

(3)

FORM No.4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O R D E R S H E E T

Original Application No. _____

Misc. Petition No. _____

Contempt Petition No. 3/05 Mo.A 124/03

Review Application No. _____

Applicants:- R. Bhattacharyya

Respondents U. O. I. Poul

Advocates for the Applicant M. Chanda, S. Nath

Advocates of the Respondents Case A.K. Chaudhry for 122

Notes of the Registry

Date

Order of the Tribunal

This Contempt

11.1.2005

Present: The Hon'ble Mr.K.V.Prahlada
Member (A).

Petition has been

filed by the counsel

for the petitioner

praying for initiation

of a contempt proceeding

against the alleged

contemners for non-

compliance of the order

dt. 14.5.04 passed

in O.A. 124/03.

and before the

learned counsel for the

respondent

Se. J. S.

for Section 124

is

Steps taken on 24/1/05.

27/01/05.

bb

15.02.2005

Present: The Hon'ble Mr.M.K.Gupta,
Member(J).

The Hon'ble Mr.K.V.prahlada
Member (A).

Learned counsel appearing on behalf of respondent no.2 seeks time for filing reply. Adjourned to 31.3.2005

Member (A)

Member (J)

bb

CP. 3/05

Notice & order
Sent to D/Section
for issuing to
resp. Nos. 1, 2 by
regd. A/D post.

27/01/05.

Notice duly
served on
resp. No-2

22/3

24.3.05

The relevant case records
Sent to the Hon'ble Gauhati
High court as per approval of
the Hon'ble V.C. on 23.3.05
except C.P. NO. 3/05 in
link file NO. CAT/GHY/68/
2001/Jndll.

24.3.05.

2-5-05

No reply, as per Secy. Bited.

lm

31.3.2005 Mr. M. Chanda, learned counsel
for the applicant and Mr. A. K. Chaudhuri,
learned Addl. C.G.S.C. for the respondents
were present.

Post on 3.5.2005.

Vice-Chairman

3.5.05

The Respondents No.1 & 2 has filed
separate reply. In paragraph 3 of the said
reply of the first respondents it is stated
that the Respondents now decided to imple-
ment the order dated 14.5.04 in O.A.No.
124/03 in paragraph of the reply filed by
the 2nd respondents it is stated that the
said respondents has earlier issued the
office order dated 30.4.05 (copy enclosed)
for implementing the order dated 14.5.04.

Heard Mr.M.Chanda learned counsel for
the applicant and Mr.A.K.Choudhury, learned
Addl.C.G.S.C. appearing for the Respondent
No.1 & 2. The affidavit filed by the
aforesaid Respondent. 8 weeks time is gran-
ted for implementation of the order dated
30.4.05. Accordingly, C.P. is closed.

Member

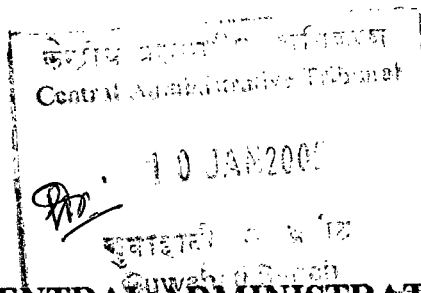
Vice-Chairman

Received
18/5/05

11.5.05

Copy of the order
has been sent to.
The D/Sec for issue
the same to applicant
by Post.

est



Filed by me
petitioner through
Subrata Kanti Ahirwar
01.01.05

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

(An Application under Section 17 of the Administrative Tribunals Act, 1985)

Contempt Petition No. 3 /2005

In O.A. No. 124 of 2003.

In the matter of:

Shri Ramjyoti Bhattacharjee.

... Petitioner.

- Versus-

Union of India and Others.

... Alleged Contemnors.

-And -

In the matter of:

An application under section 17 of the Administrative Tribunals Act, 1985 praying for initiation of a Contempt proceeding against the alleged contemnors for non-compliance of the order dated 14.05.2004 passed in O.A. No. 124/2003.

-And -

In the matter of:

Shri Ramjyoti Bhattacharjee,

Asstt. Accounts Officer.

Office of the Executive Engineer,

North Eastern Investigation Division,

Rongpur Part-I, P.O- Silchar,

District-Cachar, Assam.

... Petitioner.

