

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 40/2003

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SECTION OFFICER (Judl.)

(RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 40/2003

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (s) Dn T.K.T Hafizan

- Vs. -

Respondent (s) Cesr 2 015.

Advocate for the applicant (s) Dr M. Pathak D. Borthakur

Advocate for the respondent (s) CQSC

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time Condonation Petition is filed / not filed C.F. Rs. 50/- deposited IPO/BD No 7G-605586 Dated 16/2/03...</p> <p><i>DRB</i> <i>DRB</i></p>	20.3.2003	<p>Heard Dr. Mrs. M. Pathak, learned counsel for the applicant. The application is admitted, call for the records. List the case for order on 25.4.2003.</p>
<p>Steps taken with Courtier : <i>DRB</i> 6/3/03</p> <p>Notice prepared and sent to S/o for arry. the respondent No. 1 to 5 by Regd. A.D. <i>DRB</i> 24/3.</p> <p>DIN. 4956499 dated 24/3/03.</p> <p>Notice returned in No. 6 due to Incomplete address.</p> <p><i>DRB</i> 24/4/03</p>	25.4.2003	<p>Heard Dr. Mrs. M. Pathak, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. Mr. Deb Roy has referred to the com- munication No. ASD/CC/Misc/2001-03/ 2290-92 dated 23.4.2003 received from SSB, North Assam Division, Tezpur and prayed for transferring the case to Lucknow Bench. I am not inclined to pass any order at the stage. Let the respondent submit written statement first, ther- after the prayer would be considered.</p>

Contd.

(2)

O.A.40/2003

Contd.

25.4.2003

Put up the matter on 23.5.2003 for filing of written statement.

No written statement has been filed.

My
22.5.03.

bb

Vice-Chairman

23.5.2003 The respondents are yet to file written statement. Put up again on 20.6.2003 for orders.

No written statement has been filed.

My
19.6.03.

mb

20.6.2003

Put up again on 8.8.2003 to enable the respondent to file written statement on the prayer made by Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

No written statement has been filed.

My
8.8.03.

mb

8.8.2003

Written statement has been filed.

The case may now be listed for hearing on 17.9.2003. The applicant may file rejoinder, if any, within two weeks from today.

11-8-03
W.P. Submitted
by the Respondents.

P.W.

Vice-Chairman

mb

19.9.03

On the prayer of learned counsel for the applicant case is adjourned to 24.10.03 for hearing.

K.D. Bhalerao
Member

lm

24.10.03 There is no Bench today.
Adjourned to 5.11.03.

B.D.
1a

27.11.03 no Bench.

Adjourned to 17.12.03, 5.11.03

no Bench today.
Adjourned to 27.11.03.

B.D.
1a

B.D.

17.12.2003 Adjourned. List again on
8.1.2004 for hearing.

K.V.Prahladan
Member (A)

mb

8.1.2004 List on 12.1.2004 for hearing.

K.V.Prahladan
Member (A)

mb

12-1-04 There was a reference.
Adjourned to 4.2.04.

18/0
h.

25.2.2004 Present: The Hon'ble Shri Shanker Raju
Judicial Member.

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

PM We have heard Ms.B.R.A.Sultana, lea-
rned counsel for the applicant and also
M

25.2.2004 Present: The Hon'ble Shri Shanker Raju
Judicial Member.

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

Dr.Mrs.M.Pathak, learned counsel for
the applicant, prays for an adjournment
on the ground of her personal difficulty.

List the case on 10.3.2004 for hearing.

K.V.Prahladan
Member (A)

h
Member (J)

bb

No. rejoinder has
been filed.

10.3.2004 List before the next available
Division Bench, alongwith SDA matters.

29-3-04

KV Prahadan
Member (A)

mb

30.3.2004 Present Hon'ble Shri Kuldip Singh,
Judicial Member

Hon'ble Shri K.V. Prahadan,
Administrative Member.

27.4.04

Copy of the Judgment
has been sent to the
Office for identifying
the case to the
applicant as well
as to the M.C.S.C.

46 May 27/4

Heard the learned counsel for
the parties. Hearing concluded.
The application allowed vide orders
passed separately.

KV Prahadan
Member (A)

nkm

JK
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. /XXXX No. 111 40 of 2003

DATE OF DECISION 30.3.2004

Thang Khan Taung Hatzaw

APPLICANT(S).

DR (Mrs) M. Pathak, Mr D. Baruah and

Mr J. Das

ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

Union of India and others

RESPONDENT(S).

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

ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. KULDIP SINGH, JUDICIAL MEMBER

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

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

Judgment delivered by Hon'ble Member (J)

X

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.40 of 2003

Date of decision: This the 30th day of March 2004

The Hon'ble Shri Kuldip Singh, Judicial Member

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

Thang Khan Taung Hatzaw
Senior Medical Officer
O/o The Commandant 11th Bri. SSB
C/o Sri L. Hatzaw,
304, Kailash Apartment,
Ranibagan Housing Estate,
Beltola Tiniali, Guwahati.

.....Applicant

By Advocates Dr (Mrs) M. Pathak,
Mr D. Baruah and Mr J. Das.

- versus -

1. The Union of India,
Represented by the Cabinet Secretary,
Department of Cabinet Affairs,
Bikaner House,
Shahjahan Road, New Delhi.

2. Director General SSB
Block-V (East) RK Puram,
New Delhi.

3. Director of Accounts
Cabinet Secretariat
Bikaner House, Shahjahan Road,
New Delhi.

4. Inspector General Frontier
HQ- Lucknow,
11th Floor, Kendriya Bhawan,
Sector S. Puran.

5. Divisional Organiser, SSB
Shillong Division,
Shillong.

.....Respondents

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

.....

O R D E R (ORAL)

KULDIP SINGH, MEMBER (J)

The applicant has challenged an order passed by
the respondents whereby the respondents have stopped
payment of Sepcial (Duty) Allowance to the applicant and

/m

had effected recovery from his salary with effect from 1.9.2000.

2. The facts in brief are:

The applicant after selection for the post of Medical Officer was appointed and was posted at Aizawl with effect from 20.10.1994 and one of the conditions contained in the appointment order was that the applicant had an All India Transfer Liability. The applicant was also promoted as Senior Medical Officer and was posted at Arunachal Pradesh. During his service tenure the applicant was also posted outside the North Eastern Region which clearly indicates that the applicant has an All India Transfer Liability.

3. It is further submitted that the Government of India vide a Circular dated 14.12.1983 issued by the Ministry of Finance extended a scheme to grant certain incentives to the officers posted in the North Eastern Region and one of such incentives was known as Special (Duty) Allowance (SDA for short). It seems there were some anomalies in sanctioning and payment of SDA and the Government of India vide O.M. dated 20.4.1987 issued clarifications for the entitlement of SDA, according to which the benefit was extended to the officers of any service/cadre having All India Transfer Liability. But for the purpose of sanctioning SDA mere insertion of the clause in the appointment letter regarding All India Transfer Liability was not sufficient. It is also to be seen whether the person is being brought to the North Eastern Region from another zone or not and whether the

person.....

km

person of the North Eastern Region has been transferred outside on his own or not.

4. The applicant further claims that he being eligible was granted SDA with effect from the date of his initial appointment, but all of a sudden without any notice to the applicant the respondents started recovery of SDA from his salary paid to him as SDA because according to the respondents he was not entitled to get the same. It is also stated that an amount of Rs.6,252 had been recovered from the applicant although no SDA was paid to the applicant for the period 1.5.2000 to 31.8.2000. Several representations were submitted but to no effect. The applicant further submits that according to the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. S. Vijay Kumar and others, an employee who fulfils the conditions as stated in the O.M. dated 20.4.1987 is entitled to get SDA and it is further clarified by another O.M. dated 29.5.2002 that the SDA paid upto 5.10.2001 should not be recovered. Thus it is submitted that the applicant is legally entitled to the grant of SDA which has been denied to him illegally and arbitrarily. So the recovery effected from the applicant should be refunded. The applicant also seeks a direction to the respondents to continue payment of SDA to the applicant as per provisions of O.M.s dated 14.12.1983, 20.4.1987, 1.12.1988, 12.6.1996 and 29.5.2002 and at the rate as applicable and admissible to the applicant. Further the respondents be directed to refund and amount of Rs.50,715 which was recovered by the respondents from the applicant for the period 20.10.1994 to 31.8.2000 which

also.....
M

also includes an excess amount of Rs.6252/- recovered from the applicant fro the period 1.5.2000 to 31.8.2000. The applicant has also claimed interest.

5. The respondents have contested the O.A. The respondents admitted that the applicant was appointed as a Medical Officer. It is further stated that the applicant was allowed SDA based on the O.M. dated 14.12.1983 as the applicant was having All India Transfer Liability. But based on the judgment of the Hon'ble Supreme Court dated 20.9.1994 the Government of India came out with another Notification wherein it was mentioned that the Apex Court had held 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. So it is only those employees who are transferred from outside the N.E. Region to N.E. Region ~~who~~ are eligible for SDA. Thus it is stated that the applicant is ineligible for the grant of SDA and the recovery effected from the applicant is stated to be justified. However, the amount of Rs.6252/- which is stated to have been recovered in excess has been ordered to be refunded and the same has been refunded to the applicant. It is further stated that as per the O.M. contained in Annexure A-11 the recovery is already made need not be refunded back in accordance with the O.M. dated 29.5.2002. Thus it is stated that recovery already effected is not liable to be refunded.

