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**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 124/2003

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FROM No. 4  
(SEE RULE 42 )

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 124/2003/

Mise Petition No: \_\_\_\_\_

Contempt Petition No: \_\_\_\_\_

Review Application No: \_\_\_\_\_

Applicants: - Mr. R. Bhattacharjee

Respondents: - Union of India & Ors.

Advocate for the Applicants: - Mr. M. Chander, Mr. G.N. Chakrabarty

Advocate for the Respondents: - Mr. S. Nath,

C.G.S.C.

Notes of the Registry	Date	Issue	Order of the Tribunal
	6.6.2003	Heard Mr. G.N. Chakrabarty, learned counsel for the applicant.	
		Issue notice to show cause as to why the application shall not be admitted.	
		Retunrable by four weeks.	
86-490733 26-5-03 Ap. Register By		Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents is requested to obtain necessary instructions on the matter positively on the next date.	
		List again on 11.7.2003 for admission.	
Steps taken with Envelop.			Vice-Chairman
	mb		
	11.7.2003	On the prayer of Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents four weeks time is allowed to file written statement.	
Notice prepared & sent to 5/6/03 S/s for giving the respondent No 1 to 4 by Regd. A.D.		List again on 12.8.2003 for admission.	
DINo 12871692			Vice-Chairman
Dd 10/7/03			
Dr 10/7/03	mb		

12.8.2003 List again on 22.8.2003 to enable the respondents to obtain instruction on the matter.

Vice-Chairman

mb

22.8.2003 The respondents are yet to file written statement. On the prayer of Mr. B.G. Pathak, learned Addl. C.G.S. C. for the respondents four weeks time is allowed to file written statement.

List on 26.9.2003 for written statement and further orders.

Vice-Chairman

mb

26.9.2003 The respondents are yet to file written statement. List again on 7.11.2003 to enable the respondents to file written statement.

Issue notice to show cause as to why interim order as prayed for shall not be granted?

As per court's order  
dated 6/6/03 notice already  
sent to the respondents  
via despatch no. 1289  
1292 dated 10/6/03.

mb

Vice-Chairman

W.S.  
26/9/03

28. 10. 03

W.S. Submitted  
to the respondents.

8x8x2888

2.1.2004

The O.A. is admitted and fix it for hearing on 16.2.2004. Meanwhile,

Order dt. 2/1/04, Sent  
to D/Section for  
issuing L/Advocates  
both the parties.

*(os)*  
8/1/04

2.1.2004

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

The O.A. is admitted and list  
it for hearing on 16.2.2004. Meanwhile  
recovery of SDA shall be stayed.

Member (A)

mb

16.2.2004

Adjourned and again listed on  
10.3.2004 for hearing.

W/B has been  
filed.

*My*  
29.3.04

Member

bb  
10.3.2004

List before the next available  
Division Bench alongwith SDA matters.

Member (A)

mb

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

The Hon'ble Sri K.V. Prabhakar  
Administrative Member.

Heard learned counsel for the parti-  
es. Hearing concluded. Judgment reserved.

Member (A)

Member (J)

pg

14.5.2004

Judgment delivered in open Court,  
kept in separate sheets. The application  
is disposed of. ~~XXXXXX~~

Member (A)

mb

On the 29th of May, 2003 and on 17/6/2003.

New Delhi, this the 14th day of May, 2003.

HON'BLE MR. CHIEF JUSTICE, SINGH, CHIEF JUSTICE,  
THE 14TH MAY, 2003.

OA 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 (Acting)  
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 Bhattacharjee  
Assistant Accounts Officer,  
Office of the Executive Engineer,  
North Eastern Investigation Division,  
Rongpur Part 1, P.O. Sitalpur,  
District-Cachar,  
Assam.

Applicant

By Advocates: S/Shri M. Chanda, G.N. Chakravorty 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 Dachar, Assam. Respondents

By Advocate: Shri H. C. Pathak, Learned Additional Central  
Government Standing Counsel.

ORDER

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

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

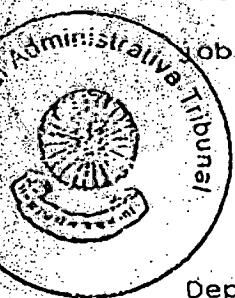
2. In OA-124/2003 applicant has assailed an order dated 26.8.2002 passed by Executive Engineer, Central Water Commission, Silchar whereby he has ordered recovery of Special Duty Allowance (SDA, for short) which has been paid to the applicant to be effected from the applicant and also against the decision of the respondents for discontinuation of SDA in total disregard of judgment dated 12.5.82 passed in G.O. No. 105/82 without providing any reasonable opportunity to the applicants.

It is also prayed that directions be issued to the

pondents to continue to pay SDA to the applicant with order dated 12.5.82 and order dated 2.11.1980 passed in OA-7/99.

3. In the connected case 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 22.7.98 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. Dutta Choudhury and

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. The right 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.

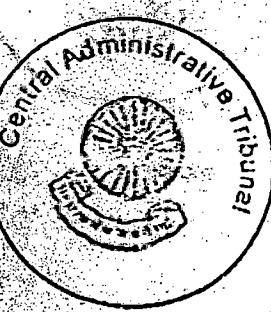
6. It is further stated that in the similar circumstances another applicant who was co-applicant alongwith applicant in OA-105/87 had also approached this Tribunal against the order of discontinuation and recovery of SDA when he filed OA No.7/99. The said OA was also allowed and respondents were directed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

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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 10.10.85 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.

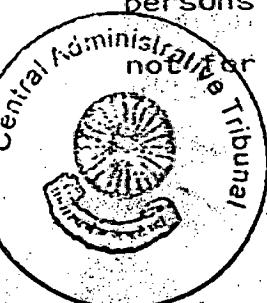
9. Another OM was issued on 1.12.88 but in the meanwhile several cases were filed in the Court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court.



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 critteria 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.



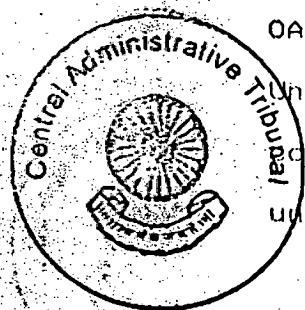
12. Now the question arises that after the dismissal of the SLP filed against the applicants, can the Govt. resort to recover the amount of SDA paid to the applicants. Learned counsel appearing for the respondents submitted that since the law as laid down in Vijoy Kumar's case by the Supreme Court of 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."



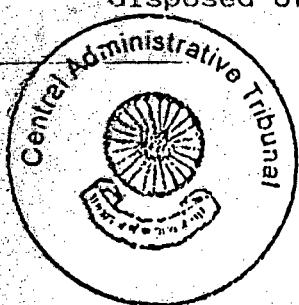
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14. It is not disputed in these two cases that, the judgment on the basis of which applicants have been paid SOA, department has done to Hon'ble Supreme Court in an SLP and those SLPs have been dismissed. So it is not open for this Tribunal to review 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 applicant. If any amount had already been recovered that shall be refunded to the applicants and department shall continue to pay SOA to the applicants. Both the OAs are accordingly disposed of.

Sd/MEMBER(J)

Sd/MEMBER(A)



Certified to be true Copy  
ক্ষমতা প্রদত্ত ক্ষমতাপ্রাপ্তি

(J. S. Malhotra)  
Section Officer 17/5/04  
C.A.T. GUWAHATI BANCH  
Guwahati-781005  
17/5/04  
YES

To

The Executive Engineer,  
North Eastern Inv.Divn No.1,  
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.

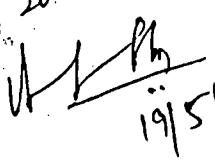
Enclosure: As stated above.

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

NEED-1  
North Eastern Inv. Divn No.1  
C.W.C. Rongpur, Assam  
Jalbikashpur, Rongpur-I  
Silchar-9

5<sup>th</sup> JUN 2003

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

Filed by the Applicant  
Mr. Jeet Singh  
Subrata Nath  
Advocate.  
Guwahati 27/6/03.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

D.A. No. 124/2003

Sri Ramjyoti Bhattacharjee

-vs-

Union of India & Ors.

14.12.83 Govt. of India, Department of Expenditure, Ministry of Finance, issued an O.M. granted certain benefits to the Central Government Civilian employees working in the North Eastern region with all India transfer liability. One of such benefit is special duty allowance at the rate 25% of the Basic pay. The rate of Special Duty Allowance was subsequently modified to the extent at the rate of 12 and half percent of basic pay by the O.M. dated 1.12.1988 and 22.7.1998.

12.5.89 The applicant along with others approached this Hon'ble Tribunal being aggrieved by the decision of the respondents for non payment of Special Duty Allowance through G.C. No. 105/87 and the said O.A. was disposed of on 12.5.89 declaring that the applicants of the said O.A. is entitled to draw Special Duty Allowance.

9.10.89 That the entitlement of Special Duty Allowance so far the present applicant is concerned was further confirmed by the Principal Accounts Officer, Ministry of Steel and Mines, through its letter dated 9.10.1989.

2.11.00 That under the similar circumstances this Hon'ble Tribunal in O.A. No. 7 of 99 (Sri Tushar Kanti Paul Vs. Union of India & Ors.) passed its order on 2.11.2000 in favour of that applicant declaring that he is entitled to draw Special Duty Allowance and also directed those respondents to continue to pay SDA to that applicant.

26.08.02 That the applicant was transferred and posted from the office of the Pay and Accounts Office, GSI, Shillong to the Central Water Commission, North Eastern Investigation No.1, Jalbikashpur, Silchar, Cachar, Assam. The applicant is still working there as Assistant accounts Officer. But most surprisingly the respondent No.4 namely Shri K.K.IJangid, the Executive Enginee, Central Water Commission, North Eastern Investigation Division No.2, Jalbikashpur, Silchar issued an Office Order for recovery of Special Duty Allowance paid to the applicant in 20 instalments commencing from August 2002. The said office order issued in total disregard to the judgment and order passed in GC No. 105/87.

P R A Y E R

- 8.1 That the impugned order issued under letter no.NEID-I/GC-2/6450-60, dated 26-8-2002, be set aside and quashed.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to payment of Special Duty Allowance in terms of O.M. dated 14.12.1983, 1.12.1998, 22.7.98, and in terms of Judgement and order dated 12.05.1989 passed in G.C. No. 105/87 and also in terms of judgment and order dated 2.11.2000 passed in O.A. No. 7 of 1999 (Sri Tushar Kanti Paul Vs. U.O.I. & Ors.).
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to continue to pay Special Duty Allowance to the applicant in terms of the Judgment and order dated 12.05.1989 passed in G.C. No. 105 of 1987 with immediate effect from the date of its discontinuation i.e. with effect from 6.10.2001 with arrear monetary benefits and further be pleased to direct the respondents to refund the amount of SDA which have already been recovered from the salary of the applicant.
- 8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.
- 8.5 Costs of the application.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case:

O. A. No 124 /2003

Sri Ramjyoti Bhattacharjee:

Applicant

- Versus -

Union of India & Others:

Respondents.