-Versus-

- 1) Shri S.K Mathus,
Controller of Accounts,
Govt. of India.
Ministry of Water Resources,
Shastri Bhawan
New Delhi.
- 2) Shri K. K. Jangid,
Executive Engineer,
Central Water Commission,
North Eastern Investigation Division
No.1, Jalbikashpur, Silchar.

... Alleged Contemnors.

The humble petitioners above named-

Most respectfully sheweth: -

1. That your petitioner being aggrieved due discontinuation of payment of Special Duty Allowance and recovery thereafter approached this Hon'ble Tribunal through O.A. No 124 of 2003 and also sought for a direction upon the respondents/alleged contemnors to continue to pay special duty allowance and also to refund the amount of SDA which have already been recovered from the salary of the petitioner.
2. That the Hon'ble Tribunal after hearing both the parties was pleased to dispose of the application vide a common order dated 14.05.2004 passed in O.A. No. 29/2003 and 124/2003 directing the respondents as follows: -

"-----Thus, we find that the OA deserves to be allowed. We order that no recovery shall be effected from the applicant, if any amount had already

been recovered that shall be refunded to the applicants and department shall continue to pay SDA to the applicants. Both the OAs are accordingly disposed of.

(Copy of the Judgment and order dated 14.05.2004 is annexed hereto and marked as Annexure-I).

3. That your petitioner after receipt of the order dated 14.05.2004 approached the alleged contemnors through representation dated 19.05.2004 for implementation of the order dated 14.05.2004 enclosing therewith a copy of the order of the Hon'ble Tribunal passed in O.A. No. 124/03 but to no result.

(Copy of the representation dated 19.05.04 is annexed hereto and marked as Annexure-II.)

4. That the humble petitioner begs to state that more than 7 (seven) months time have passed since the passing of the order by this Hon'ble Tribunal but the alleged contemnors have not initiated any action for implementation of the Judgment aforesaid.
5. That it is stated that the alleged contemnors deliberately and willfully did not initiate any action for implementation of the Judgment and Order dated 14.05.2004 passed by this Hon'ble Tribunal in O.A. No 124 of 2003 which amounts to Contempt of Court. Therefore the Hon'ble Tribunal be pleased to initiate a Contempt proceeding against the alleged contemnors for willful violation of the order of the Hon'ble Tribunal dated 14.05.2004 in O.A.No.124/2003 and further be pleased to impose punishment upon the alleged contemnors in accordance with law.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate Contempt proceeding against the Alleged Contemnors for willful non-compliance of the order dated 14.05.2004 in O.A.No.124/2003 and be pleased to impose punishment upon the alleged contemnors in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper by the Hon'ble Court.

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

AFFIDAVIT

I, Shri Ramjyoti Bhattacharjee, aged about 42 years, working as Assistant Accounts Officer, office of the Executive Engineer, North Eastern Investigation Division, Central Water Commission, Rongpur Part I, Silchar, Assam, do hereby solemnly declare as follows: -

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statement made in para 1 to 5 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench for non-compliance of the Hon'ble Tribunal's order dated 14.05.2004 passed in O.A. No.124/03.

Ramjyoti Bhattacharjee
deponent

And I sign this Affidavit on this 2nd day of January 2005.

Identified by
Surajit Choudhury
Advocate.

The above named deponent
solemnly affirmed
and declared before
Shri Subrata Nath, Advocate
on 2nd day of January, 05
who is identified by
Shri Surajit Choudhury,
Advocate.

Subrata Nath
Advocate.

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of order of the Hon'ble tribunal dated 14.05.2004 passed in O.A. No 124/2003 and to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 14.05.2004.

CENTRAL ADMINISTRATIVE TRIBUNAL

OA No. 22 of 2003 and OA No. 124/2003

New Delhi, this the 14th day of May, 2004

HON'BLE MR. KULDIP SINGH, JUDGE
HON'BLE MR. J. V. CHANDRA, JUDGEOA No. 22/2003

Shri Dayamoy Saikia
Senior Accountant
Office of the Pay and Accounts Officer,
Doordarshan, Guwahati. Applicant

By Advocates: Shri M. Chanda.