6. From the pleadings of the parties, the following issue arises for determination: whether the applicant is entitled to SDA or not and whether the recovery which has already been effected the department is liable to refund

the.....


the same to the applicant or not. In this regard we may mention that the applicant was appointed in the month of October 1994 and since then he continued to work in the N.E. Region and the plea of the department is that since he is a native of the N.E. Region and has not come from outside the N.E. Region so he is not entitled to SDA. But we find that as per the earlier O.A. and the same as had been interpreted by the Courts also the applicant had been found eligible to SDA and the department had also paid the SDA to the applicant. From 19.4.2001 to 30.5.2001 the applicant had been transferred outside the region and had been posted at Jammu and again from 17.2.2002 to 13.3.2002 he was posted to Jammu and again from 17.7.2002 to 8.12.2002 he was posted in Indo Nepal Border outside the N.E. Region and finally from April 2003 the applicant had been posted in Uttar Pradesh.

7. The learned counsel for the respondents fairly admitted at the Bar that since the applicant had been transferred from the N.E. Region to outside the region now he is entitled to SDA the moment he is transferred to the N.E. Region and the department would pay the same. But as regards the payment made to the applicant earlier for the period 20.10.1994 to 18.4.2001 when the applicant was posted in the N.E. Region itself the learned counsel for the respondents submits that the department could recover the same and since the recovery had already been effected, the department is not liable to refund the same. But then the learned counsel for the respondents referred to the O.M. dated 29.5.2002 wherein at para 6(i) it has been mentioned that the amount already paid on account of SDA to the ineligible persons not qualifying the criteria

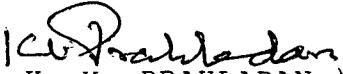
mentioned.....

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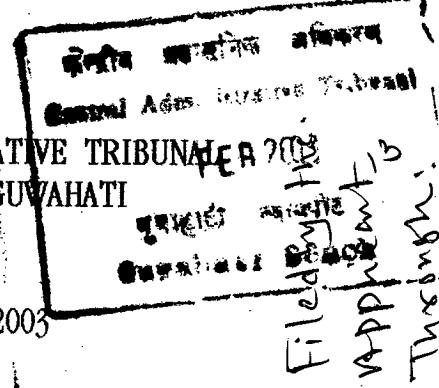
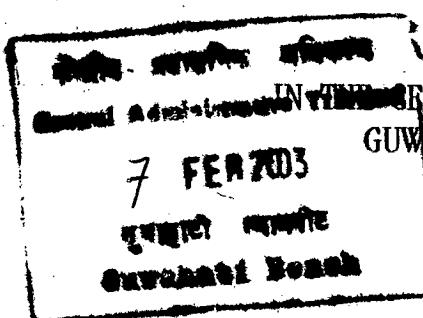
mentioned in para 5 on or before 5.10.2001 which is the date of the judgment of the Hon'bel Supreme Court be waived. However, recovery already made need not be refunded. The amount paid on account of SDA to ineligible persons after 5.10.2001 will be recovered. In our view Clauses (i) and (ii) of the Circular are contradictory to each other. Once Clause 6(i) says that the amount paid to ineligible persons on or before 5.10.2001 will be waived then the question of recovery does not arise and that is why in Clause 6(ii) it has been specifically mentioned that the amount paid on account of SDA to ineligible persons after 5.10.2001 will be recovered. In this case, admittedly, the applicant had been transferred outside the N.E. Region prior to 5.10.2001 also, so in a way he was eligible also for SDA and thereafter he had been facing frequently transfers also. So we find that the applicant was not such an officer from whom recovery should have been made. Accordingly we find that the applicant is entitled for refund of the amount already recovered from him.

8. Hence we allow the O.A. and direct the respondents to refund the entire amount recovered from the applicant on account of SDA. However, the applicant will not be entitled to any interest.

No order as to costs.


(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(KULDIP SINGH)
JUDICIAL MEMBER



Dr. Thang Khan Taung Hatzaw
.....Applicant

-versus-

Union of India & others
.....Respondents

SYNOPSIS OF THE CASE

Paras Page No. Particulars

1 2 This application is filed by the applicant against the actions on part of the respondents stopping the payment of SDA and recovery made from his salary w.e.f. 1.9.2000

4.2 3 The applicant was duly selected for the post of Medical Officer on All India basis centrally at New Delhi in SSB
[Annexure A₁ (page 14) and Annexure A₂ (page 16)]

4.4 4 & 5 The applicant was transferred and posted outside the NE Region

4.5 5 As per Govt. of India's scheme for payment of incentives, Special Duty Allowance is applicable to NE Region for special category of employees [Annexure A4, A5 & A6 (page 19, 24, and 26 respectively)]

4.6 6 & 7 The applicant is entitled to get SDA as per rules. But from 1.9.2000, without any notice, the respondents have started recovery of SDA already paid to him.
To that effect, a number of representations were submitted by the applicant to the respondents. But the respondents have taken no steps till the filing of this application.
[Annexure A7, A8 & A9 (page 29, 30 & 31)]

Filed by:

Dipanwita Baruah
(D. Baruah)
Advocate
7-2-2003

14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

ORIGINAL APPLICATION NO. OF 2003

Dr. Thang Khan Taung Hatzaw

.... APPLICANT

-VERSUS-

UNION OF INDIA & OTHERS

.... RESPONDENTS

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Filed by :

Dilip Baruah
Advocate 7-2-2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

Filed by the
Applicant in
through
Divyanshu
Advocate - 2-2003

(An application under section 19 of the Central
Administrative Tribunal Act, 1985)

Original Application No. of 2003

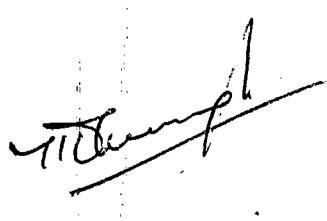
BETWEEN

Thang Khan Taung Hatzaw,
Senior Medical Officer
0/o The Commandant 11th Bri. SSB
C/o Sri L. Hatzaw,
304, Kailash Apartment,
Ranibagan Housing Estate,
Beltola Tiniali, Guwahati-28

.....Applicant

-versus-

1. Union of India,
Represented by the Cabinet
Secretary,
Department of Cabinet Affairs,
Bikaner House,
Shahjahan Road, New Delhi.



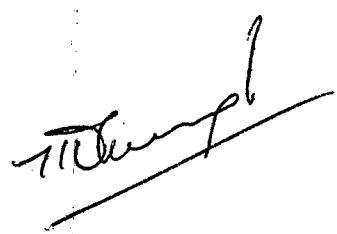
2. Director General SSB
Block-V (East) RK Puram,
New Delhi - 100066
3. Director of Accounts,
Cabinet Secretariat,
Bikaner House,
Shahjahan Road, New Delhi.
4. Inspector General Frontier
HQ- Lucknow,
11th Floor, Kendriya Bhawan
sector 5, Puran
5. Divisional Organiser, SSB
Shillong, Division Shillong

.....Respondents

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is made against the actions on part of the respondent authorities stopping payment of SDA to the applicant and recovery made from his salary with effect from 1.9.2000, the amounts already paid to him as Special Duty Allowance without any notice to the applicant.



2. **LIMITATION:**

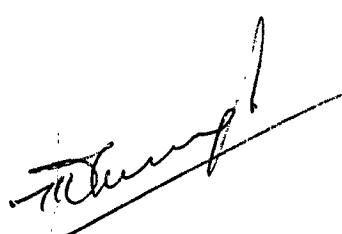
The applicant declare that the instant application has been filed within the limitation period prescribed under Section 21 of the Central Administrative Tribunal Act, 1985.

3. **JURISDICTION:**

The applicant further declares that the subject after of the case is within the jurisdiction of the Administrative Tribunal.

4. **FACTS OF THE CASE:**

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed under the Constitution of India and the laws framed thereunder.
- 4.2 That the applicant was duly selected for the post of medical officer on All India Basis centrally at New Delhi and he was offered appointment in SSB vide Govt of India Memo No. 6/3/94- DOII/1493-98 dated 4.10.94. By the said letter of offer of appointment certain terms and conditions were imposed out of which one of the conditions imposed was that the said appointment carries All India Transfer Liability. The applicant accepted the said conditions and accordingly was appointed as Medical Officer w.e.f. 20.10.94 and he was posted at Aizawl vide



-4-

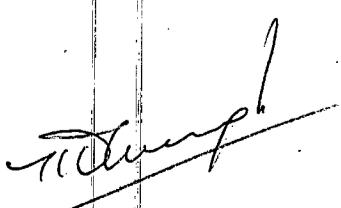
order No. 6/3/94- DO II dated 2.12.94 (signed on 14.12.94).