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Filed

by

*Ramjyoti Bhattacharjee*

Filed by the Applicant  
through  
Subroto Nath,  
Advocate,  
S. No. 18  
27/05/03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative  
Tribunals Act, 1985)

O. A. No. 124 /2003

**BETWEEN**

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

...Applicant

**-AND-**

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,  
Minstry of Water Resources,  
Shastri Bhawan, New Delhi.

*Ramjyoti Bhattacharjee*

4. The Executive Engineer,  
Government of India  
Central Water Commission,  
North Eastern Investigation Division No.1  
Jalbikashpur, Silchar. District-Cachar, Assam.

...Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned Office Order dated 26.8.2002 issued by the Executive Engineer, Central Water Commission, Silchar, Cachar whereby recovery of SDA is effected and also against the decision of discontinuation of Special Duty Allowance in total disregard to the judgment and order dated 12.05.1989 passed in G.C. No. 105/87 that too without providing any reasonable opportunity to the applicant and praying for a direction to the respondents to continue to pay Special Duty allowance to the applicant in terms of the judgment and order dated 12.5.1989 passed in G.C. No. 105/87 and judgment and order dated 2.11.2000 passed in O.A. No. 7 of 1999.

2. Jurisdiction of the Tribunal.

*Dananjayti Datta Chakraborty*

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

**3. Limitation.**

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

**4. Facts of the Case.**

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the applicant is presently serving as Assistant Accounts Officer in the office of the Executive Engineer, North Eastern Investigation Division, Central Water Commission, Rongpur Part-I, Silchar, Assam.
- 4.3 That the applicant while serving in the office of the Pay and Accounts Office (in short PAO), Geological Survey of India, Shillong, Government of India, Ministry of Finance, Department of Expenditure, issued an Office Memorandum under letter No. 20014/3/Estt.IV dated 14.12.1983 granting certain improvements and facilities to the Central Government Civilian Employees serving in the North Eastern Region. As per the said Office Memorandum, the Special (Duty) Allowance (in short SDA) has been granted to the civilian employees

*Ranongjoti Bhattacharya*

of the Central Government who are saddled with All India Transfer Liability. The relevant portion of the O.M. dated 14.12.1983 is quoted below:

"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, 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 and Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of civilian Central Government employees serving in the 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:

(iii) Special Duty Allowance

Central Government civilian employees who have All India transfer liability will be granted Special (Duty) Allowance at the rate of 25 percent of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempt from payment of income tax, will however,

*Ranongjali Bhattacharya*

not be eligible 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 will not exceed Rs. 400/- P.M. Special Allowances like Special Compensatory (Remote Locality) allowance, Construction Allowance and Project Allowance will be drawn separately."

After the issuance of the aforesaid Office Memorandum the applicant along with other employees of the office of the Pay and Accounts, Geological Survey of India, Shillong approached the competent authority for grant of the said SDA. However the same was denied to the applicant as well as to the other employees of the office of the Pay and Accounts. Being highly aggrieved by the decision of non payment of SDA the present applicant alongwith other employees of the Pay and Accounts Office, Shillong had filed an Original Application under Section 19 of the Administrative Tribunals Act, 1985 before the Hon'ble Central Administrative Tribunal, Guwahati Bench and the same was registered as GC No. 105/87 (Sri R. Dutta Choudhury & Ors. Vs. U.O.I & Ors.). The respondents duly contested the said Original Application. However, finally the said Original Application was decided on 12.5.1989 in favour of the applicants.

*Ranmoyish Bhattacharya*

A copy of the judgment and order dated 12.5.1989 passed in O.A. No. 105/87 is annexed hereto and marked as **Annexure-1**.

4.4 That pursuant to the said judgment and order dated 12.5.89 passed by the Guwahati Bench where the present applicant was one of the applicants out of the 12 applicants of Pay and Accounts Office, GSI, Shillong. The said decision of the Hon'ble Tribunal was accepted and implemented by the respondents and in compliance of the aforesaid judgment and order the applicant was allowed to draw SDA from the respective date of his joining in service. It is pertinent to mention here that the respondents never challenged the said decision before the Hon'ble Supreme Court at any point of time rather they have accepted and implemented the said judgment.

. A copy of Extract of the O.M. dated 14.12.1983, is annexed as **Annexure 2**.

4.5 That the present applicant was thereafter transferred and posted from the office of the Pay and Accounts Office, GSI, Shillong to the Central Water Commission, North Eastern Investigation No.1, Jalbikashpur, Silchar, Cachar, Assam. Thereafter, the applicant started discharging his duties as Assistant Accounts Officer, in the office of the Executive Engineer, North Eastern Investigation Division, Rongpur Part-I, Silchar

*Ranajyoti Borthakur*

and he is still working there as Assistant Accounts Officer. It is pertinent to mention here that although the present applicant is posted to Central Water Commission, in fact he belongs to the Department of Expenditure, Government of India, Ministry of Finance under the office of the Controller General of accounts. Mention has to be made also that the present applicant was a party in the GC No. 105/87 (Sri R. Dutta Choudhury & Ors. Vs. U.O.I. & Ors) and he was allowed to draw SDA continuously in terms of Office Memorandum dated 14.12.1983, 1.12.1988 and 22.7.1998 issued by the Government of India, Ministry of Finance, Department of Expenditure from time to time on the basis of the clarifications given by the appropriate authorities.

4.6 That your applicant further begs to state that the judgment and order dated 12.5.1989 passed in G.C. No. 105/87 (R. Dutta Choudhury & Ors Vs. U.O.I & Ors) was accepted and implemented by the respondents and the validity of the judgment and order was never questioned at any point of time.

4.7 That But most surprisingly, the respondent no.4 namely Shri K.K. Jangid, the Executive Engineer, Central Water Commission, North Eastern Investigation Division No.1, Jalbikashpur, Silchar issued an Office Order No. NEID-1/GC-2/6450-60 dated 26.8.2002 for recovery of Special Duty Allowance paid to the applicant in 20 installments commencing from August 2002. The said office order has

*Damayanti Dutt Choudhury*

been issued in total disregard to the judgment and order passed in GC No. 105/87 by the Hon'ble Tribunal, which is still in force. Therefore the action of the respondent no.4 is arbitrary, illegal and unfair. The decision of withholding and recovery of SDA in respect of the applicant has been taken by the respondent no.4 without considering that the applicant is entitled to the payment of SDA in terms of the Office Memorandum dated 14.12.1983, 1.12.1988 and 22.07.1998 as well as in the light of the Hon'ble Tribunal's judgment and order dated 12.5.1989 passed in G.C. No. 105/1987. Therefore, the impugned order of recovery-dated 26.8.2002 is liable to be set aside and quashed.

A copy of the Office order dated 26.8.2002 and O.M. dated 29.5.2002 are annexed herewith as Annexure-3 and 4 respectively.

4.8 That it is stated that the respondent no.4 after receipt of the Office Memorandum No. 11 (3)/97-E. II(B) dated 29.5.2002, has stopped the payment of the SDA and issued an office order No. NEID-1/GC-2/6450-60, dated 26.8.2002 for recovery of Special Duty Allowance paid from 06.10.2001 to 30.6.2002 in total disregard to the Hon'ble Central Administrative Tribunal's judgment and order dated 12.5.1989 in O.A. No. 105/87 where the present applicant was a party. Since the Government of India has accepted and implemented the judgment and order dated 12.5.1989 therefore the impugned order

*Ramnigal Dantwala*

dated 26.8.2002 is liable to be set aside and quashed. The instant case of the applicant is quite different and the same is not correct by the O.M. dated 29.5.2002, as such Office Order dated 26.8.2002 is liable to be set aside and quashed.

4.9 That it is stated that the entitlement of Special Duty Allowance, so far the applicant is concerned, has already been settled by a judicial order passed by a competent court of law and the said order was further confirmed by the Principal Accounts Officer, Ministry of Steel and Mines, through its letter dated 9th October, 1989. Therefore, the impugned order of withholding the payment of SDA and the order of recovery of SDA is liable to be set aside and quashed.

A copy of the letter dated 9th October, 1989 has been enclosed and marked as **Annexure-5**.

4.10 That it is stated that under the similar circumstances Shri Tushar Kanti Paul who was also a party in G.C. No. 105/87 along with the present applicant approached this Hon'ble Tribunal against the order of discontinuation and recovery of SDA through O.A. No. 7 of 1999 (Sri Tushar Kanti Paul Vs. Union of India & Ors.). However, this Hon'ble Tribunal passed its order on 2.11.2000 in favour of the applicant, directing to continue to pay SDA to the applicant of O.A. No. 7 of 1999.

*Danmoyjoti Bhattacharya*

Copy of the judgment and order-dated 2.11.2000 has been enclosed and marked as Annexure-6.

4.11 That as a result of the order of denial of payment of Special Duty Allowance and also for the impugned order of recovery of Special Duty Allowance already paid, the applicant is incurring a huge financial loss each and every month even every day and as such the recurring cause of action is arising each and every day and the same will continue till the payment is made to the applicant. In the compelling circumstances, the applicant is praying for a declaration from this Hon'ble Tribunal regarding his entitlement of Special Duty Allowance and also praying for a direction to the respondents to continue to pay him Special Duty Allowance with effect from the date of its discontinuation.

4.11 That this application is made bonafide and for the cause of justice.

**5. Grounds for relief(s) with legal provisions.**

5.1 For that, the entitlement of Special duty Allowance so far present applicant is concerned, has already been settled by this Hon'ble Tribunal in its judgment and order dated 12.5.1989 in O.A. No. 105/87.

5.2 For that the respondents i.e. Union of India have accepted and implemented the judgment and order dated

*Ramgopal Dutt Acharya*

12.5.1989 passed in G.C. No. 105/87 and the validity of the same had never been questioned at any point of time before any authority of law, as such the Judgment has already attained its finality.

5.3 For that, willful violation of the judgment and order passed in G.C. NO. 105/87 which is still in force on the plea of Executive Order issued by the Govt. of India, Ministry of Finance dated 29.5.2002 which has no bearing with the entitlement of SDA of present applicant.

5.4 For that, the order passed by respondent No.4 is in total disregard to the judgment and order passed in O.A. No. 105/87, which amounts to contempt of court.