Versus

1. The Union of India
Represented by the Secretary to the
Government of India,
Department of Expenditure,
Ministry of Finance,
New Delhi.
2. The Controller General of Accounts
Ministry of Finance,
Department of Expenditure,
Lok Nayak Bhawan,
New Delhi.
3. The Chief Controller of Accounts,
Principal Accounts Office,
H-Block, Tropical Building,
Connaught Circus,
New Delhi-110 001.
4. The Senior Accounts Officer (Admin)
Principal Accounts Office,
Ministry of Information and Broadcasting,
H-Block, Tropical Building,
Connaught Circus,
New Delhi-110 001.
5. Pay and Accounts Officer,
Doordarshan,
Guwahati. Respondents

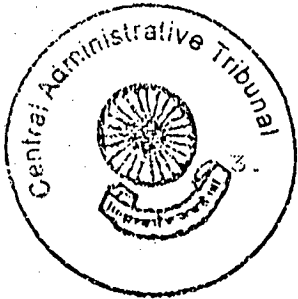
By Advocate: Sh. A. K. Choudhry, Learned Additional
Central Government Standing Counsel.

OA 124/2003

Shri Ramjyoti Bhatta Chatterjee
Assistant Accounts Officer,
Office of the Executive Engineer,
North Eastern Investigation Division,
Rongpur Part I, P.O. Silchar,
District-Cachar,
Assam. Applicant

By Advocates: S/Shri M. Chanda, G.N. Chakraborty and S.
Nath.

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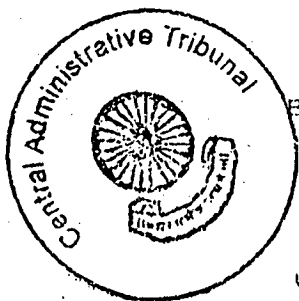
Versus

1. The Union of India
Represented by the Secretary to the
Government of India,
Department of Expenditure,
Ministry of Finance,
New Delhi.
2. The Controller General of Accounts
Ministry of Finance,
Department of Expenditure,
Lok Nayak Bhawan,
New Delhi.
3. The Controller of Accounts,
Ministry of Water Resources,
Shastri Bhawan,
New Delhi.
4. The Executive Engineer,
Government of India,
Central Water Commission,
North Eastern Investigation Division No.1,
Jalbikashpur, Silchar,
District Cachar, Assam. Respondents

By Advocates: Shri B. C. Pathak, Learned Additional Central
Government Standing Counsel.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)



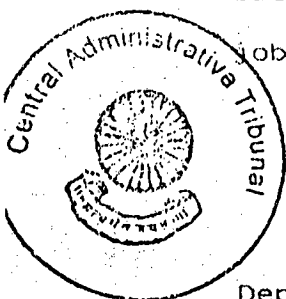
By this common judgment we will decide two OAs
which involve common question of law and facts.

2. In OA-124/2003 applicant has assailed an
order dated 26.8.2002 passed by Executive Engineer,
Central Water Commission, Silchar whereby he has ordered
recovery of Special Duty Allowance (SDA, for short) which
has been paid to the applicant to be effected from the
applicant and also against the decision of the
respondents for discontinuation of SDA in total disregard
of judgment dated 12.5.89 passed in GL No 105/87 without
providing any reasonable opportunity to the applicants.
It is also prayed that directions be issued to the

respondents to continue to pay SDA to the applicant with order dated 12.5.89 and order dated 2.11.90 passed in OA-7/99.

3. In the connected OA No. 29/2003 the applicant is stated to be aggrieved of discontinuation of payment of SDA which is payable to the applicant in terms of the OM dated 14.12.1983, 1.12.1988 and 27.7.98 as well as in the light of the judgment given by the Tribunal dated 28.6.90 which was subsequently confirmed by the Apex Court in SLP preferred by the respondents.

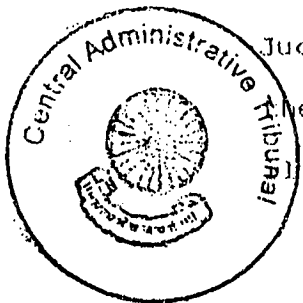
4. Facts in brief are that in both the cases applicants who belong to North Eastern region are working under the respondents as they had been recruited there. But they are working under the Govt. of India and their job is also liable to be transferred anywhere in India.