The copies of the said letter dated 4.10.94 and 2.12.94 are annexed as Annexure A₁ and A₂ respectively.

4.3 That the applicant continued to work as the Medical Officer at Aizawl upto 28.10.99 and thereafter he was selected on All India Seniority basis for promotion to the post of Senior Medical officer alongwith others, centrally at New Delhi. He was promoted as Senior Medical Officer w.e.f. 29.10.99 and was posted at Dirang in Arunachal Pradesh vide order F.No. 6/7/99- DO II-497 dated 28.10.99.

The copy of the order dated 28.10.99 is annexed herewith as Annexure A₃.

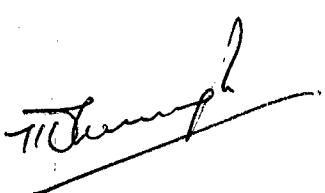
4.4 That during his service tenure, the applicant was transferred and posted outside the North East Region (the defined area). From such transfer and posting in the North East Region clearly indicates the post of Medical Officer/Senior Medical Officer in SSB is a post having All India transfer liability. The applicant during his tenure in service has seen the following transfer and posting outside the North East Region:



Sl.	Place of Transfer & Posting	Period/dates
A	Jammu	19.4.01 - 30.5.01
B	Jammu	17.2.02 - 13.3.02
C	Indo Nepal Border	17.7.02 - 8.12.02

4.5 That the Govt. of India, Ministry of Finance, Deptt of Expenditure, New Delhi vide OM No. 20014/3/83-E.IV dated 14.12.83 brought out an scheme to extend certain incentives to officers posted in the North East Region. Out of these incentives, there is an incentive known as the Special Duty Allowance (SDA).

Certain anomalies crept in sanctioning and payment of SDA and as a result of that the Govt. of India vide OM No. 20014/3/83/ E.IV dated 20.4.87 brought out certain clarifications for the entitlement of SDA. According to this clarification, for the purpose of sanctioning SDA, the All India Transfer liability of the members of any service/ cadre or encumbrance of any posts/ groups of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to the service/ cadre/ post has been made on All India Basis and whether the promotion is also made on basis of the All India zone of promotion based on common seniority for the service/ cadre/ post as a whole. A mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of Special Duty Allowance. The same



facilities of SDA was further extended by the Govt. of India via O.M. F.No. 20014/1b/86/E.N/E.II (B) dated 1.12.1986 and the same benefit are continued to be paid thereafter also.

The copies of the said O.M. dated 14.12.83, 20.4.87 and 1.12.88 are annexed as Annexure A₄, A₅ and A₆ respectively.

4.6 That the applicant being eligible and entitled to get the SDA having All India Transfer Liability, All India promotion zone and seniority. SDA was in fact granted to him from the date of his appointment in service i.e. w.e.f. 20.10.94. But all of a sudden, without any notice to the applicant and without affording any chance to him to defend his case. The respondents started recovery of SDA from his salary, paid to him as SDA to which, according to the respondents, he is not liable to get. It is also surprising to note for the applicant that an amount of Rs. 6,252/- has been recovered from the applicant as SDA although no SDA was paid to the applicant for the period 1.5.2000 to 31.8.2000. The details of recovery so far made are as follows:

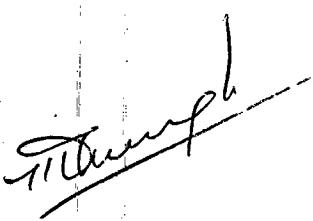
S1. Amount of SDA recovered	Further period
A. Rs. 50,715.00	20.10.94 - 31.8.2000
B. Rs. 6,252.00 (excess recovery)	1.5.2000 - 31.8.2000
C. Rs. 46,322.00 (amount payable to the applicant)	1.5.2000 - 31.1.2003



In this connection, the applicant submitted several representations to the respondents, but so far no reply has been given to the said representatives. The actions of the respondents are thus arbitrary, illegal and violative of the fundamental and other legal rights of the applicant. The applicant is entitled to interest on the amount shown above which has been illegally recovered from him.

The copies of representations dated 4.1.2001, 28.2.2001 and 13.10.2001 along with the forwarding dated 15.10.2001 are annexed hereto as Annexure- A₇, A₈ & A₉ respectively.

4.7 That the Hon'ble Supreme Court of India in "Union of India and Others -versus- Vijaykumar & others" has clearly held that an employee fulfilling the conditions as stated in the O.M. dated 20.4.87 (Annexure- in this application) is entitled to get SDA. This was further clarified by the O.M. issued by the Govt. of India, Ministry of Finance, Dept. of Expenditure vide no. 11(3)/ 95-E.II (B) dated 12.1.96. The same criteria for granting and entitlement of SDA has been further emphasized by the O.M. issued by the Govt. of India, Ministry of Finance, Dept. of Expenditure vide F.No. 11(5)/97- E.II (B) dated 29.5.2002. In this O.M. the reliance has been put to the O.M. dated 20.4.87 and the Hon'ble Supreme Court decision held in "Union of India and Others -versus- Vijaykumar & others". By this



O.M. it was also made clear that the SDA so far paid upto 5.10.2001 should not be recovered.

The copies of the O.M. dated 12.1.96 and 29.5.2002 are annexed as Annexure A₁₀ and A₁₁ respectively.

4.8 That the applicant is legally entitled to the grant of SDA which has been denied to him most illegally and arbitrarily by the respondents. In some cases, this Hon'ble Tribunal has interfered with the action of the respondents in recovering the SDA paid to the ineligible employees and directed not to recover such SDA which has been already paid. This Hon'ble Tribunal has also in some cases directed the respondent to refund this amount of SDA recovered from such employees.

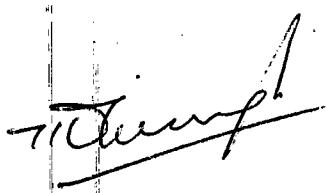
The copies of the order passed in O.A. No. 115/2002 dated 13.11.2002 is annexed hereto as Annexure A₁₂.

4.9 That this application has been made for the ends of Justice.



5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

- 5.1 For that the respondents erred in both facts and law and have stopped payment of SDA w.e.f. 1.5.2000 to the applicant, although he is entitled to SDA under the provisions of law.
- 5.2 For that the actions of the respondents to recover SDA from the salary of the applicant from the month of September 2000 onwards fro the period of 20.10.94 to 31.8.2000 are illegal, arbitrary and contrary to the provisions of law.
- 5.3 For that the excess recovery of Rs. 6,252/- from the salary of the applicant for the period 1.5.2000 to 31.8.2000 is grossly illegal as the applicant was not paid any SDA for that period.
- 5.4 For that the action of the respondents leading to the recovery of Rs. 50,715/- and excess recovery of Rs. 6,252/- is in violation of clear provisions of law as provided under Art. 14,16 and 21 of the Constitution of India.
- 5.5 For that the O.M. dated 20.4.87, 12.1.96, 29.5.2002 and decisions of the Hon'ble Supreme Court does not say anything that debars persons who are residents of the North East Region having All India Transfer Liability from entitlement to SDA.
- 5.6 For that in view of the facts and the law, the recovery so far made from 20.10.94 to 31.8.2000 and stopping of



payment of SDA to the applicant w.e.f. 1.5.2000 is grossly illegal as the applicant is entitled to grant of SDA under the law.

6 DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant and the applicant declares that he has exhausted all other remedies available to him which has given him the jurisdiction of this Hon'ble Tribunal.

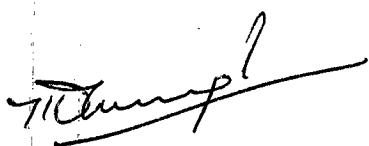
The applicant made a series of representations which have not been attended to or replied so far by the respondents.

7 MATTER NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

that the applicant further declares that he has not filed any application, writ petition or suit in respect of the subject matter of this instant application before any other court, tribunal or any other authority, nor any such application, writ petition or suit is pending before any of them.

8 RELIEF SOUGHT FOR:

Under the facts and circumstances of the case and the provisions of law, it is proposed that Your Lordship may be pleased to admit this application, call for the

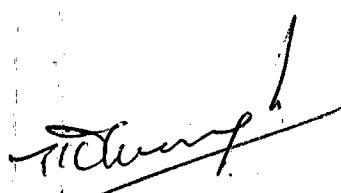


records, issue notice and direct the respondents to show cause as to why the relief sought for by the applicant should not be granted and after hearing the parties and perusing the records including the cause or causes, if shown, also be pleased to direct the respondents to grant the following reliefs:

- 8.1 To direct the respondents to continue to pay the SDA to the applicant as per the provisions of O.M. dated 14.12.83, 20.4.87, 1.12.88, 12.6.96 and 29.5.2002 and at the rate as applicable and admissible to the applicant.
- 8.2 To direct the respondents to refund Rs. 50,715/- recovered from the applicant for the period 20.10.94 to 31.8.2000 and excess amount of Rs. 6252/- recovered from the applicant for the period 1.5.2000 to 31.8.2000.
- 8.3 To direct the respondents to continue to pay SDA to the applicant from 1.5.2000 onwards.
- 8.4 To direct the respondents to pay interest for the amount of Rs. 50,715/- and Rs. 6,252/- from 1.5.2000.
- 8.5 To direct the respondents to pay the cost of the case.