5.5 For that, the Hon'ble Tribunal has already decided similar issue in its judgment and order dated 12.11.2000 in O.A. No. 7 of 1999 (Sri Tushar Kanti Paul Vs. U.O.I. & Ors.) that since the Tribunal has already passed an order which has attained finality, the question of challenging the wisdom of the order by the Administration is not permissible and therefore the action of the respondent no.4 is highly arbitrary and the same is contrary to law.

5.6 For that, the present respondents have no jurisdiction to withhold the payment of Special Duty Allowance to the applicant and as such, the action of the respondents in withholding payment of Special Duty

Ranayjoti Datta Ray

Allowance to the present applicant amounts to contempt of court.

- 5.7 For that, the respondents have no jurisdiction to withhold the payment of Special Duty Allowance to the applicant and as such, the action of the respondents in withholding payment of Special Duty Allowance to the present applicant amounts to contempt of court.
- 5.8 For that, the illegal and arbitrary decision of stoppage and order of recovery of SDA has been taken by the respondent No.4 with an ulterior motive knowing fully well about the judgment and order dated 12.5.1989 passed in G.C. No. 105/87 and also the judgment and order dated 2.11.2000 passed in O.A. No. 7 of 1999.
- 5.9 For that, impugned order of stoppage and recovery of SDA has been issued without affording opportunity to the applicant therefore the impugned order dated 26.8.2002 is liable to be set aside and quashed.
- 5.10 For that, the applicant is meted out with differential treatment amongst the similarly situated applicants of G.C. No. 105/87 (Sri R.Dutta Choudhury & Ors. Vs. U.O.I. & Ors.).
- 5.11 For that, there is no mention about the judgment and order dated 12.5.89 passed in G.C. No. 105/87.

*Ranajyoti Borthakur*

5.12 For that, the impugned order withholding the payment of SDA and recovery of the SDA already paid to the applicant caused irreparable mental agony and financial loss to the present applicant.

5.12 For that, the judgment and order passed by the Hon'ble Tribunal in G.C. No. 105/87 is still in force.

6. Details of remedies exhausted.

That the applicant states that he had no scope to submit any representation as the payment of SDA has been effected without affording any opportunity to the applicant. In this view of the matter, the applicant has no other alternative and efficacious remedy and the relief sought for herein above if granted will be just and proper.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the

*Ramgopal Bhattacharyya*

case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the impugned order issued under letter no.NEID-I/GC-2/6450-60, dated 26-8-2002, be set aside and quashed.
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to payment of Special Duty Allowance in terms of O.M. dated 14.12.1983, 1.12.1998, 22.7.98, and in terms of Judgement and order dated 12.05.1989 passed in G.C. No. 105/87 and also in terms of judgment and order dated 2.11.2000 passed in O.A. No. 7 of 1999 (Sri Tushar Kanti Paul Vs. U.O.I. & Ors.).
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to continue to pay Special Duty Allowance to the applicant in terms of the Judgment and order dated 12.05.1989 passed in G.C. No. 105 of 1987 with immediate effect from the date of its discontinuation i.e. with effect from 6.10.2001 with arrear monetary benefits and further be pleased to direct the respondents to refund the amount of SDA which have already been recovered from the salary of the applicant.

*Ramnigam Bonthala*

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

8.5 Costs of the application.

**9. Interim order prayed for.**

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to stay the operation of the impugned order dated 26.8.2002 and further be pleased to direct the respondent to pay SDA to the applicant in terms of the judgment and order dated 12.5.1989 passed G.C. No. 105/87.s

**10. .....**

This application is filed through Advocates.

**11. Particulars of the I.P.O.**

- i) I. P. O. No. : 8G 490733 ,
- ii) Date of Issue : 26. 5. 2003 ,
- iii) Issued from : GPO. Gvrahati
- iv) Payable at : GPO. Gvrahati ,

**12. List of enclosures.**

As given in the index.

*Ramgopal Bhatia*

### VERIFICATION

I, Shri Ramjyoti Bhattacharjee, aged about 40 years, working as Assistant Accounts Officer, office of the Executive Engineer, North Eastern Investigation Division, Central Water Commission, Rongpur Part I, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 26<sup>th</sup> day of May, 2003.



CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

G. C. 105 of 1987

Present : Hon'ble Mr. A. P. Bhattacharya, Judicial Member  
Hon'ble Mr. J. C. Roy, Administrative Member

RANENDU DUTTA CHOUDHURY & ORS

VS

UNION OF INDIA & ORS

For the applicants : Mr. K. B. Paul, counsel

For the respondents : Mr. S. Ali, Sr. C.G.S.C.

Heard on : 11.5.1989 : Judgement on : 12.5.89

JUDGEMENT

A.P.Bhattacharya, J.M.

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Ranendu Dutta Choudhury and 11 others against the Union of India, represented by the Secretary, Ministry of Steel and Mines and four others.

2. The applicants are Central Government employees belonging to Central Civil Accounts Service (Group C) cadre. They carry with them All India transfer liability and in their appointment letters it was specifically stipulated. Govt. of India, Ministry of Finance, Deptt. of Expenditure, by its memorandum dated 14.12.1983 had sanctioned certain allowance known as Special (Duty) Allowance at the rate of 25% of the basic pay subject to the maximum of Rs. 400/- per month with effect from 1.11.1983 to all civilian employees of the Central Government serving in the States and in the Union Territories of North Eastern Region carrying all India Transfer liability. It is their contention that they are entitled to get that benefit. By its letter dt. 16.8.1984, the Accounts Officer, quoting the Ministry of Finance letter dt. 8.8.84 wrote to the Pay & Accounts Officer, Geological Survey of India, Shillong, that the Special (Duty) Allowance would not be admissible to the Group B, C and D

*W. H. Steele  
27/5/83*

officials of departmentalised accounts office appointed to Central Govt. Service and continuing to work in North East region. Thereafter, a representation was made by the applicants to the Controller of Accounts, Principal Accounts Office, New Delhi, for reconsideration of the matter in reply to which respondent No. 4 intimated the applicants that such benefit would not be admissible to them. Being aggrieved by that decision, the applicants have filed the present application for issuing direction on the respondents so that Special (Duty) Allowance is paid to applicant Nos. 3 to 6 and 8 to 12 with effect from 1.11.83 and to applicant Nos. 1, 2 & 7 with effect from 27.2.84, 29.4.84 and 26.7.84 respectively i.e. from the dates of their appointment and posting in North Eastern Region.

3. The application has been contested by the respondents. It is the main contention of the respondents that the applicants, merely on the mention in their appointment letters that they would have All India transfer liability, are not entitled to get Special (Duty) Allowance. According to the respondents, All India transfer liability has got to be determined by applying the test of recruitment zone, promotion zone etc. as clarified by the Govt. of India, Ministry of Finance, Deptt. of Expenditure by its O.M. dt. 20.4.87. It is the version of the respondents that the ~~benefit~~ fact whether a particular official is actually transferred outside the zone of recruitment would be the guiding factor for granting Special (Duty) Allowance.

4. The only question to be decided in this case is whether the applicants of the present case are entitled to get Special (Duty) Allowance at the rate of 25% of their basic pay subject to the ceiling of Rs. 400/- per month on the basis of the office Memorandum dated 14.12.83 issued by the Govt. of India, Ministry of Finance, Department of Expenditure. Under that Memorandum, Central Govt. civilian employees who have All India transfer liability will be granted Special (Duty) allowance at the rate of 25% of their basic pay subject to the ceiling of Rs. 400/- per month on posting to any station in the North Eastern region.

5. Earlier there was a difference of opinion on the self-same point between the Guwahati Bench and the Calcutta Bench of the Central Administrative Tribunal. In O.A20-A&N of 1987, the Calcutta Bench of this Tribunal passed a judgement on 13.1.88 where the applicants were granted Special (Duty) Allowance. Subsequently, in G.C. No. 145 of 1986, such claim of the applicants of that case was refused by the Guwahati Bench on the ground that if a Central Govt. employee carrying All India transfer liability was not transferred outside the region from the region where he was originally appointed, he would not be entitled to get the said Special (Duty) Allowance. In arriving at such a conclusion the Guwahati Bench mainly relied on the letter dt. 12.4.84 circulated by the Director General of Works in consultation with the Ministry of Finance, Govt. of India and letter dated 28.9.84 circulated by the Cabinet Secretariat with the concurrence of the Ministry of Finance and on another letter issued by the Cabinet Secretariat on 17.7.85. As there was a difference of opinion a Full Bench was constituted by the Hon'ble Chairman, Central Administrative Tribunal. On 10.4.84 O.A. 16-A&N/1988, O.A. 17-A&N/1988 and O.A. 18-A&N/1988 were heard and after due deliberations the Full Bench delivered its judgement on 12.4.1989 where such Special (Duty) Allowance was found admissible to the applicants of those cases. The applicants of those cases were Central Govt. employees carrying with them All India transfer liability. Although those applicants had never been transferred outside the region where they were originally appointed, such allowance was found admissible to them. The Full Bench was of the view that when Central Govt. employees carry ~~themselves~~ with them All India transfer liability, Govt. of India had no reason to make the benefit of Special (Duty) Allowance available to certain class of employees and make it non-available to certain others. The Full Bench also held that the classifications made by the Govt. of India by its letters dt. 12.4.84 and 28.9.84 were wholly unreasonable and discriminatory. Accepting the said decision of the Full Bench, we are of the

opinion that when at the time of their appointments it was made clear to the applicants of this case in no uncertain term that they would be liable to be posted and transferred any where in India and when taking that liability on themselves they joined their service, the grant of Special(Duty) Allowance cannot be denied to them merely because they have not been transferred outside the region since their appointments. We hold that refusal to grant such allowance to them on this ground would be wholly discriminatory. We agree with the decision of the Full Bench that transfer of these applicants outside the region is a matter resting on the Administration. <sup>the fact that</sup> As they have never been transferred outside the region where they were originally appointed, in would not cease their liability of serving any part of India. We think that such liability still exists and can be give effect to by the administration as and when required in the interest of the administration. The classifications made by the memorandums mentioned above is not founded on an intelligible differentia. Subsequent letters issued by the Govt. of India as mentioned above cannot be taken to have modified or circumscribed the contents and applicability of the O.M. issued in 1983 so far as the present applicants are concerned. We hold that when the conditions of service impose all India service liability on these applicants and so long that liability continues to exist and has not been revoked by an order by the competent authority, it is not open to the Govt. to deny that benefit to any employee on the ground that the all India transfer liability has not been in fact enforced. We hold that as the present applicants are equally circums- tanced with the applicants of the cases decided by the Full Bench and as they fulfil the conditions stipulated in the O.M. of 1983, they are entitled to get the Special (Duty) Allowance claimed by them.

