dated September 28, 1984 have been fully discussed by the Full Bench, Calcutta and held that the real test/criteria for determination is whether all India transfer liability exists and opined that without recalling the Office Memorandum issued in 1963 the concerned departments had no reason to deny the benefit of memorandum available to certain classes of employees and to withdraw its application to certain other classes. Relying on the said Bench decision of the Central Administrative Tribunal, Calcutta, the Tribunal allowed the application of the respondents by the impugned judgment and granted the relief as stated above against which this appeal has been preferred.

6. Learned counsel for the appellants submitted that the Tribunal has failed to appreciate the true meaning, intention and spirit behind the term 'all India transfer liability' which occurred in the Finance Ministry Office Memorandum referred to above and has thus seriously erred in holding that the members of the respondent-Association are entitled to the Special Duty Allowance. He further submitted that the package of incentives contained in the Ministry's Office Memorandum

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dated December 14, 1983 (as amended) is based on the recommendations of the committee to review the facilities and allowance admissible to Central Government Employees in the North-Eastern Region and it was with a view to attract and retain competent officers in service in the States and Union Territories in the North-Eastern Region that the Government of India on the recommendations of the committee made the provision for Special Duty Allowance to be paid to such officers who came on posting and deputation to North-Eastern Region from other Regions. It was, therefore, submitted that since the members of the respondent-Association belonged to the North-Eastern Region itself who were recruited and posted in the same Region, they were not entitled for Special Duty Allowance.

7. The main source for claiming the Special Duty Allowance is the Office Memorandum dated December 14, 1983 the very first paragraph of which reads as under:-

"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 have 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

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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."

.....

B. A careful perusal of the opening part of the Office Memorandum reproduced above would show that the Government had appointed a Committee under the Chairmanship of the Secretary Department of Personnel and Administrative Reforms to review the existing allowances and facilities admissible to the various categories of Civilian Central Government Employees serving in the North-Eastern Region so that competent officers may be attracted and retained in the North-Eastern Region States. The use of words "attracting and retaining" in service are very much significant which only suggest that it means the competent officers belonging to the Region other than 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. The intention of the Government and spirit behind the Office Memorandum is to provide an incentive and attraction to the competent officers belonging to the Region other than

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the North-Eastern region to come and serve in the North-Eastern Region. It can hardly be disputed that the geographical, climatic, living and food conditions of people living in North-Eastern Region and the States comprising therein are different from other Regions of the country. The North-Eastern Region is considered to be 'hard zone' for various reasons and it appears that it is for these reasons that the Government provided certain extra allowance, benefits and other facilities to attract competent officers in the North-Eastern Region at least for two to three years of tenure posting. The Ministry's Office Memorandum in question came up for consideration before this Court in Chief General Manager (Telecom) Vs. S. Rajender C.M. Enattacharice & Ors. [JT 1995 (1) SC 440] which was decided by us by judgment dated January 10, 1995 in which this Court took the view that the said Office Memorandums are meant for attracting and retaining the services of competent officers in the North-Eastern Region from other parts of the country and not the persons belonging to that region where they were appointed and posted. This was also the view expressed by this Court in yet another case reported as J.T. 1994 (6) 443 - Union of India Vs. S. Vinaya Kumar & Ors. In Vinaya Kumar (Supra) the point for consideration was exactly identical, with regard to the entitlement to Special Duty Allowance to those employees/officers who

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are residents of North-Eastern Region itself. After considering the memorandum dated December 14, 1983 and other related Office Memorandums indicated above, it was held that the purpose of the allowance was to attract persons from outside the North-Eastern Region to work in the North-Eastern Region because of inaccessibility and difficult terrain. In the facts and circumstances stated above the view taken by the Tribunal cannot be upheld and deserves to be set aside.

9. For the reasons stated above the appeal is allowed. The impugned order of the Tribunal is set aside and the application filed by the respondents before the Tribunal for grant of Special Duty Allowance to them is dismissed. In the facts and circumstances of the case, we make no order as to costs.

.....J.
(B.C. Agrawal)

.....J.
(Fazlun Diddin)

New Delhi.

February 22, 1993.