9 INTERIM ORDER PRAYED FOR:

The applicant has not made any interim prayer at this stage of this application.



10 THE application is filed through the advocate.

11 PARTICULARS OF THE IPO:

IPO No. : 74 605586.

Date of Issue : 11.2.203

Issued from : Head Post Office, Guwahati

Payable at : Guwahati

12 LIST OF ENCLOSURES:

As stated above.

10b/1

VERIFICATION

I Dr. Thang Khan Taung Hatzaw, S/o. Sri K. Hatzaw, aged about 40 years, permanent resident of Churachandpur, Manipur, present address, C/o. Comdt. 11th BN. SSB, Maharajganj, Uttar Pradesh, do hereby solemnly affirm and state that the statements made in para ~~4.2.3.4.4.1.4.9 to 10 and 11.~~ are true to my knowledge and belief, those made in para ~~4.2.4.3.4.5 to 4.7 and 4.8~~ - being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Court. I have not suppressed any material facts.

And I sign this verification on this th day of February, 2003 at Guwahati.

Thang Khan Taung Hatzaw

DEPONENT

Registered.

No. 6/3/94-Do/1 - 1493-98

Government of India
Cabinet Secretariat
Bikaner House (Annexe.)
New Delhi - 110 011

Dated the : 28-9-94
6-10-94

MEMORANDUM

The undersigned hereby offers Dr. Thang Khan Tuang Hatzaw..... at temporary post of the Medical Officer in the SSB on a pay of Rs. 2200/- per month in the pay scale of Rs. 2200-75-2800-EB-100-4000. The appointee will also be entitled to dearness and other allowances at the rate admissible under and subject to the conditions laid down in rules and order governing the grant of such allowances in force from time to time. He/She will also be entitled to draw non-practising allowance as admissible under the Central Government Rules issued from time to time.

2. The terms of appointment are as follows :

- i) The post is temporary and he/she will be on probation for a period of two years. The period of probation may, if the controlling authority deems fit, be extended or cancelled but such extension/curtailment shall not exceed one year. His/Her permanent appointment to the post if and when it is made permanent, however, will depend on various factors governing permanent appointment to such posts in force at the time, and will not confer on him the title of permanency from the date of post if made permanent.
- ii) The appointment may be terminated at any time by a months' notice given either side viz. the appointee OR the appointing authority without assigning any reasons. The appointing authority, however, reserve the right of terminating the services of the appointee forthwith OR before the expiration of the stipulated period of notice by making payment to him/her of a sum equivalent to the pay and allowances for the period of notice OR the unexpired portion thereof.
- iii) The appointment carries with it the liability to serve in any part of India.
- iv) While serving in the SSB, he/she shall be completely debarred from private practice.
- v) No application for higher education OR appointment to some other department will be entertained before completion of two years of service in this organisation.
- vi) Other conditions of service will be governed by the relevant rules and order in force from time to time.

3. The appointment will be further subject to :

- i) production of certificate of fitness from the competent authority (viz., Medical Board). This will not be applicable in case he has already been medically examined.

Certified to be true Copy.
D. B. Arora
Advocate

- ii) Submission of marital declaration in the prescribed form and in the event of candidate having more than one wife/husband living, the appointment will be subject to his/her being exempted from the enforcement of the requirement in this behalf.
- iii) Taking an oath of allegiance/faithfulness to the Constitution of India (OR making of a solemn Affirmation) to that effect in the prescribed form.
- iv) Production of degree/diploma/certificates of educational and other technical qualification.
- v) Production of original certificate of age.
- vi) Production of certificate in the prescribed form in support of candidates' claim for belonging to a Schedule Caste OR Tribe/Anglo Indian community.
- vii) Production of discharge certificate from the previous employment, if any.
- viii) Execution of a Bond of the value of Rs. 16,000/- (Rupees sixteen thousand only) to serve in SSB organisation for a period of three years from the date of joining SSB, as per the Annexure—I (enclosed).

4. It may please be stated whether the candidate is serving or is under obligation to serve another Central Government department or State Government or a public authority.

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

6. If Dr.... Thang Khan Tuang Hatzaw..... accepts the offer on the above terms he/she shall report to the..... Comdt. GC, SSB, Aizwal (Shillong)..... within one month from the date of issue of this Memorandum.

7. No travelling allowance will be allowed for joining the appointment. However, the candidate appointed to the in North Eastern Region is entitled for ordinary Bus fare/2nd Class rail Class rail fare for road/rail journey in excess of 400 Kms.

Encl: One

(A. Nath)
Joint Secretary ~~SECRETARY TO THE GOVERNMENT OF INDIA~~
To

Joint Secretary
Cabinet Secretariat
New Delhi
Tel No. 321225

✓ Dr.... Thang Khan Tuang Hatzaw.....
C/o...CBA..Book..Room,...P.B...No.30,
New Lamka, P.O., Churachandpur, Manipur.

Copy forwarded to :—

1. The Director, SSB, Block V (East), R. K. Puram, New Delhi.
2. Director of Accounts, Cabinet Secretariat, Block No. IX (East), R. K. Puram, New Delhi.
3. The Divisional Organiser, SSB, Shillong Division
4. The Commandant/~~Divisional Organiser~~, SSB, .., GC, .. Aizwal.
5. Office Order file.

DIRECTOR (SR)

Attested
T. K. HAZARI
Dy. Chief Executive Officer
Mizoram KVI Board
Aizawl.

Certified to be true Copy
D. J. Khan
Advocate

~~CONFIDENTIAL~~

ANNEXURE :

THE SPANISH PHIL.

12254

1934

69 6/3/94-19.11-44
Government of India
Cabinet Secretariat
Rikar House Annex
Shahjahan Road

New Delhi, the

OB P E (u) 2 - 05

The President is pleased to appoint the following
incumbents as Medical Officers in the S.M. in the pay
scale of Rs. 2200-4000/- v.e.f. the dates they assumed
charge of the post at the place of posting as noted
against each:-

Sl. No. Name Date of Birth, place of
B.C. Grade of joining, Post

01.	<u>Doctor Jyoti Chandra Singh</u>	27.10.94 (FII)	CC, Imphal
02.	<u>Thang Khan Thang Matzau</u>	20.10.94 (FII)	CC, Mizoram
03.	<u>Dipak Singh Ningthoujam</u>	30.09.94 (FII)	North Lakhimpur Area, NAD
04.	<u>Miss Kalisham Shantibala Devi</u>	12.10.94 (FII)	WATS, Kashipur Shillong
05.	<u>S.J.P. Singh</u>	17.10.94 (AT)	CC, Hukokchung Naga Dly.

2. The ~~16~~ officers would remain on probation for a period of two years ~~u.e.f.~~ the dates they assumed charge of the post.

• Prof. H. H. Wilson, D. Sc., F. R. S., a man of extensive knowledge (28)
• and wide interests, was appointed (A. Math.) in 1883
• as St. Secy. to the Govt. of India.

2. Shri G. V. Venkateswaran, Director of Accounts, Cabinet Secretary, R.K. Puram, New Delhi. It is certified that the above officers have been officially examined by the Medical Board and found fit.

is a general file of the officers concerned.

2. *Organic acids*

P₅O₁₀

Certified to be true Copy
J. A. W.
Advocate

Advocate

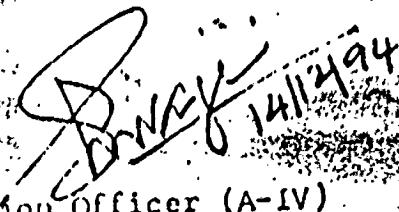
SP-A22

9
No.6/SSB/A-4/93(1)
Directorate General of Security
Office of the Director SSB
East Block No.V, R.K.Puram,
New Delhi-110066.

Dated the,

Copy for information forwarded to :-

- 1) The Divisional Organisers: North Assam, Shillong & Manipur and Nagaland Divisions.
- 2) P.F. Officer concerned.
- 3) The Medical Superintendent at SSB Dte.

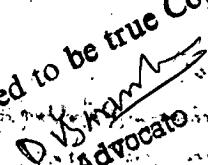

Section Officer (A-IV)

No.6/1/3(6)/D/01-93/ 80-65 Dated 4/1/95

Copy forwarded to :-

- 1) The Comdt. G.C. SSB Mizoram for information please.
- 2) the Commandant, WATS Kohima for information please.
- 3) Dr. Thang Nhen Taung Netzen, M.D. SSB, G.C. Mizoram for information please.
- 4) Dr. Kalisham Shantibala, M.D. WATS Kohima for information please.
- 5) Personal File of Dr. T.K.T. Netzen.
- 6) Personal File of Dr. K. Santibala.


Area Organiser (Assam)
Shillong Division: Shillong.