In view of our findings made above, the application succeeds. We allow this application without, however, making any order as to costs. The respondents are directed to grant Special(Duty) Allowance as per O.M. No. 20014/3/83-E.IV, dt. 14.12.1983 issued by the Ministry of

: 5 :

Finance, Govt. of India, including arrears counting from three years before the date of institution of this case or from the date/dates they had joined their respective posts in the North Eastern region whichever is later, within four months from the date of receipt of a copy of this judgement.

sd/- J. C. Roy  
Member Adm.  
(12.5.89)

sd/- A. P. Bhattacharya  
Indr. Member  
(12.5.89)

Certified to be true copy  
R. J. John  
Deputy Registrar (A. Adm.)  
Central Administrative Tribunal  
Guwahati Bench

15.5.89

Affected  
Law Advocate  
27/05/89

Annexure-2

No.20014/2/83/B.IV  
Government of India  
Ministry of Finance  
Department of Expenditure

New Delhi, the 14th Dec'83

OFFICE MEMORANDUM

Sub : Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North Eastern Region- improvements thereof.

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

W. H. Fletcher  
Sarki. Advisor  
27/12/83

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 of 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:

xx

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 exempted from payment of Income Tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and pre-Deputation (Duty) Allowance 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.

Sd/ S.C. MAHALIK

Joint Secretary to the Government  
of India

affested  
Yakub  
27/6/03

Government of India,  
 Central Water Commission,  
 North Eastern Inv. Divn. No.1,  
 Jalbikashpur,  
 Silchar : Cachar : Assam : 788009

Annexure - 3

NO.NEID-I/GC-2/

6450-60

Dated: 26-8-02

OFFICE ORDER

In pursuance to Ministry of Finance OM No. 11(5)/97-E.II(B), dated 29-5-2002 the Special Duty Allowances paid to the following employees of this Division who do not qualify for drawal of SDA as per the criteria laid down in the aforesaid Office Memorandum, w.e.f. 6-10-2002 will be recovered in 20 instalments commencing from August 2002 as shown below.

Sl. No.	Name & Designation S/Shri/Smt.	Quantum of SDA paid w.e.f 06-10-2001 to 30-6-2002 to be recovered.	Amount recovered from the P&A for 8/2002	2 <sup>nd</sup> to 19 <sup>th</sup> instalments commencing from 9/2002 @	Last instal- ment
1	R. Bhattacharjee, AAO	8120	469	403	397
2	R.U. Choudhury, D'man Grade-I	8008	453	398	391
3	Rajesh Kumar, J.E.	5710	332	283	284
4	Madhuri Barman, UDC	5593	280	280	273
5	Rekha Dey, SK	5108	288	254	248
6	Nand Kishor, J.E.	5440	272	272	272
7	D.K. Singha, Bkz.	3740	220	185	190
8	Anil Kr. Das, Bkz.	3793	215	188	194
9	A.K. Barman, Chow.	3254	220	160	154
10	D.K. Biswas, Chow.	3868	220	192	190
11	K.K. Cheltri, Chow.	3696	220	183	182
12	Suro Singha, MVD	4989	249	249	258
13	Ajoy Kumar, MVD	3775	188	188	203
14	Lalan Sharma, MVD	3562	178	178	180
15	M. Sahabdeen, MVD	4640	232	232	232
16	B.B. Cheltri, MVD	3911	195	195	206

*Kamal Jangid*  
( K.K. Jangid )  
Executive Engineer

Copy to :-

1. The Superintending Engineer, NEIC, CWC, Shillong in continuation to this office letter No. NEID-I/GC-2/2002/5751-57 dated 26-7-2002 for information.
2. The Superintending Engineer, HOC, CWC, Guwahati. Shri S.K. Aditya, LDC was paid Rs. 4135/- towards SDA w.e.f. 6-10-01 to 7-6-02.
3. The Executive Engineer, LBD, CWC, Behrampore. Shri M. Datta Mazumder, Steno Gr.III was paid SDA amounting to Rs. 5865/- for the period from 6-10-01 to 31-7-02.
4. The Executive Engineer, NEID-II, CWC, Aizawl. The SDA paid to Shri Akhilesh Prasad, JE from 6-10-2001 to 31-5-2002 works out to Rs. 5197/-.

PTO

*Attested  
Date:  
Subtract  
affection.*

5. The Executive Engineer, MBD, CWC, Guwahati. The SDA paid to Sri B. Mazumder, MVD for the period from 6-10-01 to 30-4-02 is Rs. 4103/-
6. The Executive Engineer, MID, CWC, Shillong. The SDA paid to Sri A. Warjri, MVD for the period from 6-10-01 to 31-5-02 is Rs. 2766/-
7. The Assistant Executive Engineer, NEISD-I, CWC, East Phaileng, Mizoram.
8. Accounts Branch, NEID-I
9. Official(s) concerned.
10. Bills Clerk, NEID-I.
11. Junior Engineer (HQ), NEID-I.

F.NO.11(5)/97-E.11.(B)

Government of India

Ministry of Finance

Department of Expenditure.

New Delhi; dated the 29th May, 2002

OFFICE MEMORANDUM

**SUBJECT:** SPECIAL DUTY ALLOWANCE FOR CIVIL SERVICE EMPLOYEES OF THE CENTRAL GOVERNMENT WORKING IN THE STATE AND UNION TERRITORIES OF NORTHEASTERN REGION INCLUDING SIKKIM.

The undersigned is directed to refer to this Department's OM NO.20014/3/8-E.IV dated 14.12.83 and 20.4.87 read with OI1 NO20014/16/86-EIV/E.11 (1) date 1.22.88, and O.M.NO.11 (3)/95-/95-E.11 (E) dt.12.1.1996 on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted 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 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 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 of UOI and CAT V/S Sh. S. V. Jay 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 in the appointment order relating to All India Transfer Liability.

*Attested  
S. V. Jay Kumar  
Advocate*

4. In a recent appeal filed by Telecom Department (Civil Appeal NO.7000 2001-arising out of SLP NO.5455 of 1999) Supreme Court of India has ordered, 5.10.2001 that this appeal is covered by the judgement of this Court in the case of UOL & Ors vs. S. Vijayakumar & Ors reported as 1994 (Supp.3) SCC, 649 and following in the case of UOL & Ors vs Executive Officer Association Group C 1995 (Supp.1) SCC, 757. Therefore, this appeal is to be allowed in favour of the UOL. 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 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.

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

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

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

ग्रा. शा. ऋमांक/प.०. नो. P.A.S.I. GC-105/51/SD/111/11/1

2133

G P GUPTA  
DY CONTROLLER OF ACCOUNTSमुख्य लेसा कार्यालय  
PRINCIPAL ACCOUNTS OFFICE  
इस्पात एवं खान मंत्रालय  
MINISTRY OF STEEL & MINES  
खान विभाग  
DEPARTMENT OF MINES  
लोक नायक भवन  
LOK NAYAK BHAWAN  
नई दिल्ली-११०००३  
NEW DELHI-110003

U.K.

दिनांक  
Dated, the 9th October 1989

Dear Shri Das

This is regarding the judgement dt. 12.5.89 of CAT Guwahati Bench in favour of the staff member of PAO, GSI Shillong on the question of payment of special (duty) allowance as envisaged in M.O.F.C.M No.20014/3/83-E.W dt. 14.12.83. The orders of the CAT directing the respondents for payment of the arrears of special (duty) allowance was to be implemented within four months from the date of receipt of the copy of judgement.

On the advise of Controller General of Accounts the matter was taken up with Min. of Law, Deptt. of Legal Affairs (Central Agency Section) for filing special leave petition and obtaining stay from the Supreme Court against CAT's judgement. After examining the case, the learned Additional Solicitor General of India advised that this is not a fit case for filing an SLP in the Supreme Court and as such we have to take steps for implementation of the judgement of CAT Guwahati Bench.

In this connection today Shri S.V.S Sharma, Chief Controller of Accounts had a telephonic talk with Shri Paul AAO of your office as you were not available at that time. He was requested to take steps for payment of the arrears of special(duty) allowance in respect of 12 applicants in the case no.GC-105 of 1987. The arrears are to be paid for the period counting from 3 years before the institutions of their case or from the date they had joined their respective posts in North Eastern Region which

...2/-

Attested  
Santosh  
Akhare  
27/10/89

2:

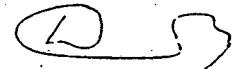
ever is later only in respect of the following 12 applicants:

1. Ranendu Dutta Chowdhury
2. Ramon Spnoual
3. Bijan Ghari Bhattacharjee
4. Smt. Karry Blanca Kharsing
5. G Hongkneih
6. Manik Chanda
7. Ramjyoti Bhattacharjee
8. Ashutosh Paul
9. Tuser Kanti Paul
10. Himalayshu Sekhar Bhattacharjee
11. Samiran Chaudhury
12. Smt. T Shongwan.

The copy of the CAT judgement dt. 12.5.89 was received here on 9.6.89 through the official channel. As such the period of four months becomes overdate from 9.10.89. In order to avoid any contempt of the court I shall be thankful if you could immediately take steps for disbursement arrears of special duty allowance to the above 12 applicants. May I also request you to intimate compliance for the information of Chief Controller of Accounts. However a telegram has also been sent at your office today.

Best wishes

Yours sincerely



( G P GUPTA )

Shri S B Das  
PAO, Care-Late S K. Gupta's House  
Lower New Colony  
Shillong-3  
Pin 793 003  
(Meghalaya)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.7 of 1999

Date of decision: This the 2nd day of November 2000

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

Shri Tushur Kanti Paul,  
Assistant Accounts Officer,  
Regional Pay and Accounts Officer(NH),  
Ministry of Surface and Transport,  
Government of India,  
Guwahati.

By Advocates Mr S. and Ms N.D. Goswami.

.....Applicant

- 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 Chief Controller of Accounts, Ministry of Surface and Transport, I.D.A. Building Jamnagar, Shahjahan Road, New Delhi.
3. The Regional Pay and Accounts Officer (NH), Ministry of Surface Transport, Guwahati.
4. Shri Panna Lal Dey, Regional Pay and Accounts Officer (NH), Guwahati.
5. The Pay and Accounts Officer, Geological Survey of India, North Eastern Region, Shillong.

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

.....Respondents

ORDER (ORAL)

CHOWDHURY, J. (V.C.)