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ANNEXURE : R 6 (61)

ANNEXURE : R 6 11

R-5

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 8208 - 8213

(Arising out of SLP Nos. 12430 - 55/92)

Union of India & Others

- Appellants

- versus -

Geological Survey of India
Employees' Association & Others

- Respondents

ORDER

Delay condoned
Leave granted

Mr. P. K. Gorwami, Learned Senior Counsel appears for Geological Survey of India Employees' Association and Mr. S. K. Mandy, Advocate, appears for the other respondents in all the matters.

Heard learned counsels 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 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 & others Vs. S. Vijay Kumar & others (1994) (3) SCC 649.

Accordingly, the impugned order is set aside. We however direct 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.

New Delhi

14th March 1995

Sd/- G. B. Rao

Sd/- S. R. Mehta

ANNEXURE : B7

ANNEXURE : R7

No. 11(3)/95-E.II(B)

Government of India

Ministry of Finance

Department of Expenditure

New Delhi, the

12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No. 20014/3/23-E.IV dated 14.12.83 and 2014/16/86-E.IV/E.II(B) 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 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 change 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) (Gwahati 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. 3231 of 1992) 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 employer of Indian Audit and Accounts Department, these orders issued in consultation with the Comptroller and Auditor General of India.

10. Hindi version of this OM is enclosed.

(C. Bal. Chandran)

Under Secy to the Govt of India

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

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

All communications should be addressed to the Registrar, Supreme Court, by designation, not by name.
Telegraphic address:—
"SUPREMACY"

39
35/11/66
No. 3366/96/1
64
74
Dated New Delhi, the 28th November, 1966

SUPREME COURT
INDIA

FROM: ASSISTANT REGISTRAR (JUDG)

ANNEXURE: R 8

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

ANNEXURE: R 8

WILL PETITION NO. 124 OF 1966
(Under Article 32 of the Constitution of India)

WITH
THE DOCTORS APPLICATION NO. 1
(Application for separate stay)

Sadan Kumar Goswami & Ors
VS
Union of India & Ors.

.. PETITIONER
.. RESPONDENT

Sir,

I am directed to forward herewith for your information and necessary action a certified copy of the Signed Order dated the 25th October, 1966, of this Court passed in the said Petition and Application for stay.
Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR (JUDG)

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Controlled to be used
by the
Supreme Court
of India

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
PETITION NO. 794 OF 1991
(Under Article 32 of the Constitution of India)

Inspector Sadhan Kumar Goswami &
Ors.

... Petitioner

v.

Union of India & Ors.

... Respondent

THE 25TH DAY OF OCTOBER, 1991

Hon'ble Mr. Justice B. Ramaswami
Hon'ble Mr. Justice V.P. Kurudkar

Amicus Curiae: Shri. Ghosh, Sr. Adv. and Amal Ghosh, Adv. with him
the petitioners.

O R D E R

The following order of the Court was delivered:

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(26)

7/6

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Writ Petition No. 789 OF 1996

Sub-Inspector Sadhan Kumar Goswami
Ors.

versus

The Union of India & Ors.

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This writ petition is under Art. 226 of the Constitution of India. It is one of the series of cases which have come before this Court for consideration of the judgments/orders of this Court rendered under Art. 226 of the Constitution of India after their expiry of the period of limitation prescribed by Art. 136 of the Constitution of India.

The admitted facts are that the petitioner who joined service under the Special Recruitment Scheme (SRSS) in North Eastern Region of Andhra Pradesh in 1974, was not given any post in the service. The question was considered by this Court in Union of India vs. S. Vijay Kumar (1984) 1 SCR 1000 decided on September 29, 1984; therein this Court had held that the petitioner was entitled to be appointed to the post.