Certified to be true Copy.
D.V. Khan
Advocate

~~CONFIDENTIAL~~~~ANNEXURE : A3~~

F.NO.6/7/99-DO.II-3497
 Cabinet Secretariate
 Bikaner House(Annexe)
 Shahjahan Road, New Delhi.

Dated the 28th Oct '99

ORDER

The President is pleased to appoint the following Medical Officers as Senior Medical Officer in the pay scale of 10000-15200/- in SSB on adhoc promotion basis with effect from the dates as indicated against each until further orders:-

Dr. Anup Kumar	29.09.1999 (FN)
Dr. Sunil Sumbli	30.09.1999 (FN)
Dr. (Ms) Smita Taneja	01.10.1999 (FN)
Dr. Raji Kumar Verma	01.10.1999 (FN)
Dr. Y.J.K. Singh	29.09.1999 (FN)
Dr. K.B. Rongmei	30.09.1999 (FN)
Dr. T. Khan Tung Hatzaw	29.09.99 (FN)

Sd/

(P.N. THAKUR)
 Director to the Govt. of India

17075 24/11/99
 GCD/SSB/CONF/99/
 Office of the Commandant, GC SSB Dirang

24/11/99
 COMMANDANT
 GC SSB DRG

To

Shri T.K.T. Hatzaw,
 Senior Medical Officer
 GC SSB Dirang.

Certified to be true Copy.
 D. V. Rayamajhi
 Advocate

ANNEXURE B

No. 20014/3/82-E.IV
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE B

2 OCT 1991

Ministry of Finance
Assam Circle, Guwahati-781001

New Delhi, the 14th December 1982.

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

....2/....

Certified to be true Copy.
D. B. Khan
Advocate

Certified
D. B. Khan
ACII Director (VIG)
Officer K. P. M.L.
Guwahati

described 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.

.....3....

Certified to be true Copy.
D. M. A. S.
Advocate

1. 1. 1. 1.

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 100 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 goes not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. In case the family 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.

Certified to be true Copy.
D. V. Attri
Advocate

contd....

(vii) Round trip or transportation of personnel 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 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 case, 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 16 years, for boys and 24 years for girls) will be allowed air-travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance / Hostel Subsidy:

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

Contd...5....

Certified to be true Copy.
D. M. Arora
Advocate

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. As 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.

Certified to be true Copy.
D. Mahalik
Advocate

ANNEXURE : A5

ANNEXURE

13-20014/3/83-H.19
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 granting any 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. There clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of special (duty) allowance.

Contd... 2/

Certified to be true Copy.
D. N. M.
Advocate

Certified
T. N. K. M.
MSA. Birendra (M)

M. S. A. Birendra (M)
S. P. M. K. M.
S. P. M. K. M.

- 8 -

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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 the autonomous organisations located in the North East Region which are under administrative control of their Ministries/Departments.

Chandrasekhar
(A. N. SINHA)
DIRECTOR (EG)
TELE: 3011819

To

Financial Advisors of all Ministries/Departments.

J.K.

Certified to be true Copy.
D. N. Amrit
Advocate

17 - 26
6 - 26
F. No. 20014/16/06/E.IV/E.II(B)

Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 1 December, 1963

OFFICE OF THE SECRETARY

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

O.M. No. 20014/3/73-E.IV dt. 14th December, 1963 vide 30th March,
1964 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 and Islands
the States of Assam, Nagaland, Manipur, Meghalaya, Tripura, Arunachal
Pradesh and Mizoram has been enroute the attention of the Govt.
Accordingly, the President is now pleased to decide as follows:-

(1) Leave of port/tut/depotation
The existing provisions as contained in this Ministry's
O.M. dated 14.12.63 will continue.

(2) Leisure for Central deputation and training abroad
Leave in continental regions
The existing provisions as contained in this Ministry's
O.M. dated 14.12.63 will continue. Cadre authorities are advised
to fix due weightage for satisfactory performance of duties for
the prescribed tenure in the North-East in the matter of deputation
in the years henceforth, deputation to Central tenures post and courses
of training abroad.

(3) 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. 100/- per
month on deputation 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. 100/- p.m.
Special allowances like Special Conveyance (Rugato, Isailly)
allowance, Construction allowance and Project allowance will be
drawn separately.

Certified to be true Copy:
D. V. Sharma
Advocate

2/2

The Central Govt. Civilian employees who are members of
Judicial Tribunals and are otherwise eligible for the grant of
Special 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 Compensation Allowance:-

The recommendations of the 4th Pay Commission have been
accepted by the Govt. and Special Compensation Allowance at the
revised rates have been made effective from 1.10.86.

(v) Traveling Allowance on First appointment:-

The present concessions as contained in this Ministry's
O.M. dated 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) Traveling Allowance for journey on transfer:-

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

(vii) Home Allowance for transportation of personal effects

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

(viii) Joining time with family:-

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

(ix) Family Travel Concession:-

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

Officers arriving by of Rs. 5100/- or above, and their
parents, 16 years and the dependent children (Upto 6 years for
boys and 14 years for girls) will be allowed air-travel between
Mysore/Chikmagalur/Captain/Alزار/Hubli and Calcutta and via
Mysore/Chikmagalur/Captain/Alزار/Hubli and via
Mysore/Chikmagalur/Port Blair and Calcutta/Hubli and via
Mysore/Chikmagalur/Port Blair and between Bangalore and
Cochin and vice-versa in case of posting in Lakkadweep.

(x) Children Education Allowance/Hospital 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 officer resides. If children studying
in hospitals etc. but in hospitals in the last station of posting
or any other station, the Government servant concerned will be
given hospital subsidy without any restriction.

Certified to be true Copy.
D. N. M.
Advocate

The rates of Children Education Allowance/Hostel subsidy will be as in the D.O.P.R. O.M. 11011/1/07-Hott. (Allow.-con). dt. 31.12.07.

(xi) Amend. from time to time.

Concession regarding grant of House Rent Allowance to officers posted in the States of North Western Frontier, Andaman & Nicobar Islands and Lakshadweep Islands.

The present concession as contained in this Ministry's O.M. No. 11016/1/E, II(B)/06 dt. 29.3.06 as regards from time to time will continue to be applicable.

(xii) Tel. telephone facilities.

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

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

4. The officers will take effect from the date of issue. In so far as the officers serving the Indian Audit & Accounts Deptt. are concerned these orders shall after consultation with the Comptroller & Auditor General of India.

5. Hindi version of this Memorandum is attached.

(A. JAYARAMAN)

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.O.A.O., U.P., G.O., etc., etc., on due endorsement list.

Certified to be true Copy.
D. V. M.
Advocate

-29-

No. GCD/PE-TTH/2000/41
Dte. General of Security,
Office of the Commandant,
Group Centre (SSB) Dirang,
P.O. Dirang, West Kameng,
Arunachal Pradesh.

168 (13)

ANNEXURE : A

To

Dated the 4 Jan 2001.

The Director of Accounts,
Cabinet Secretariat,
East Block-IX, Level-7,
R.K. Puram, N/Delhi-110066.

Sub: EXCESS RECOVERY OF SDA

Sir,

With due regards, it is stated that on receipt of my pay slips for the month of December 2000, it repeatedly mentioned that SDA recovery is being made wef 20.10.94 to 31.08.2000.

Whereas I have drawn SDA upto April 2000. Earlier also request was made vide my letter, photostat copies of which are attached for ready reference alongwith the photostat copies of my Pay slips for the months of May, June, July and August 2000.

My case may please be examined as the proof of the documents is attached as mentioned above.

Submitted for further necessary action.

Thanking you.

Yours faithfully,

Encl: (as above)

T. T. HATZAW
04/01/2001
(Dr. T T HATZAW)
Senior Medical Officer
GC SSB Dirang

td/2
Certified to be true Copy.
D. M. H.
Advocate

-30-

ANNEXURE : A

No.GCD/SSB/PR-TIN/2001/44/ 2912
Government of India,
Ministry of Home Affairs,
Office of the Commandant,
Group Centre (SSB) Dirang,
PO:Dirang, Distt:W/Kameng,
Arunachal Pradesh-790101.

Dated 28 FEB 2001 2001.

To,

The Government of India,
Ministry of Home Affairs,
Office of the Director of Accounts,
SSB, Block-V (East) R.K.Puram,
New Delhi.

Sub:- REGARDING EXCESS RECOVERY OF SDA.

Sir,

I have the honour to inform you that I was not in receipt of SDA w.e.f. 1st May 2000 till today whereas recovery of SDA was made from 20/10/94 till 31st August 2000. The excess recovery w.e.f. 01/05/2000 to 31/08/2000 should be deducted from the total calculate amount of recovery of SDA i.e., Rs.50,715.00. In this regard, three letters had been sent to your good office, no action no reply was received so far.

Sir, there was recovery of SDA from time to time since 1995 where the reasons of recovery was not known to me. Therefore, I request you kindly look into the matter and correction of recovery of my SDA be made. For which act of your kindness I shall ever remain grateful to you Sir.

Yours faithfully

DR.T.T.HATZAW
28/02/2001

(DR.T.T.HATZAW)
S.M.L
GC, SSB, DIRANG.