The legitimacy of the direction issued by the Regional Pay and Accounts Officer(NH) vide letter No.PAO(G)NH. 1(25)98-99 dated 30/31.12.1998 is the subject matter of this application.

*Attested  
Smt. Rabindra  
27/10/01.*

2. The applicant alongwith ten others earlier presented an application before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 against the present respondents. The ten applicants in aforesaid application alongwith the present applicant sought for a direction for grant of Special (Duty) Allowance (SDA for short) which was granted to all Central Government employees serving in the North Eastern Region, carrying an All India Transfer liability. The Tribunal after considering the rival contentions and the O.M. No.20014/3/Estdt.-IV dated 14.12.1983 by its Judgment and Order dated 12.5.1989 in G.C.No.105 of 1987 allowed the application and directed the respondents to grant SDA as per the O.M. dated 14.12.1983 issued by the Government of India, Ministry of Finance, Department of Expenditure, including arrears. The said Judgment and Order dated 12.5.1989 of the Tribunal was accepted by the respondents and the respondents never challenged the aforesaid Judgment of the Tribunal in any higher Court. The respondents accordingly paid SDA to the applicants of the aforesaid O.A. till receipt of the impugned order dated 30/31.12.1998 by the respondents. According to the respondents though the applicant is subject to All India transfer liability he is not entitled to the benefit of SDA, moreso in view of the subsequent judgments pronounced by the Apex Court in Civil Appeal No.3251 of 1993 and No.3034 of 1995.

3. Mr S. Ali, learned Sr. Counsel for the applicant submitted that the Tribunal has already passed an order and that order attained finality. The legality and validity of the order was never under challenge and in the circumstances the respondents are not entitled to question the legality of the same on the strength of the decision of the Apex Court in subsequent cases. Mr Ali, in support of his contention, also referred to some earlier decisions of the Tribunal in respect of the same subject matter. In aid of his submission, Mr Ali referred to the Judgment and Order of this Tribunal passed in O.A.No.208 of 1991 on 8.2.1991. The learned counsel submitted that the aforesaid judgment of the Tribunal dated 8.2.1991 was challenged in the Apex Court by the respondents of the said case by filing SLP No.9381/92 and the said SLP was rejected by the Apex Court by

order.....

: 3 :

order dated 23.7.1992. Mr Ali further submitted that the Judgment and Order of the Tribunal dated 8.2.1991 in O.A.No.208/91 has not yet been set aside and in the circumstances the directions given by the Regional Pay and Accounts Officer are contrary to the decisions of this Tribunal and therefore, not binding.

4. Considering all the aspects of the matter, I am of the view that since the Tribunal has already passed an order, <sup>which has attained finality</sup> the question of challenging the wisdom of that order by the Administration is not permissible. In the circumstances the Impugned communication dated 30/31.12.1998 is not binding and operative and the same is hereby set aside.

6. The application is allowed. No order as to costs.

sd/ VICECHAIRMAN

*H. Hashmi*  
Hashmi  
29/5/99

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : AT GUWAHATI OCT 2003

O. A. No.124 of 2003

Shri R. Bhattacharjee

....Applicant

File No. 52  
Date 27/10/07  
Advocate

( B. C. Pathak  
Addl. Central Govt. Standing Counsel  
Central Administrative Tribunal  
Guwahati Bench : Guwahati

-Vs-

Union of India & Others

....Respondents

(Written statements filed by the respondents No. 1 - 4)

The written statements of the respondents are as follows:

1. That a copy of the above noted O.A. No. 124/2003 (hereinafter referred to as the 'Application') has been served on the respondents. The respondents have gone through the same and understood the contents thereof.

2. That the averments made in the application, which are not specifically admitted, are hereby denied by the respondents.

3. That before traversing the various paragraphs made of the application, the respondents beg to state a brief resume to the facts and circumstances of the case and the basis for entitlement for payment of Special Duty Allowance (referred to as the "SDA") as under:

(a) That the Government of India, Ministry of Finance, Department of Expenditure, New Delhi vide Office Memorandum No. 20014/3/83-E.IV dated 14.12.1983 brought out a scheme thereby extending certain facilities and allowances including Special Duty Allowance for the civilian employees of the Central Government serving in the North Eastern States and Union Territories etc. This was done to attract and retain the services of officers coming from outside the N.E. Region due to inaccessibility and difficult terrain. A bare reading of the provisions of the said Office Memorandum makes it clear that these facilities and allowances are made available only to those who are posted in the region from outside on transfer.

A true copy of the said Office Memorandum dated 14-12-1983 is annexed as Annexure-R-1.

(b) That after some time, some departments sought clarifications about the applicability of the said Office Memorandum dated 14-12-1983. In response to the said clarification, the Government of India issued another Office Memorandum vide No. 20014/3/83-E.IV dated 20-4-1987. The relevant portion of the said O.M. is quoted below:

2. Instances have been brought to the notice of this Ministry where Special (Duty) Allowance has been allowed to Central Government employees serving in the North East Region without fulfillment of the condition of all India Transfer liability. This is against the spirit of the orders on the subject. For the purpose of sanctioning special (duty) allowance, the all India transfer liability of the members of any service/cadre or incumbents of any posts/group of posts has to be determined by applying the tests of 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 (as is done in the case of almost all posts in the Central Secretariat etc) to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of special (duty) allowance"

A true copy of the said OM dated 20-4-87 is annexed as ANNEXURE-R-2.

(c) That the Government of India again brought out another Office Memorandum vide F.No.20014/16/86/E.IV/E.II(B) dated 1.12.1988. By the said OM the special (duty) allowance was further continued to the central Government Employees at the rate prescribed therein.

A copy of the said OM dated 1-12-1988 is annexed as ANNEXURE-R-3.

(d) That in the meantime, several cases were filed in the court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court. The Hon'ble Supreme Court in Union of India & others-vs- S. Vijaykumar & others (C.A. No.3251/93) upheld the provisions of the O.M. dt. 20-4-87 and also made it clear that only those employees who were posted on transfer from outside to the N.E. Region were entitled to grant of SDA on fulfilling the criteria as in O.M. dt. 20-4-87. Such SDA was not available to the local residents of the N.E. Region. The Hon'ble Supreme Court also went into the object and spirit of the O.M. dt. 14-12-83 as a whole.

A copy of the said judgment dt. 20-9-94 is annexed as ANNEXURE-R-4.

(e) That the Hon'ble Supreme Court in another decision dated 23-2-1995, in Case No.3034/95 (Union of India & others -vs- Executive Officers Association Group-C) held that the spirit of the O.M. dt. 14-12-83 is to attract and retain the services of the officers from outside posted in the North Eastern Region, which does not apply to the officers belonging to the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. Therefore, the incentives granted by the said O.M. is meant for the persons posted from outside to the North-Eastern Region, not for the local residents of the said defined region. The Hon'ble Supreme Court in this decision also held that the spirit of the OM dated 14-12-1983 is to

attract and retain the services of the officers posted in the N.E. Region from outside and therefore, application of these provisions to the local residents of the NE Region does not arise. While passing the said judgment the Hon'ble Supreme Court referred to and relied upon its earlier decisions held in 'Chief General Manager (Telecom) –Vs- Shri Rajendra Ch. Bhattacharjee & others and also the "S. Vijayakumar case".

A true copy of the said judgment dt. 23-2-95 is annexed as ANNEXURE-R-5.

(f) That the Hon'ble Supreme Court in another judgment dt. 7-9-95 passed in Union of India & others – vs- Geological Survey of India employees' Association & others (CA No. 8208-8213) held that the Group C and D employees who belong to the N.E. Region and whose transfer liability is restricted to their region only, they do not have all India transfer liability and consequently, they are not entitled to grant of SDA.

A copy of the said judgment dt. 7-9-95 is annexed as ANNEXURE-R-6.

(g) That after the judgment of the Hon'ble Supreme Court, the Govt. of India brought yet another Office Memo. Vide No. 11(3)/95-E.II(B) dt. 12-1-96 and directed the departments to recover the amount paid to the ineligible employees after 20-9-94 as held by the Hon'ble Supreme Court.

A true copy of the said judgment dt. 12-1-96 is annexed as ANNEXURE-R-7.

(h) That in another case vide Writ Petition No.794/1996 in Sadhan Kumar Goswami & others –vs- Union of India & others, the Hon'ble Supreme Court again put reliance on the earlier decision as in S. Vijayakumar case and held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D and there is no distinction. By the said judgment, the said Hon'ble court also held that the SDA paid to the ineligible employees after 20-9-94 be recovered as the Government of India has limited the recovery of SDA to the ineligible employees from the date of judgement dated 20-9-94 passed in S.Vijayakumar and in terms of the OM dated 12-1-1996.

A true copy of the said judgment dt. 25-10-95 is annexed as ANNEXURE-R-8.

(i) That the Ministry of Finance further in connection with query made by the Directorate General of Security, New Delhi gave some clarification to the questions raised by some employees regarding eligibility of SDA. This was done vide I.D. No.1204/E-II(B)/99 and which was duly approved by the Cabinet Secretariat U.O. No.20/12/99-EA.I-1798 dt. 2.5.2000. According to that clarification, an employee belonging to the N.E. Region, posted in the N.E. Region having all India transfer liability as a condition of service, shall not be entitled to grant of SDA. But if such employee is transferred out of the N.E. Region and reposted to N.E. Region on transfer from outside, in that case such employee

would be entitled to SDA. Hence, the applicant in the instant case, has no cause of action agitate in this Tribunal.

A true copy of the said clarification of Cab. Sectt. dt. 2-5-2000 is annexed as ANNEXURE-R-9.

(j) That in a recent decision dt. 5-10-2001, in Union of India & others -vs- National Union of Telecom Engineering Employees Union & others (CA No. 7000/2001) the Hon'ble Supreme Court once again clinched on the vexed question of grant of SDA to the Central Govt. employees and by relying on the earlier decision in the case of "S. Vijaykumar and the 'Executive Officers' Association Group C" was pleased to allow the appeal in favour of the Union of India and held that the amount already paid to such ineligible employees should not be recovered.

A true copy of the said judgment dt. 5-10-2001 is annexed as ANNEXURE-R-10.

(k) That pursuant to the said judgment passed in CA No. 7000/2001, the Govt. of India, Ministry of Finance, Department of Expenditure, brought out another Office Memo. F.No.11(5)/97-E.II(B) dt. 29-5-2002 and thereby directed all the departments to recover the amount of SDA already paid to such ineligible employees with effect from 6-10-2001 onwards and to waive the amount upto 5-10-2001 i.e. the date of the said judgment.

The true copy of the O.M. dt. 29-5-2002 is annexed as ANNEXURE-R-11.