5. Govt. of India, Ministry of Defence, Department of Expenditure has issued a memorandum dated 14.12.1983 granting certain improvements and facilities to those Central Govt. Civilian employees working in the North Eastern region, according to which a SDA had been granted to Civilian employees of the Central Govt. This was @25% of the Basic Pay subject to the ceiling of Rs.400/- p.m. initially, which was also revised subsequently. After the issue of this office memorandum the applicant alongwith other employees approached the competent authority for grant of SDA but the same was denied to the applicants so they filed an OA which was registered as GC No. 105/87 Sh. R. Datta Choudhury and

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others vs. Union of India and others. The same was contested by the respondents, however, it was allowed on 12.5.89 in favour of the applicants. Pursuant to the judgment given by the Tribunal the respondents implemented the judgment and started paying SDA. Applicant thereafter was transferred from one office to another office under the Central Govt. and still working as Assistant Accounts Officer. However, Resp. No.4, the Executive Engineer of Central Water Commission under whom the applicant is now presently working issued an order dated 26.8.2002 for recovery of SDA paid to the applicants in 20 instalments commencing from 1.8.2002 which stated that the said order of recovery is illegal.



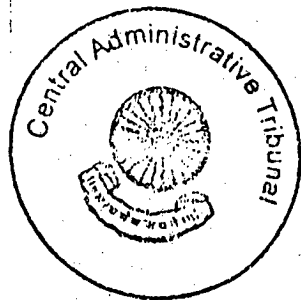
Judgment of the Tribunal in OA-105/87 is still in force. Therefore, the action of the respondents is arbitrary and illegal.

6. It is further stated that in the similar circumstances another applicant who was co-applicant alongwith applicant in OA-105/87 had also approached this Tribunal against the order of discontinuation and recovery of SDA when he filed OA No.7/99. The said OA was also allowed and respondents were directed to continue to pay SDA to the applicant of OA-7/99.

7. The same are the facts of OA-29/2003 and in his case when earlier OA was allowed for grant of SDA, department has gone in a SLP before the Hon'ble Supreme Court but the SLP was dismissed in limine.

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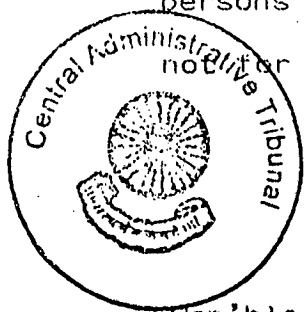
8. Respondents are contesting the OA. Respondents admit that the Govt. of India, Ministry of Finance, New Delhi vide office memorandum dated 14.12.85 brought out a scheme extending facilities of SDA to the Central Govt. employees serving in North Eastern Region. It is further stated that after some time some departments sought clarification about the applicability of the said OM. Then Govt. of India issued another OM dated 20.4.87 wherein it was mentioned that the instances have been brought to the notice of the Govt. of India that SDA has been allowed to Central Govt. employees serving in the North East Region without fulfillment of the condition of all India transfer liability which is against the spirit of the orders on the subject. For the purpose of sanctioning SDA, the all India transfer liability of the members of any service/cadre or incumbents of any posts/group of posts has to be determined by applying the tests of the recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all India basis and whether promotion is also done on the basis of the all India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of SDA.



9. Another OM was issued on 1.12.88 but in the meanwhile several cases were filed in the Court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court.

[6]

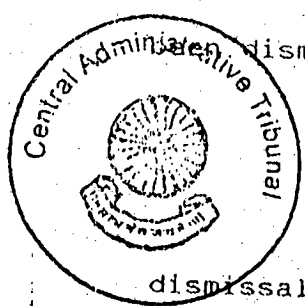
Hon'ble Supreme Court in Union of India and others vs. Vijoy Kumar and others upheld the Tribunal's judgment that only those employees who were posted on transfer from outside to the North East Region were entitled to grant of SDA on fulfilling the criteria as in OM dated 20.4.87. Such SDA was not available to the local resident of the North East Region. Thus, it is submitted that incentives granted by the said OM are meant for the persons posted from outside to North Eastern Region and not for local residents of the said defined region.



10. It is further stated that similarly Hon'ble Supreme Court in another judgment dated 7.9.95 in case of Union of India and others vs. Geological Survey of India employees' Association and others held that the Group C and D employees who belong to the North East Region and whose transfer liability is restricted to their region only, they do not have all India transfer liability and consequently, they are not entitled to grant of SDA. On the same lines there is another judgment of Hon'ble Supreme Court Sadhan Kumar Goswami and others vs. Union of India and others where Hon'ble Supreme Court again put reliance on the earlier decision as in S.Vijoy Kumar case held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D and there is no distinction.

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11. We have heard the learned counsel for the parties and gone through the record. There is no dispute to the fact that office memorandum was issued granting certain facilities to the Central Govt employees serving in the North Eastern Region and as regards the facilities of SDA is concerned, the same was allowed to certain employees and to these applicants it was allowed after they had gone to the Tribunal by filing an OA. Against the judgments given by the Tribunal the department had also filed an SLP before Hon'ble Supreme Court. Though various other SLPs were decided in favour of Government but in the case of the applicant SLP has been dismissed in limine.