✓
Certified to be true Copy.
Advocate

DR

-31-

ANNEXURE: A9

NO.GCD/SSB/CONF/PF-TTH/2001/ 157SI-S2
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE COMMANDANT
GROUP CENTRAL SSB DIRANG
PG:DIRANG, VIA:ULMDILA,
DISTT: WEST KAMEN(MP)

DATED THE 15TH OCT '2001

TO

The Director of Accounts
Ministry of Home Affairs
Block-IX(East), Level-7
R.K.Puram, New Delhi-56

Sir,

Please find enclosed an application of
DR T.T.Hatzau, SMO of this Group. Centre for favour
of perusal and necessary action please.

The request of the officer may please be
entertained at your end.

Encl: As above

Yours faithfully,


D.G. Chittler
OFFICER COMMANDANT
GC SSB DIRANG
157X101

Copy to:

DR.T.T.Hatzau, SMO
GC SSB Dirang
For information please.

Certified to be true Copy
D. John
Advocate

NO. GCD/SSB/PF-TTH/2001/66/15751
 MINISTRY OF HOME AFFAIRS.
 OFFICE OF THE COMMANDANT.
 GROUP CENTRE (SSB) DIRANG.
 PO: DIRANG, DISTT: W/ KAMENG.
 ARUNACHAL PRADESH-790101.

DATED THE _____ TH OCT 2001.

To,

Director of Account Cabinet
 Secretariat, Ministry of Home Affairs,
 Block-IX(East) Level - 7
R.K.Puram, New Delhi-66.

(Through Proper Channel)

Sub:- RECOVERY AND FURTHER STOPPING OF PAYMENT OF SDA.

Sir,

With due respect it is stated that in my pay slip for the month of September 2000 I came to know SDA recovery will be made and further it will be stopped. I do not understand I have not received any information regarding the recovery and further stopping or no any order or information is received by me officially.

Therefore, I request that my case may please be re-examined and I may please be intimated. If no reply is received within 30 days, I will be taking the case in the court.

This is submitted for your necessary action please.

Yours faithfully

T.Chung
 13/10/2001

(DR. T.T.HATZAW)
 S.M.O.
GC, SSB, DIRANG

D. J. Chung
 Certified to be true Copy.
 Advocate

No. 111(3)/95-E.II(B)

Government of India

Ministry of Finance

Department of Expenditure

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

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

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

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

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

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

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

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

Certified to be true Copy.
D. V. Ram
Advocate

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/81-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)Y95-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.G. civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

4. In a recent appeal filed by Telecom Department (Civil Appeal No 7000 of 2001 - arising out of SLP No.5455 of 1999), Supreme Court of India has ordered on 5.10.2001 that this appeal is covered by the judgement of this Court in the case of UOI & Ors. vs. S. Vijayakumar & Ors. reported as 1994 (Supp 3) SCC, 649 and followed in the case of UOI & Ors vs. Executive Officers' Association 'Group C' 1995

Certified to be true Copy.
[Signature]
Advocate

(Supp.) SCC, 757. Therefore, this appeal is to be allowed in favour of the U.O. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

5. In view of the aforesaid judgements, the criteria for payment of Special Duty Allowance, 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
(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.

Certified to be true Copy.
D. N. M. A.
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

CIRCUIT COURT AT SHILLONG.
Original Application No.115 of 2002.

Date of Order : This the 13th Day of November, 2002.

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

1. Shri Lalthansanga Varte
Deputy Director
All India Radio, Shillong.
2. Sri C.Lalbiaktluanga
Deputy Director
All India Radio, Shillong.
3. Sri R.Giri
Asstt. Engineer
AIR, Nongstoin, Shillong.
4. Md. Naseer Rafique Diengdoli
Programme Executive
All India Radio, Shillong. . . . Applicants.

By Advocates Mr.M.K.Choudhury, S.Sarma & U.K.Nair.

- Versus -

1. Union of India
Represented by the Secretary
to the Government of India
Ministry of Information & Broadcasting
AGCR Building, Indraprastha Estate
New Delhi.
2. The Secretary to the Government of India
Ministry of Finance, North Block
New Delhi.
3. The Director General
All India Radio, Akashvani Bhawan
Parliament Street, New Delhi- 110 001.
4. The Station Director
All India Radio, Shillong. . . . Respondents.
By Mr.B.C.Pathak, Addl.C.G.S.C.

O R D E R

CHOWDHURY J.(V.C.):

The issue relates to payment of Special Duty
for the
Allowance (SDA) and the steps taken/ recovery of the same.

D. N. M.
Certified to be true Copy.
Advocate

1. Admittedly, these applicants belong to N.E.Region are not eligible for SDA as has been clarified by the Hon'ble Apex Court in S.Vijayakumar and Others -vs- Union of India & Others reported in (1994) Supp³ 3 SCC 649. The said decision was followed up by a number of cases by Apex Court as well as by the Tribunal. However, fact remains that these applicants were paid SDA spread ^{out for} long. As per the pleadings the applicant Nos.1 & 2 were paid SDA since 1986. The applicant Nos.3 & 4 were paid SDA from April, 1998. After the decision of the Hon'ble Supreme Court and after some circulars issued by the authorities the authority took steps to correct the error and stopped the payment of SDA. The respondents authority also sought to recover of the amount already paid to the applicant Nos.1 & 2 from April, 2000 and in case of applicant Nos.3 & 4 from April, 2001 and recovered the amount from these applicants.

2. The action of the respondents in stopping the SDA cannot be held to be illegal. The respondents acted lawfully in terms of the Hon'ble Supreme Court's order as well as the Govt. of India instructions. But at the same time the action of the respondents in recovering the amount from the applicants which was already paid to them was seemingly arbitrary that caused hardship to these applicants. Recovery of amount retrospectively is not to be readily resorted, however even in ~~number of~~ number of decisions it has been indicated that the

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recovery already made, is not to be refunded and any payment made is not to be recovered.

3. I have heard Mr.S.Sarma, learned counsel for the applicants and also Mr.B.C.Pathak, learned Addl.C.G.S.C. In the set and circumstances of the case I hold the action of the respondents in recovering the payment already paid to the applicants is unlawful and accordingly direct the respondents to refund the amount to the applicants already recovered from them.

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

TRUE COPY

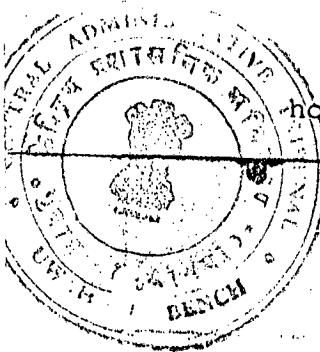
sd/ VICE CHAIRMAN

ପ୍ରତିଲିପି

Section 12.15.2

bb

Certified to be true Copy.
D. W. Smith
Advocate



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Digitized by
Guwahati Bench

Filed by

8/8/03
(A. DEB ROY)
Sr. C.
C. A. T., Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI

O.A. NO. 40 OF 2003.

Dr. T.K.T. Hatzaw

..... Applicant.
- Vs -

Union of India & Ors.

..... Respondents.

- And -

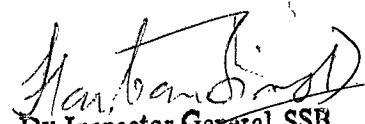
In the matter of :

Written statement submitted by
the respondents.

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

1. That with regard to the statement made in para 1,
of the application the respondents beg to state that the applicant
is not eligible for the grant of SDA and the respondents
have rightly effected recovery from the pay of applicant. Reply
to the subsequent paras of this application would reveal that
the respondents have acted within the ambit of the rules and
instructions on the subject matter.

2. That with regard to para 2 & 3, of the application
the respondents beg to offer no comments.


Hanwant Singh
Dy. Inspector General, SSB
Govt. of India, MHA
Sector HQR, Gorakhpur

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Shri Jay Singh
Dy. Inspector General
Govt. of India, MHA
Sector HQR, Gorakhpur

3. That with regard to the statement made in para 4.1 to 4.3, of the application the respondents beg to state that admitted as per the records maintained by the respondents however anything contrary to the records is denied.

4. That with regard to the statement made in para 4.4, of the application the respondents beg to state that the factual position regarding this para is as follows :-

The applicant has not been transferred from this Bn (erstwhile GC SSB Dirang) so far. Since 2 Coys each of this Bn were deployed at Jammu and Birpur (on Indo Nepal Border) for I.S. Duties and border duties respectively, the said SMO was detailed temporarily to these two places, during the period mentioned by the SMO in his application.

5. That with regard to the statement made in para 4.5, of the application the respondents beg to state that the Govt. of India, Ministry of Finance Department of Expenditure vide their O.M. No. 20014/2/83-E-IV dated 14.12.1983 allowed Special Duty Allowance to Central Government Civilian Employees who have All India Transfer Liability based on the recommendation of a Committee set up by the Govt. of India. Based on the decision, the respondents allowed Special Duty Allowance on the analogy to the employees having All India Transfer Liability to the applicant, including all other SSB employees posted in N.E. Region.