We have duly considered the submissions and see in them no merit. With the conclusion arrived at in

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learned Additional Solicitor General, Shri Tuli for two reasons. The first is that a 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 20.4.1967, 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 while counting the period of tenure of posting which was required to be of 25 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 memoranda of 1-63 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 adequately met by what 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, 1996 which provided that "it is not applicable from one station to another station within the region of Group A and B staff will further continue to get the facilities". They have filed this writ petition contending that while the Group C and D employees have been denied the benefit of the above judgment, special duty allowance benefit is being granted to Group A and B; it amounts 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, ^{and correct} apart from the fact that Group A and B employees are entitled to special duty allowance contrary to the law declared by this Court in the above judgment, they too are bound by it; whether or not they are entitled to the above benefit due to this Court's judgment, the petitioners are not entitled to the benefits of the allowances as claimed by them. The judgment of this Court would indicate that it did not make any distinction between Group C and D and Group A and B Officers. All are governed by the law under Article 141. The petitioners are not entitled to the payment of the special duty allowance irrespective of whether or not they were parties to the judgment rendered in Vijay Kumar's case (supra); they cannot be permitted to raise new grounds, though not raised or argued in earlier case, 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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of writ petitions filed by several parties. We are constrained to take the view that the learned counsel who are advising them to move this court under Article 32 should certify to the court that though they advised the petitioners that the judgment of this court binds them and cannot canvass its correctness and still, in spite of such advice, the party insisted upon filing the writ petition. It would then be for this Court to consider and deal with the case appropriately. Hereinafter, it would be necessary that the Advocate-on-Record should file, as part of the paper book of the writ petition filed under Article 32, a statement and certificate that the party concerned was advised that the matter is covered by the judgment of this Court and yet the writ petitioner insisted to file the same. Should such certification form part of the record of the petition, then only the Court would deal with the writ petition. In view of the fact that Class C and D employees are not entitled to special duty allowance as per the law already declared by this Court, the petitioners are not entitled to the benefit.

It is next contended that the Government is recovering as per memorandum dated January 17, 1990 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. RAMASHAstry)

NEW DELHI;
OCTOBER 25, 1926.

.....
(S. P. KURUPKAR)

SEALED IN MY PRESENCE
12/11/26

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No. ARC/Coord/4/99- 1/52
Directorate General of Security
(Cabinet Secretariat)
O/o The Director, ARC
East Block-V, R K Puram
New Delhi - 110 066.

Dated, the 05/5/2000

ANNEXURE : Rg

MEMORANDUM

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

A copy of Cabinet Secretariat U.O. No.20/12/99-EA.1-1798, dated 02.5.2000 on the above subject is sent herewith for information and necessary action.

Encl. 1 as above.

(V DONA GRABY)
ASST DIRECTOR (DEO)

To

- (1) A.D.(A)/AD(B)/AD(C)/AD(D) of ARC Hqrs.
- (2) The A.O., ARC Hqrs.
- (3) The A.D.(A), ARC, Charbatia/Doom Dooma/Sarsawa.
- (4) File copy.

No. ESIT/DDM/SDA/99-11- 6-7
ARC, Doom Dooma

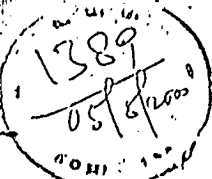
Dated the, 01/6/2000

1. Copy forwarded to the Accounts Officer, ARC, Doom Dooma for information and necessary action.

2. All Unit Heads.

cc, C.O. (A), DDC, DDM
Atte(c), DDC, DDM

(R.N. CHAKRABORTY)
SECTION OFFICER



Cabinet Secretariat
(E.A. Section)

COURT CASE
ECSE IMMEDIATE

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

SSB Directorate may kindly refer to their UO No.42/SSB/A1/99(10)-2369 dated 31.3.2000 on the subject mentioned above.

2. The points of doubt raised by SSB in their UO No. 42/SSB/A1/99(10)5282 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Deptt. of Expenditure) and clarification to the points of doubt is given as under for information, guidance and necessary action:

- 1) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(D) 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/Centralised seniority list and All India Transfer Liability.
 - (b) An employee hailing from the N.E. 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.
- 11) An employee belongs to N.E. Region was appointed an 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 14.12.03 and

DD (B)

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20.4.97 read with OM 20014/16/DE F.11(B) dated 1.12.00, but subsequently the post/cadre was centralized 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 MoP, Deptt. of Expenditure vide their DO No.11(3)/95-E.11(B) dt.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 S.D.A. 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 SSP/DGS, there is a common recruitment system made on All India basis and promotions are also done on the basis of All India Common Seniority basis. Based on the above criteria/tests all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from NE Region or posted to NE Region from outside the NE Region.