(l) That this Hon'ble Tribunal, vide order dated 23-5-2003 passed in OA~~§~~ No. 249/2002, 316/2002 342/2002 and 367/2002 rejected the <sup>SDA</sup> claim by the employees of the Central Government under the above facts and circumstances which are similar in the instant case also.

The copy of the judgment dated 23-5-2003 is annexed hereto as ANNEXURE-R-12.

From the above facts and circumstances of the case and the clarifications made in the matter, it is very much clear that only those employees irrespective of their group in A, B, C or D, shall be entitled to grant of SDA if they fulfil the criteria as underlined in O.M. dt. 20-4-87 and such employees are in fact posted into the North-Eastern Region actually on transfer. Therefore the amount paid to the ineligible employees upto 5-10-2001 would be waived. However, the amount paid after 5-10-2001 should be recovered. This aspect of the matter is clear as indicated by the Hon'ble Supreme Court in its all earlier decisions.

(m) That as per records of the respondents the applicant is local resident of the defined area of North Eastern Region. The applicant is appointed initially in the North East Region and continues to work in the N.E. Region without any transfer to outside the said region. Hence, the applicant is not entitled to grant of SDA and the amount so far paid is liable to be recovered from him.

4. That with regard to the statements made in para 1 of the application the answering respondents state that by the passing of the various judgments and orders by the Hon'ble Supreme Court on the issue of grant of SDA as indicated hereinabove, the law has been laid down by the Hon'ble Supreme Court that an employee who is a local resident of the North Eastern Region is not entitled to the grant of SDA. This is a law binding on all the courts and authorities. The decisions of the Hon'ble Supreme Court are binding on all states and their officers and all persons whether they are parties thereto or not and to all pending proceedings as provided under Article 141 of the Constitution of India. Therefore, the answering respondents respectfully submit that there is no cause of action in filing the instant application and the same is liable to be dismissed with cost.
5. That with regard to the statements made in para 2, 3, 4.1 and 4.2 of the application, the answering respondents state that they have no comment to offer.
6. That with regard to the statements made in para 4.3 of the application, the answering respondents state that the very object and spirit of the O.M. dated 14-12-83 is to attract and retain the services of the competent officers in the Northern Region for its inaccessibility and difficult terrain. The persons coming from outside the Region faces the hostile situation in this Region while the local resident are accustomed with such situation. Therefore, the provisions of the said Office Memorandum are held to be inapplicable to Central Government Employees who are resident of the Region. The applicant is a local resident of Silchar in the North Eastern Region and hence he is not entitled to the grant of SDA. The judgement and order dated 12-5-89 passed in O.A. No.105/87 shall no longer apply/operate after the law laid down by the Hon'ble Supreme Court as stated hereinabove.
7. That with regard to the statements made in para 4.4 and 4.6 of the application, the answering respondents state that they were bound to obey the judgement and order dated 12-5-89 as there was no law to determine the issue about eligibility criteria of SDA upto 20-9-94 when the Hon'ble Supreme Court for the first time laid down law that a local resident of the North Eastern Region is not entitled to the grant of SDA.
8. That with regard to the statements made in para 4.5 of the application, the answering respondents reiterates the foregoing statements and state that from the facts and circumstances of the case, the applicant is not entitled to the grant of SDA.

9. That with regard to the statements made in para 4.7 of the application, the answering respondents state that the impugned order has been issued in view of the changed situation and the law laid down by the Hon'ble Supreme Court from time to time as explained hereinabove. There is nothing to show that the action of the respondents is in any way illegal or arbitrary.
10. That with regard to the statements made in para 4.8 of the application, the answering respondents reiterates the forgoing statements made in this written statement and state that they have acted as per provisions of law as they are duty bound to do so.
11. That with regard to the statements made in para 4.9 of the application: the answering respondents state that the executive order cannot stand on the way of the law laid down by the Statutory Authority and the Hon'ble Supreme Court. Therefore, the statements made in that paragraph cannot sustain in law. After the Supreme Court judgment dated 20-9-1994 in Union of India –Vs- S. Vijayakumar, the question regarding discontinuance of Special (Duty) Allowance to the Central Civil Accounts Employees who were already getting the Allowance by virtue of earlier Orders of the Hon'ble Central Administrative Tribunal which had become final because either no appeal had been filed or the SLPs had been dismissed *in limine* by the Hon'ble Supreme Court, was specifically considered by the Government. Keeping in view that the Hon'ble Supreme Court had held in S. Vijayakumar case that the Allowance was admissible only to those employees who were posted from outside to North Easter Region it was decided vide O.M. dated 22-3-1999 to discontinue the SDA even to those who were getting it by virtue of earlier Orders of the Hon'ble Tribunal.

A true copy of the said OM dated 22-3-1999 is annexed as Annexure R-13.

12. That with regard to the statements made in para 4.10 it is submitted that the Order dated 2-11-2000 of the Hon'ble Tribunal in O.A. 7 of 1999 (T.K. Paul v. Union of India) relied in the application filed by the applicant in the present case, does not take note of the aforesaid O.M. dated 22-3-1999 as this OM was not brought to the notice of the Hon'ble Tribunal in T.K. Paul's case. A writ petition against the Order dated 2-11-2000 could not also be filed in the High Court due to lapse on the part of the Office of the Chief Controller of Accounts, Ministry of Road Transport and Highways. A remedial action has now been taken vide D.O. letter No. F-140/99-LC dated 26-9-2003 addressed to the Chief Controller of Accounts.

A true copy of the letter dated 26-9-2003 is annexed as Annexure-R-14.

13. That with regard to the statements made in para 4.11 of the application, the answering respondents state that the similar course of action are being initiated uniformly in all such cases and there will not be any discrimination or partiality in handling such matter in view of

the Hon'ble Supreme Court's decisions. In any view of the matter, the present applicant is not entitled to the grant of SDA.

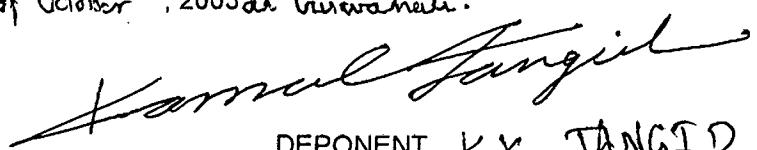
14. That with regard to the statements made in para 5.1 to 5.12 of the application, the answering respondents state that the grounds shown by the applicant to support his contention claiming thereby for grant of SDA are not legally valid grounds. Therefore, the application is liable to be dismissed with cost as baseless.
15. That the answering respondents have no comments to offer to the statements made in para 6 and 7 of the application.
16. That with regard to the statements made in para 8.1 and 9 and 9.1 of the application, the answering respondents state that under the facts and circumstances of the case and the provisions of law and also the law laid down by the Hon'ble Supreme Court, the applicant is not entitled to the grant of SDA and the SDA already paid to him is to be recovered as in terms of the impugned order. Therefore, the application is liable to be dismissed with cost as devoid of any merit.

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

#### VERIFICATION

I, Kamal Kumar Jangid at present working as Executive Engineer, North Eastern Investigation Division No.1, Central Water Commission at Jalbikashpur, Silchar who is taking steps in this case being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 1 to 16 are true to my knowledge and belief and are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 8<sup>th</sup> Day of October, 2003 at Guwahati.



DEPONENT K.K. JANGID

Executive Engineer  
NEIDT, CWC, Silchar

New Delhi, th 14th December, 1983.

OFFICE MEMORANDUM

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

The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the states of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been ongoing 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 of a time for officers with service of 10 years or less and 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc. in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The nominal 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.

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

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

A specific entry shall be made in the C.R. of all employees rendered a full tenure of service in the North Eastern Region to that effect.

iii) Special (Duty) Allowance :

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

iv) Special Compensation 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. Tripura

The rates of the allowance will be as follows :

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

(b) Other areas

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

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

There will be no change in the existing rates of Special Compensation Allowance admissible in Arunachal Pradesh, Nagaland and Mizoram and the existing rate of Disturbance Allowance admissible in specified areas of Mizoram.

## (v) Travelling Allowance on first appointment:

In relaxation of the present rules (S.R. 105) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in cases of journeys for taking up initial appointment to a post in the North-Eastern Region, travelling allowance limited to ordinary bus fare/ second class rail fare for road/rail journey in excess of first 400 kms for the government servant himself and his family will be admissible.

## (vi) Travelling Allowance for Journey on transfer:

In relaxation of orders below S.R. 116, if on transfer to station in the North-Eastern Region, the family of the Government servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. In case the family accompanied the Government servant on transfer, the Government servant will be entitled to the existing admissible travelling allowance including the cost of transportation of the admissible weight of personal effects according to the grade to which the officer belongs, irrespective of the weight of the baggage actually carried. The above provisions will also apply for the return journey on transfer back from the North-Eastern Region.

## (vii) Road mileage for transportation of personal effects on transfer:

In relaxation of orders below S.R. 116 for transportation of personal effects on transfer between two different stations in the North-Eastern Region, higher rate of allowance admissible for transportation in 'A' class cities subject to the actual expenditure incurred by the Government servant will be admissible.

## (viii) Joining time with leave:

In case of Government servants proceeding on leave from a place of posting in North Eastern region, the period of travelling excesses of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

## (ix) Leave Travel Concession:

A government servant who leaves his family behind the old duty station or another selected place 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. If in lieu thereof, facility of travel for himself once a year from the station of posting in the North-Eastern to his home town or place where the family is residing and in addition the facility for the family is restricted to his/her spouse and two dependent children only, also to travel once a year to visit the employees at the station of posting in the North-Eastern Region. In case the option is for the latter alternative the cost of travel for the initial distance (400 kms/150 kms.) will not be borne by the officer.

Officers drawing pay of Rs. 2250/- or above, and their family (i.e., spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartala and Calcutta and vice versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance/Hostel Subsidy:

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

2. The above orders except in sub-para (iv) will also mutatis mutandis apply to Central Government employees posted to Andhra 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 recommendation of the committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

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

Sd/-

( S C MIRALIK )  
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

To,

S. No. 6

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

## ANNEXURE R.2

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/- per month. Special Allowance like special compensatory (remote locality) allowance, construction allowance and Project Allowance will be drawn separately".

2. Instances have been brought to the notice of this Ministry where special (duty) Allowance has been allowed to Central Government employees serving in North East Region without the fulfilment of the condition of all India transfer liability. This is against the spirit of orders on the subject. For the purpose of sanctioning special (duty) allowance, the all India transfer liability of the members of any Service/Cadre or incumbents of any post/grade 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. ....