Shankar Singh
 Dy. Inspector General, SSB
 Govt. of India, MHA
 Sector HQR. Gorakhpur

-3-

Copy of Ministry of Finance O.M. No. 20014/2/83-

E-IV, dated 14.12.1983 is attached herewith and marked as Annexure -A-4 of the application.

B. Based on the Hon'ble Supreme Court Judgement dated 20.9.1994 (In Civil Appeal No. 3251 of 1993) the Government of India, Ministry of Finance, Department of Expenditure vide O.M. No. 11(3)/95-E.II(B) dated 12.01.96 incorporated the provision of above Judgement as under :

"Central Government Civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance, on being posted to any station in the N.E. Region from the outside the region and Special Duty Allowance would not be payable merely because of the clause in the appointment order to All India Transfer Liability. The Apex Court further added that the grant of this allowance only to the officers transferred from outside ~~for~~ this region would not be violative of the provision contained in Article 14 of the Constitutions as well as the equal pay doctrine".

Copy of the Judgement of the Hon'ble Supreme Court delivered on 20.9.1994 (In Civil Appeal No. 3251 of 1993) Union of India- Vs- S. Vijay Kumar and others, 1995 (I) SLP 139(SC) is enclosed as Annexure - 'A-10' to the application.

S/X

Manoj Kumar Jha
 Dy. Inspector General, SSB
 Govt. of India, MH-1
 Sector HQR, Gorakhpur

-4-

Further, the Ministry of Finance decided that the amount already paid on account of Special Duty Allowance to the ineligible persons on or before 20.9.94 will be waived off and payments made after this date will be recovered.

C. That the Govt. of India, Ministry of Finance, Department of Expenditure vide their U.O. No. 11(3)/85-E-II(B) dated 7.5.97 clarified that the employees who fulfill all the conditions of All India Transfer Liability and are posted from outside N.E. Region to N.E. Region, are entitled to Special Duty Allowance otherwise not.

Copy of Govt. of India, Ministry of Finance, Deptt. of Expenditure U.O. No. 11(3)/85-E-II(B) dated 07.5.97 is enclosed herewith and marked as Annexure -'R-1'.

D. That the Hon'ble Supreme Court in another judgement on 25.10.96 in petition No. 794 of 1996 titled Sub-Inspector Sadan Kr. Goswami and others -Vs- Union of India and others held that "The judgement of this court would indicate that it did not make any distinction between Group 'C' & 'D' and Group 'A' & 'B' Officers. All are Government by the law under Article 141".

Copy Judgement of the Hon'ble Supreme Court is enclosed herewith and marked as Annexure - 'R-II'.

Moreover, as per the decision of the Hon'ble Guwahati Bench of CAT dated 11.01.2001 in the case titled Shri Mathuresh Nath and 4 others -Vs- Union of India and Others. Dr. T.T. Hatzaw, SMO, (the applicant) is not eligible for SDA as applicable to

44-
58
Shankar Singh
Dy. Inspector General, S.S.
Govt. of India, Ministry
Sector HQR. Gurukul

-5-

every one who has not been transferred to N.E. Region from outside.

Copy of the dated 11.01.2001 is enclosed herewith and marked as Annexure - R-III.

That keeping in view of the judgement of the Apex Court and decisions of the Ministry of Finance, the petitioner is ineligible for the grant of Special Duty Allowance, therefore, the respondents has rightly stopped payment of Special Duty Allowance to the petitioner.

6. That with regard to the statement made in para 4.6, of the application the respondents beg to state that an amount of Rs. 50,715/- has been recovered from the applicant w.e.f. 20.10.94 to 31.8.2000 which was paid in excess to the applicant. The recovery started from Sept. 2000 and finished in May 2001. However out of this Rs. 6252/- has been recovered in excess of the amount paid as S.D.A. The unit of the applicant has been asked to refund Rs. 6252/- recovered from the applicant in excess of the amount of SDA actually paid to him. As regards refund of Rs. 44,463/- recovered from the applicant as SDA and Rs. 46,322/- to be paid to him, as claimed by him, is concerned, refund/payment can not be done as the Government instruction dated 29.5.2000,

Copy enclosed as Annexure-11, to the application states clearly that recoveris already made need not be refunded.

-6-

7. That with regard to the statement made in para 4.7 & 4.8, of the application the respondents beg to state that the factual position regarding this sub para is as follows:

The applicant has annexed a copy of Ministry of Finance (Department of Expenditure) Office memo no. 11(5)97-E.II/B dated 29.5.02. copy enclosed as Annexure-11 to this application. As per para-6(i) of this office memo, the amount already paid on account of SDA to the ineligible persons not qualifying the criteria 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, but as per the Sub-para (ii) of said para-6, the amount paid on account of SDA to in eligible persons after 05.10.2001 will be recovered. From the above it is clear that recoveries were already effected with respect to the applicant before issuance of these orders. Since the applicant is not entitled to SDA, the said allowance can not be authorised to him and as recovery was already effected, the same cannot be refunded to the applicant.

8. That with regard to the statement made in para 4.9, of the application the respondents beg to state that in light of the foregoing submissions there is no merit in the case of the applicant and the OA requires to be dismissed.

9. That with regard to the statement made in para 5.1 to 5.6 of the application the respondents beg to state that the factual position regarding these sub-paras has

Mantosh Singh
Dy. Inspector General, SSE
Govt. of India, MHA
Sector HQR, Gorakhpur

-7-

already been mentioned in the reply furnished to para 4 above and the same is reiterated here for the sake of brevity.

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

10. That with regard to the statement made in para 8, of the application the respondents beg to state that in light of the foregoing submissions it is most respectfully submitted that the instant OA be dismissed being devoid of merit.

Mantosh Singh
Dy. Inspector General, SSE
Verification
Govt. of India, MHA
Sector HQR, Gorakhpur

VERIFICATION

I, Shri HANBANS SINGH DEV, presently working as DIG, SHQ - GORAKHPUR, being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para are true to my knowledge and belief and those made in para being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

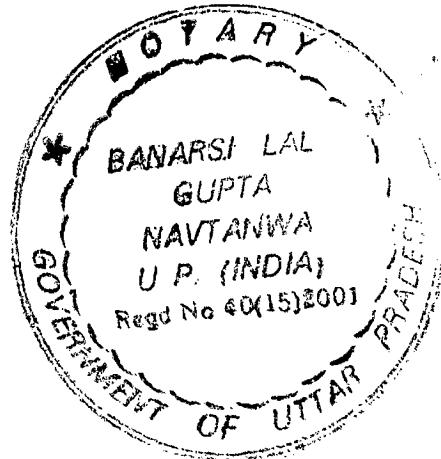
And I sign this verification on this 29th day of July, 2003.

ATTESTED

NOTARY
NAVATANWA

Bhanupriya
29.07.03.

Hanuman Singh
Deponent General, SSB
Govt. of India, MHA
Sector HQR. Gorakhpur



ANNEXURE-I

No. 2014/3/R-E.IV
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 16th

ANNEXURE

1971
Min. of Fin. & Gen. Ser. &
Expenditure
New Delhi, 16th Dec. 1971

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 has 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/rotation:

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) Allowance for Central Deputation/Training second and special mention in confidential records:

Satisfactory performance of duties for the

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Central
Deputation
Allowance
47/1971
Officer Director (VIG)
Officer K.P. Ali
Expenditure

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(a) promotion in cadre posts
(b) deputation to general 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 posts 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 Compensation (Relocate Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Concessionary Allowance

1. Assam and Nagaland

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. Return

The rates of the allowance will be as follows:-

(u) Difficult Areas

25% of pay subject to a minimum of Rs. 50/- and a maximum of Rs. 150/- P.M.

(v) Other Areas

Pay upto Rs. 260/- Rs. 60/- 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 and the existing rate of Disturbance allowance admissible in Arunachal Pradesh, Nagaland and Mizoram and the existing rate 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 100 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 goes 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 cost or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of his personal effects. If his 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.

contd.... 4....

(vii) Head allowance 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 case 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/- & above, and their families, i.e., spouse and two dependent children (upto 16 years, for boys and 24 years for girls) will be allowed air-travel between Imphal/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance / Hostel Subsidy:

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

Contd...5....

2. The above orders except in sub-para (iv) will also
mutatis mutandis apply to Central Government employees posted
to Andaman and Nicobar Islands. 1
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. 21

4. All existing special allowances, facilities and con-
cessions extended by any special order by the Ministries/Depart-
ments 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. 3

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. 4

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. 5

SD/-
JOINT SECRETARY (S.C. MAHALIK)
TO THE GOVERNMENT OF INDIA.

TO:
All Ministries/Departments of the Government of India,
etc. etc.
COPY (with space for copies) to C. & A.G., U.P.S.C. etc.

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

Facts: This Special Leave Appeal is against the judgment of the Tribunal which upheld the contention of the respondents/petitioners herein that for purpose of payment of Special Duty Allowance it is not only the staff who reside outside the North-Eastern Region who are eligible, but also local residents, for the reason that the latter has also the incidence of All India transfer. The petitioners/respondents contend in this SLP that in order to draw persons from outside the North-Eastern Region, this Allowance was introduced and, therefore, the object sought to be achieved gets frustrated in view of the judgment of the Tribunal and prayed for setting aside the same.