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

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Based on point (iv) above, some of the units of SSB/DCS have authorized payment of SDA to the employees hailing from NE Region and posted within the NE Region while in the case of others, the PACS 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 in 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 MoE 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.



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3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1349 dated 10.10.99 and Ministry of Finance (Expenditure) I.D. No. 120/E-12(1)/99, dated 30.3.2000.

16/05/2000

Ud. A-1506. Dtt. A/c. Dated 2/5

(P.N. Thakur) Director (SR)

23/00/11 2/5/2000

- | | | |
|---------------------------|-----------------------|-------------|
| 1. Shri R.L. Bedi, | Director, | ARC. |
| 2. Shri R.P. Kureel, | Director, | SSB. |
| 3. Brig (Retd) G.S. Uban, | IG, | SFF. |
| 4. Shri S.R. Mehra, | JD (P&C), | DGS. |
| 5. Shri Ashok Chaturvedi, | JS (Pers), | RGAW. |
| 6. Shri B.S. Gill, | Director of Accounts, | DACS. |
| 7. Smt. J.M. Menon, | Director-Finance (I), | Cab. Sectt. |
| 8. Col. K.L. Jangal, | CIOA, | CIN. |
- Cab. Sectt. UO No.20/12/99-EA.1-1798 dated 02-5-2000
2 MAY 2000

230 2/3/2000 14-05-2000

DD(LB)

AD (Engrg) Secy

4/5 - psc put up. In regulation 4/5

Dr. P.S. 05/5/2000

ANNEXURE-D

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Continued to be true
Assistant Registrar
Supreme Court of India

ANNEXURE : R10

ANNEXURE : R10

ANNEXURE : R10

544783

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)

Union of India & Anr.

Appellants

versus

National Union of Telecom Engineering
Employees Union Anr.

Respondents

O R D E R

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. Iyer & Ors. reported as 1994 (Supp. 3) SCC 649 and followed in the case of Union of India & Ors. Vs. Executive Officers' Association Ors. 1995 (Supp. 1) SCC 1757.

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 came up for admission on 13.1.2000 the learned Solicitor General had given an undertaking that whatever amount has 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

Contd.
R.C. P. S. S. S.
referred to
in Executive
Officers' Assn.

ANNEXURE-X

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F.No. 11(5)/97-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

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ANNEXURE: R-11

ANNEXURE: R-10

New Delhi, dated the 29th May, 2002.

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No 20014/J/BJ-E.IV dated 14.12.83 and 20.4.1987 read with OM 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'. The necessary clarification for 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.O. 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

- 44 - 51
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(Supp. I) SCC, 757. Therefore, this appeal is to be allowed in favour of the Hon'ble Supreme Court further ordered that whatever amount has been paid to 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 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 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 judgement 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 & 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.

(N.P. Singh)
Under Secretary to the Government of India.

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

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

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Shri PM Kithan.

ANNEXURE : R₁₂

STATEMENT OF EMPLOYERS SHOWING INITIAL PLACE OF RECRUITMENT/POSTING
AND DATE ON THE BASIS OF SERVICE BOOK RELATING TO
ENTITLEMENT OF SDA

Ser No	Name, No & Desig	Initial posting/ Place	Recruitment Date	If transferred & posted in the NE Region (Defined Area)			If originally posted/ recruited in the NE Region (Defined Area) Then posted out of NE Region then again reposted in the NE Region on transfer		
				Date	Place From	Place To	Date	Place From	Place To
1	2	3	4	5	6	7	8	9	10

1. MHE/223980
 Shri PM Kithan, UDE

GE Bonga

17-9-1964

8-4-93

CWE GETg. Nov '76
 Kalakunda
 (w/Bengal)


AGC(1)
 Ranigya

CWE
 Kalakunda
 (w/Bengal)

Whether the employee is resident of NE Region (Defined area)			REMARKS
place of residence	District	State	
11	12	13	14

No

A Resident of Kerala State.
 Panayarthu
 P.O. Kuri Chinnu Thom
 Vada. Kodayaram mules
 Dist. - Puthamthi Hq. (KERALA)


 (Sanjay Datta)
 Major
 Garrison Engineer

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