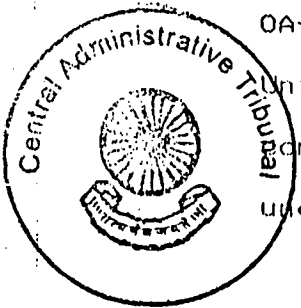


12. Now the question arises that after the dismissal of the SLP filed against the applicants, can the Govt. resort to recover the amount of SDA paid to the applicants. Learned counsel appearing for the respondents submitted that since the law as laid down in Vijoy Kumar's case by the Supreme Court of India it has been categorically held that the criteria for grant of SDA is just not the condition mentioned in the appointment letter that the employee has an all India transfer liability but it has to be examined in the light of the judgment in Vijoy Kumar's case and it is to be seen that employee is a resident of North Eastern Region and his transfer liability remains within the zone then he cannot be given the facility of SDA. So based on the judgment of Vijoy Kumar's case the respondents have

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discontinued paying the SDA to the applicants and had also started recovery proceedings for the amount already paid to the applicants under SDA.

13. But on the contrary counsel appearing for the applicant submitted that once the criteria has been fixed and the matter had gone up to the Hon'ble Supreme Court the department cannot recover the amount paid to the applicants nor the department can discontinue to make the payment to particular employees as the department has lost their case upto the Supreme Court. On this issue counsel for applicant has also referred to a judgment in OA-189/1996 titled as Sh. K.C.Sharma and others vs. Union of India and others. The Court upholding the contention of the applicants in the said case observed as under:-



"(I)it is now to be seen whether the applicants are entitled to get the SDA. This Tribunal cannot pass any order reviewing order passed earlier by this Tribunal as the Supreme Court had dismissed the SLP against the said order of the Tribunal. Therefore, we agree with the submissions of Mr. Sarkar that the applicants are entitled to get the SDA on the basis of the judgment passed by this Tribunal in OA-208/91. In view of the above circumstances the Annexure 3 OM dated 12.1.96 shall not have any effect so far the present applicants are concerned, unless the Supreme Court reviews the order dated 8.2.91 passed by this Tribunal in OA No.208/91. Therefore, we set aside the Annexure 5 order. The applicants shall continue to get the SDA."

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14. It is not disputed in these two cases that, the judgment on the basis of which applicants have been paid SDA, department has gone to Hon'ble Supreme Court in an SLP and those SLPs have been dismissed. So it is not open for this Tribunal to review the order passed by the Tribunal particularly so when the SLP filed against the order of the Tribunal has already been dismissed by the Hon'ble Supreme Court. Thus, we find that the OA deserves to be allowed. We order that no recovery shall be effected from the applicants, if any amount had already been recovered that shall be refunded to the applicants and department shall continue to pay SDA to the applicants. Both the OAs are accordingly disposed of.



Sd/MEMBER(J)

Sd/MEMBER(A)

Certified to be true Copy
प्रमाणित प्रतिलिपि

(Signature)
Section Officer (J)
C.A.T. GUWAHATI BRANCH
Guwahati-781005
12/5/04

To

The Executive Engineer,
North Eastern Inv. Divn No. I,
Central Water Commission,
Jalbikashpur, Rongpur-I,
Silchar-9.

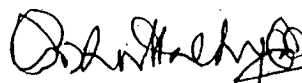
Sub: Submission of Certified copy of the Judgment of Honorable Central Administrative Tribunal: Guwahati Bench in respect of OA No. 124/2003.

Sir,

I am submitting herewith certified copy of the Judgment of Honorable Central Administrative Tribunal: Guwahati Bench in respect of OA No. 124/2003 for favour of early implementation of the judgment..

Enclosure: As stated above.

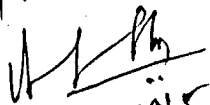
Yours faithfully,



(R. Bhattacharjee)

Asstt. Accounts Officer, NEID-I & Applicant
in respect of O.A.No.124/2003

Received with
a copy of the
judgment in
OA no 124/2003.



19/5/04

RECEIVED
NORTH EASTERN INV. DIVN. NO. I
CENTRAL WATER COMMISSION
JALBIKASHPUR, RONGPUR-I
SILCHAR-9