Held: We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor-General for two reasons. The first is that, a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum, dated 27-10-1956, which has been quoted in the memorandum, dated 20-4-1937, 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 1933 memorandum states by saying that the need for the allowance = as felt for "attracting and retaining" the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining there by taking leave and, therefore, the memorandum stated that this period of leave would be excluded while computing the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1956 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowances "on posting to any station to the North-Eastern Region". This aspect is made clear beyond doubt by the 1937 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memorandum of 1923 the subject was mentioned as quoted above is not enough to concede the submission of Dr. Ghosh.

The submission of the respondents that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in Reserve Bank of India v. Reserve Bank of India Staff Officers Association and others, [1971 (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 Gauhati Unit was not regarded as violative of Article 14 of the Constitution.

In view of the above, we held that the respondents were not entitled to the allowance and the impugned 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 have to be recovered from them in so far as the allowance is concerned. The appeals are allowed accordingly.

[Union of India and others v. S. V. Jayakumar and others, 1995 (1) M.L.J. 139 (SC), date of judgment 20-9-1994]

Civil Appeal No. 3251 of 1993

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13/10/95
13/10/95

Ministry of Finance
Department of Expenditure
E-II(B) Branch

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

Cabinet Secretariat may please refer to their D.O. Order No. 20/3/96-EA-1-645 dated 8th April, 1997 on the above mentioned subject and to say that for the purpose of determining Special Duty Allowance to Central Government Civilian employees, 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 based on a common seniority list for the service/cadre/posts as a whole. If the clause in the appointment order (as is done in the case of Group A-II posts in the Central Secretariat, etc., to the effect that the person concerned is liable to be transferred anywhere else does not make him eligible for the grant of Special Duty Allowance.

Further, Cabinet Secretariat may determine in each case whether the employees locally recruited in NE Region, who leave NE Region on their transfer to NE Region from outside the Central Govt. civilian employees who are posted on an appointment from outside NE region to NE region, fulfil the above said conditions of All-India transfer liability, or whether they fulfil all the conditions of all-India transfer liability and are posted from outside NE region to NE region. In so far they are entitled to SDA, otherwise not. However, if further advice is needed on any particular case, the same may be referred to this Ministry alongwith the views of I&B thereon.

SD/-

(P.S. Walia)

For Under Secretary to the Govt. of India.

Subj. Sectt. Bikaner House Annex. (Sh. P. N. Thakur Director)
D.O. (Expt) S. U. U. No. 11(S)/E-II(B) dt. 7th May 1997.

Cabinet Secretariat
E.A.I. Section

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

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

(Jagdish Chander)

Deek Officer

1. Deputy Director (8) ARC w.r.t. his U.O.-No. ARC/Courd./16(3)/94 dated 29/10/1996.
2. ID. (CA) SSU w.r.t. U.O. No. 42/S98/A1/92 (61)-1855 dated 9/7/1996.

Cabinet Secretariat U.O. No. 20/3/96-EA.1-1040 dated 10 JUN 1997

(55)

ANNEXURE - R-II

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION NO. 794 OF 1996

Sub-Inspector Sadhan Kumar Goswami &
Ors.

... Petitioners

VERSUS

The Union of India & Ors.

... Respondents

ORDER

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

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

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

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10/10/94
CIVIL PETITION NO. 794 OF 1996

Learned Additional Solicitor General, Shri Tulsji for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 29.10.1986 which has been quoted in the memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North Eastern Region to work in that region because of inaccessibility and difficult terrain. We have said so because even the 1983 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining" the service of the competent officers for service in the North-Eastern Region. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining thereby taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1986 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North-Eastern Region". This aspect is made clear beyond doubt by the 1987 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1983 the subject was mentioned as quoted above is not enough to concide to the submission of Dr. Ghosh.

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

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Reserve Bank of India vs. Reserve Bank of India Staff Officers Association & Ors. ((1991) 4 SCC 1321 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 tantamounts to violation of Article 14, and, therefore, the writ petition should be allowed so as to give them the same benefit. Admittedly, the petitioners are Group C and D employees and are bound

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by the above declaration of law made by this Court. Merely because they were not parties to the judgment, they cannot file writ petition under Article 32: The contention that they are entitled to get the benefit at par with Group A and B officers under the above Memorandum dated July 11, 1996^{u/s of Court}. 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 its whether or not they are entitled to the above benefit due to this Court's judgement, 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 A and B and Group A and B Officers. All are governed by the law under Article 141. The petitioners are not entitled to the payment of the special duty allowance irrespective of whether or not they were parties to the judgment rendered in Vijay Kumar's case (supra); they cannot be permitted to raise new grounds, though not raised or argued in earlier case, to canvass the correctness of the judgment by filing the writ petition under Article 32.

Of late, we have been coming across this type

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of the 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 has 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 C.G.P. C and D employees are not entitled to special duty allowance as per the law already declared by this court, the petitioners are not entitled to the benefit.

It is next contended that the Government is recovering as per Memorandum dated January 17, 1996 the amount 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
Petitioners 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.RAMASHANKAR)

.....
(S.P.KURUKKUR)

RECD DEFLT;
OCTOBER 25, 1926.

SEALED IN MY PRESENCE
11/11/1926

THE CENTRAL ADMINISTRATIVE TRIBUNAL
GANGA BHAWAN

Original Application No.43 of 2001

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

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr K.K. Sharma, Administrative Member

.....Applicants
Smt. Matiuresh Nath and 4 others

The applicants are employees of the
Special Service Bureau, Arunachal Pradesh Division,
iii. Advocate Mr K.P. Singh.

.....versus.....

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

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

.....Respondents

ORDER CRIMINAL

CHOWDHURY, J. (V.C.)

The admissibility of Special Duty Allowance (SDA for short) is the key question raised in this application. The applicants are five in number and they are working in the Secretarial Cadre of Service under the respondent. They are claiming SDA in terms of the Central Government Notification dated 13.12.1982 and other Notification issued from time

3. The issue raised in this application is no longer ~~Res Integra~~ rendered in Civil Appeal.

4. In the circumstances there is no scope for directing the respondents to pay SDA to the present applicants. No facts learned by the applicants cited the instances of other persons who allegedly being paid SDA though they are similarly situated like the present applicants. Assuming that the respondents are paying SDA to ineligible persons contrary to the provisions of law it would not be justified for giving similar unlawful benefit to the respondents by the

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

VICE-CHAIRMAN

New Delhi, dated the 29th May, 2001.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 Ofsl No 20014/3/R.I. E.IV dated 14.12.83 and 20.4.1987 read with OM No 20014/16/R.G. E.4/V/B.11 (1) dt. 1.12.88, and OM No.11(3)Y95-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 or whether promotion is also done on the basis of an all India common seniority list of 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 Guwahati Bench and in certain cases CAT upheld the prayer of employees. 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 & Ors. vs. Sh. S. Vijaya Kumar and Ors) have upheld the submissions of the Government of India that C.G. civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the Eastern Region from outside the region and Special Duty Allowance would 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 72001 - 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, 619 and so in the case of UOI & Ors vs. Executive Officers' Association (Group C

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b/b

(Supp.1) SCC, 757. Therefore, this appeal is to be allowed in favour of the (101). The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

5. In view of the aforesaid judgements, the criteria for payment of Special Duty Allowance, 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 three copies) to C&AC, UPSC etc. as per standard endorsement
Not.

Govt. of India
Ministry of Law, Justice & C.A.
Dept. of Legal Affairs
Branch Sectt., Calcutta

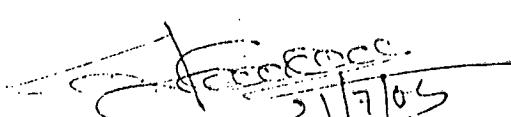
234/4, A. J. C. Bose Rd.,
Nizam Palace, 18th floor,
Calcutta-20.

The Department may please refer to their Note
dated 18.7.03 pertaining to O.A.No.407/03 in the matter of
T.K.T. Hatzaw -Vs- Union of India & Ors.

The enclosed draft Written Statement prepared by
the Govt. Counsel in the aforesaid case is formally
submitted subject to the following:-

- 1) The officer signing and verifying Written Statement on behalf of Union of India should be authorised to do so.
- 2) The verification clause may be duly signed and added with the Written Statement before filing the same in the Hon'ble Tribunal in consultation with the concerned Counsel.
- 3) That apart the correctness of facts and position as stated in the Written Statement may please be carefully ensured.

All papers are returned herewith.


(Kranti Deo)

Asstt. Legal Adviser
Tel. No. 2281-1418

H.L.C. Officer(P&L), Govt. of India(MHA),
Office of the Inspector General, SSB, Lucknow Frontier,
Adiyan Bhawan, 14th floor, Aliganj, Lucknow(U.P.).

Ref. N.O. NO. 3069/03/Adv. /Cal. Date: 21.7.03.