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

*Chandu*  
(A.N. SINHA)  
DIRECTOR (EG)  
TELE: 3011819

To

Financial Advisers of all Ministries/Departments.

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15  
F. No. 20014/10/UG/E. IV/P. 11 (B)  
Government of India  
Ministry of Finance  
Department of Expenditure

ANNEXURE : R

ANNEXURE B.P. 3

Now, Dated, the 1<sup>st</sup> December, 1960  
OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Ministry's  
O.M. No. 20014/3/134-E. IV dt. 7th December, 1963 and 20th 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 Region comprising  
the States of Assam, Nagaland, Manipur, Meghalaya, Tripura, Sikkim  
and Arunachal Pradesh has been enroute the attention of the Govt.  
Accordingly, the President is now pleased to decide as follows:-

(1) Change of posting/extension

The existing provisions are contained in this Ministry's  
O.M. dated 14.12.63 will continue.

(2) Deputation for Central Deputation and training abroad

The existing provisions on contained in this Ministry's  
O.M. dated 14.12.63 will continue. Under instruction and award  
of 51% due weightage for satisfactory performance of duty for  
the prolonged tenure in the North-East in the nature of promotion  
in the cadre, Central deputation to Central Government will occur in  
of training abroad.

(3) Special(Duty) Allowance

Central Govt. Civilian employees who have left India  
for North-Eastern Region will be granted Special(Duty) Allowance at the  
rate of 12% of basic pay subject to a ceiling of Rs 1000/- per  
month posted in any station in the North-Eastern Region.  
Special(Duty) Allowance will be in addition to any special pay  
or deputation(Duty) allowance already being drawn subject to  
the condition that the total of such Special(Duty) Allowance plus  
Special pay/Deputation(Duty) Allowance will not exceed Rs 1000/- p.m.  
Special allowances like Special Conveyance(Rail/Bus/Boat)  
Allowance, Construction Allowance and Project Allowance will be  
dealt separately.

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to Contract Govt. Civilian Employees who are members of  
Central and other civilian eligible for the grant of  
leave allowances under this para and are exempted from  
it. Those under the Income-Tax Act will also draw  
allowance (Daily) Allowance.

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(iv) Special Allowance for Allowance

The recommendations of the 4th Pay Commission have been  
accepted by the Govt. and Special Allowance at the  
pay scale rates have been made effective from 1.10.66.

(v) Traveling Allowance on First Appointment

The present conditions as contained in the Ministry's  
O.M. dated 14.12.1961, continue with the exception that on  
first appointment P.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 the Ministry's  
O.M. dated 14.12.1961 continue.

(vii) Home Allowance for Expenditure of Household Effects

The existing provisions as contained in the Ministry's  
O.M. dated 11.12.1961 continue.

(viii) Traveling and Transfer Allowance

The existing provisions as contained in the Ministry's  
O.M. dated 11.12.1961 continue.

(ix) Traveling Allowance

The existing conditions as contained in the Ministry's  
O.M. dated 11.12.1961 continue.

For journeys exceeding Rs. 5100/- or above, an ad  
ditional 10% premium and the dependent children (upto 16 years) for  
journeys between Ranchi and Ranchi (or Jharkhand) will be admissible air travel between  
Ranchi (or Jharkhand) and Calcutta and vice versa  
and between Ranchi (or Jharkhand) and Calcutta/Indore and vice versa in  
air travel. The admissible air travel between Ranchi and  
Indore, post employees in case of posting in Lucknow, Dehradun  
and Ranchi post employees in case of posting in Lucknow, Dehradun.

(x) Children Education Allowance/Boarding Allowance

If the children do not accompany the government servant  
to the North-Eastern Region, Children Education Allowance upto  
Rs. 500/- will be admissible in respect of children studying at  
the institution of posting of the employee concerned or any  
other institution where the officer resides, if children studying  
in schools or in institutions outside the institution of posting  
or any other institution, the Government servant concerned will be  
given maximum allowance without any restriction.

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(X)

State of Children Education Allowance/Hotel subsidy will be  
in the MOPOL, O.M. 10011/1/07-Hot. (Allowances), dt. 31.12.07.  
amended. From Two to Three.

(ii) Condition regarding grant of House Rent Allowance to  
officers posted in the States of North Eastern Region,  
Andaman & Nicobar Islands, Lakshadweep Islands  
The present condition as contained in this Ministry in  
O.M. No. 11016/1/8, I.I.(II)/06 dt. 29.3.06 an agreed upon time to  
time will continue to be applicable.

(xi) Telephone Installation

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

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

4. Name of officers will take effect from date of issue.  
In as far as the provision covering the Indian Audit &  
Accounts Deptt, are concerned these orders shall after consultation  
with the Comptroller & Auditor General of India,  
shall operate as far as concerned.

(A. S. YADAVAMAI)

Joint Secretary to the GOVT. OF INDIA.

To

All Ministers/Depts/Departments of Govt. of India, etc.

Copy (with serial number of serial copies) forwarded to  
C. & A. O., C. U. P. G. S. O. C., etc., for due endorsement  
list.

17-24

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ANNEXURE-W

IN THE SUFFRAGE COMMITTEE

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2222 (1977)

'Union' of India and others

... Appointments

## Vorwärts

... Rupprichtianum

Width Civil Approval is 0103-121

SLF(C) 1125 : 10

SLP(C) 1105 16794/91 10461/93 9210/315 10570-78/33 11571-92/93

HANGARIA

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

whether the respondents are entitled to expect allowances (hereinafter referred to as "the allowances"), even though they are residing in the North-Eastern Region merely because of the posts to which they were appointed were of "All India Transfer Liability". The Tribunal has interpreted like allowances in a different way. These appeals have been preferred by the Union of India.

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

19-22-23-24

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of responsibility and difficult terrain  
said so because even the 1983 memorandum states  
that the need for the allowance "in the computation  
of 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  
service 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 1983 memorandum makes the  
Region clear by stating that "All Indian Transfer Liability  
of Indian employees who have All India Transfer Liability  
would be granted the allowance on posting to in  
station to the North Eastern Region". Thus direct  
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  
offices memoranda of 1983 the subject was mentioned  
quoted above is not enough to conclude for  
submission of Dr. Ghosh.

20-23-24

not become payable merely by reason of the change in the appointment order to the effect that the person concerned is liable to his remuneration "anywhere" in India.

Dr. Ghosh appearing before the Committee stated that the office memorandum of 1903 having noted what is contained in the memorandum of 1907, it could be added to the former that the allowance payable only to those who have been given what were residents of the North-Eastern Region, and not those who were residents of this Region. It is also contended that denial of the allowance to the residents, within the meaning of the same to the non-residents, would be contrary to the doctrine of equal pay for equal work and article 14 and 16 of the Constitution.

He has also pointed out that he has duly considered the rival submissions by the learned Additional Solicitor General, Sir T. Tulsi, and are inclined to agree with the contention advanced for two reasons. The first is that a close perusal of the memorandum of 1903 with what was stated in the memorandum dated 1907, issues which has been resolved, that the memorandum of 1907 clearly indicates that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region.

This submission of Dr. Ghosh that the denial of allowance to the respondents would violate the equality doctrine is adequately met by what was held in Reserve Bank of India vs. Reserve Bank of India Staff Officers Association and others, 1991 (1991) 2 SCC 515 in which an observation 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 name to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

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

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ANNEXURE : R 57905

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Addressed to be given copy  
S. M. D.  
Assistant Registrar (Judicial)

11/3/85

Supreme Court of India.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

579005

ANNEXURE : 5

ANNEXURE : R 5

CIVIL APPEAL NO. 3034  
Arising out of S.L.P. (C) NO. 16717 of 1995  
17943

Union of India & Ors.

.....Appellants

Vs.

Executive Officers Association  
Group-C

.....Respondents

JUDGEMENT

Faizan Uddin, J.

1. Delay condoned.
2. Leave granted. The counsel for parties are heard.
3. This appeal has been directed by the appellants against the judgment dated May 28, 1995 passed by the Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as Tribunal) in O.A. No.

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

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

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

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5. After considering the rival contentions the Tribunal observed that the contents of Office Memorandum dated April 12, 1984 as well as the letter No. 7/47/48.EA/ dated September 26, 1984 have been fully discussed by the Full Bench, Calcutta and held that the real test/criteria for determination is whether all India transfer liability exists and opined that without recalling, the Office Memorandum issued in 1982 the concerned departments had no reason to deny the benefit of memorandum available to certain classes of employees and to withdraw, its application to certain other classes. Relying on the said Bench decision of the Central Administrative Tribunal, Calcutta, the Tribunal allowed the application of the respondents by the impugned judgment and granted the relief as stated above against which this appeal has been preferred.

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

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

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

"The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram have been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary Department of Personnel & Administrative Reforms, to review the existing allowances, and

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P-17

facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows.

.....

B. A careful perusal of the opening part of the Office memorandum reproduced above would show that the Government had appointed a Committee under the Chairmanship of the Secretary Department of Personnel and Administrative Reforms to review the existing allowances and facilities admissible to the various categories of Civilian Central Government Employees serving in the North-Eastern Region so that competent officers may be attracted and retained in the North-Eastern Region States. The use of words "attracting and retaining" in service are very much significant which only suggest that it means the competent officers belonging to the Region other than the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. The intention of the Government and spirit behind the Office Memorandum is to provide an incentive and attraction to the competent officers belonging to the Region other than

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P-18

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the North-Eastern region to come and serve in the North-Eastern Region. It can hardly be disputed that the geographical, climatic, living and food conditions of people living in North-Eastern Region and the States comprising therein are different from other Regions of the country. The North-Eastern Region is considered to be 'hard zone' for various reasons and it appears that it is for these reasons that the Government provided certain extra allowance, benefits and other facilities to attract competent officers in the North-Eastern Region at least for two to three years of tenure posting. The Ministry's Office Memorandum in question came up for consideration before this Court in Chief General Manager (Telecom) Vs. S. Rajender E.H. Bhattacharjee & Ors. [J.T. 1995 (1) 5C 443] which was decided by us by judgment dated January 18, 1995 in which this Court took the view that the said Office Memoranda are meant for attracting and retaining the services of competent officers in the North-Eastern Region from other parts of the country and not the persons belonging to that region, where they were appointed and posted. This was also the view expressed by this Court in yet another case reported in J.T. 1994 (6) 443 - Union of India Vs. S. Vinaya Kumar & Ors. In Vinaya Kumar (Suor) the point for consideration was exactly identical, with regard to the entitlement to Special Duty Allowance to those employees/officers who

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are residents of North-Eastern Region itself. After considering the memorandum dated December 14, 1993 and other related Office Memorandums indicated above, it was held that the purpose of the allowance was to attract persons from outside the North-Eastern Region to work in the North-Eastern Region because of inaccessibility and difficult terrain. In the facts and circumstances stated above the view taken by the Tribunal cannot be upheld and deserves to be set aside.

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

Sd/-

(S.C. Agrawal)

Sd/-

(Fazlur Uddin)

New Delhi.

February 23, 1995.

IN THE SUPREME COURT OF INDIA

CIVIL APPELATE JURISDICTION

CIVIL APPEAL NO. 2459 OF 1995  
(Arising out of S.L.P. Nos. 12450-55/92)

Union of India & Ors. .... appellants

versus

24512

Geological Survey of India  
Employees' Association & Ors.

.... respondents

ORDER

..... to be the copy  
(22/12/95)  
At the Registrar (Jud.)

..... 27.12.1995

Supreme Court of India

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

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

-36-

-38-

CL 335

31

- 2 -

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

( G. D. Ray )

( S. B. Majumdar )

New Delhi  
September 7, 1995

C.A. - Seal Annexure. R

32

ANNEXURE:

R

This is relevant to the letter No. 11 (31/95-E.II(B))  
Government of India  
Ministry of Finance,  
Department of Expenditure

\*\*\*\*\*

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

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

2. The Government of India vide the  
abovementioned OM dt. 14.12.83, granted certain  
incentives to the Central Government civilian employees  
posted to the NE Region. One of the incentives was  
payment of a 'Special Duty Allowance' (SDA) to those who  
have "All India Transfer Liability".

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

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

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

6. The Hon'ble Supreme Court in their judgement delivered on 20.9.94 (in Civil Appeal no. 3251 of 1993) upheld the submissions of the Government of India that Central Government civilian employees who have all India Transfer Liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in Article 31 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; &

iii) 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 is enclosed.

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

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

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

11  
All communications should be  
sent to the Registrar,  
Supreme Court, by designation,  
NOT by name.  
Telegraphic address:—  
"SUPREMACO"

## ANNEXURE

SUPREME COURT  
INDIA

26th November, 1896

**FRONT ASSISTANT REGISTRATION (JUNIOR)**

20 : 1. The Union of India,  
Represented by the Cabinet Secretary,  
Government of India, North Block,  
NEW DELHI.

2. The Director, SSB,  
Office of the Director, SSB,  
East Block-V, P.K.Pura,  
New Delhi - 110 065

3. The Divisional Organiser,  
SSS Shillong Division,  
A.P. Secretariat building,  
Shillong, Meghalaya.

4. Commandant, Group Centre, SSB,  
Tripura, Salbagan, Kartala,  
Tripura West.

WITH PECITION NO. 124 OF 1995  
(Under Article 32 of the Constitution of India)

WITH  
TELEGRAMS APPLICATION NO. 1  
(Application for ex-parte stay)

Sadan Kumar Goswami & Ors.

Union of India & U.S.

نیازی

• PETITIONEES

• • • *REEDWILDERTE* • • •

I am directed to forward herewith for your information and necessary action a certified copy of the signed order dated the 25th October, 1956, of this Court passed in the writ Petition and application for stay.  
With please acknowledge receipt.

Yours faithfully,  
J. B. Judd (Judd)

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Unfiled to be in  
Nursery  
A. S. S. C. M. (11)  
C. P. C. C. M. (11)  
Petitionable 1274  
S. C. C. M. (11)

13372

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

Writ Petition No. 794 of 19

(Under Article 32 of the Constitution of India)

Sub-Suspector Sardan Kumar Goswami &  
Ors.

Petitioners

Respondents

THE 25TH DAY OF OCTOBER, 1996

Hon'ble Mr. Justice K. Ramaswamy,  
Hon'ble Mr. Justice S. P. Kurduwala

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

O R D E R

the following order of the court was delivered:

— 30 — 39 —  
— 29 — 41 —  
— 12 —

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X (6)

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION.

W.L.T. PETITION NO. 789 OF 1996

Sub-Inspector Sadiq Khan Goswami & Ors.

Petitioners  
versus

The Union of India & Ors.

Respondents

22 P.E.

This writ petition under Article 32 is filed in 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 theirs becoming final.

The existing facts are that the petitioners who joined service under the Special Security Bureau (SSB) in North Eastern Region of India, claimed special allowances as per order of the Central Government. The question was considered by this Court in Union of India vs. S. Vilay Khan [CA No. 3251 of 93] decided on September 20, 1924; 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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learned Additional Solicitor General, Shri Tulsi for two reasons. The first is that his close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 28.10.1966 which has been quoted in the memorandum of 20.4.1967, clearly indicates 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 1967 memorandum starts by saying that the need for the allowance has been for "attracting and retaining the service of the concerned officers in the service in the North-Eastern Region. Retention bonus retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining the post holding leave and. Therefore, the memorandum stated that this period of leave would be reckoned while calculating 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 1966 memorandum makes this position clear by stating that Central Government civilian employees who have All India transfer liability would be granted the allowance on posting to any station to the North-Eastern Region. This aspect is made clear beyond doubt by the 1967 memorandum which stated that allowance would not become payable merely because of the clause in the administrative order relating to All India transfer liability. Merely because in the office memorandum of 1963 the subject was mentioned as quoted since it not be enough to concur to the submission of Sir Ghosh.

The submission of Dr. Ghosh that the denial of the allowance to the residents who violate the equal pay doctrine is squarely set by the law was held in

Reserve Bank of India vs. Reserve Bank of India Staff Officers Association & Ors. [(1991) 4 SCC 132] to which an attention has been invited by the Learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance from 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 paid upto the date of the judgment was directed 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 locality allowance benefit is being granted to Group A and B, it amounts to violation of Article 14 and therefore, the writ petition should be allowed so as to give them the same benefit. Admittedly, the petitioners are Group C and D employees and are bound

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

Of late, we have been coming across this type

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Writ petitions filed by several parties. We are a  
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 Class  
C and D employees are not entitled to special duty  
allowance as per the law already declared by this  
Court, the petitioners are not entitled to the benefit.

It is next contended that the Government is  
recovering as per Memorandum dated January 17, 1996 the  
amounts paid which is contrary to the direction issued

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-44-  
41-48-

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

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

The writ petition is accordingly dismissed.

(K. RAMESHWAR)

(S.P. KURUKHAR)

NEW DELHI;  
OCTOBER 25, 1976.

SIGNED IN MY PRESENCE  
1/11/1976

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Annexure R9

COURT CASE  
MOST IMMEDIATECabinet Secretariat  
(EA.I Section)

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

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

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

- i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region. and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.
- a) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer Liability.
- b) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/ service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.
- ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/03-E.IV dated 14.12.03 and 20.4.07 read with

No

-2-

OM 20014/16/06 E.II(B) dated 1.12.80) but subsequently the post/cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the NE Region though they can be transferred out to any place outside the NE Region having All India Transfer Liability.

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

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

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

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

Contd... 3/-

## Annexure 9

- 3 -

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

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

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

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

3. This issued with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1349 dated 11.10.99 and Ministry of Finance (Expenditure)'s T.D. No. 1204/E-II (B)/99 dated 30.3.2000.

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

1. Shri R.S. Dedi, Director, ARC
2. Shri R.P. Kureel, Director, SSB
3. Brig. (Rtd) G.S. Uban, IG, SFF
4. Shri S.R. Mehra, JD (P&C), DGS
5. Shri Ashok Chaturvedi, JS (pers), RAW
6. Shri B.S. Gill, Director of Accounts, DACS
7. Smt. J.M. Menon, Director-Finance (S), Cab. Secy.
8. Col. K.L. Jaspal, CIA, CIA

Cab. Secy. UO No. 20/12/99-EX-1-1799 dated 275.2000

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 7999 OF 2001  
(Arising out of S.L.P. (C) NO. 6465 OF 1999)

ANNEXURE R 10  
Complied to be true copy  
Accidental Revision (1999)  
Supreme Court of India

Union of India & Anr. vs.

Appellants

National Union of Telecom. Engineering  
Employees Union (A.P.S.),

Respondents

280 E.R.

ANNEXURE R 10  
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R 10

Leave granted.  
It is submission behalf of the respondents that this  
appeal of the Union of India is covered by the judgment of  
this Court in the case of Union of India & Ors. vs. S.  
K. Jayakumar & Ors. reported as 1994 (Supp. 3), S.C.C. 649 and  
followed in the case of Union of India & Ors. vs. Executive  
Officers' Association Group 'C' 1995 (Supp. 1), S.C.C. 757.

Therefore, this appeal is to be allowed in favour of the  
Union of India. It is ordered accordingly.

It is, however, made clear that when this appeal came  
up for admission on 13.1.2000, the learned Solicitor General  
had given an undertaking that whatever amount had been paid  
to the respondents by way of speciality allowance will not  
be recovered from them. It is on  
this assurance that delay was conceded. It is made clear

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

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(H. SANTOSH HEGDE)

(H. G. BALAKRISHNA)

New Delhi,  
October 06, 2001.

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Annexure - R 11  
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B4

ANNEXURE R11

OB

SwamysnewS

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July, 2002

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In the matter of Special Duty Allowance to Central Government employees posted in N.E. region vide O.M. No. 20014/3/83-E. IV, dated 14-12-1983, read with G.I., M.F., O.M. No. 11 (5)/97-E. II (B), dated 29-5-2002, read with G.I., M.F., O.M. No. 11 (3)/95-E. II (B), dated 12-1-1996 (Sl. Nos. 214 and 103 of Swamy's Annual, 1988 and 1996 respectively) on the subject mentioned above.

**Special Duty Allowance to civilian employees posted from outside the region only**

The undersigned is directed to refer to this Department's O.M. No. 20014/3/83-E. IV, dated 14-12-1983 and 20-4-1987, read with O.M. No. 20014/16/86-E. IV/E. II (B), dated 1-12-1988, and O.M. No. 11 (3)/95-E. II (B), dated 12-1-1996 (Sl. Nos. 214 and 103 of Swamy's Annual, 1988 and 1996 respectively) on the subject mentioned above.

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

3. Some employees working in N.E. region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UoI. The Hon'ble Supreme Court in judgment delivered on 20-9-1994 (in Civil Appeal No. 3251 of 1993, in the case of UoI and Others v. Sh. S. Vijaya Kumar and Others) have upheld the submissions of the Government of India that Central Government civilian employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North-Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

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9

July, 2002

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Swamysnews

4. In a recent appeal filed by Telecom Department (Civil Appeal No. 7000 of 2001-arising out of SLP No. 5455 of 1999), Supreme Court of India has ordered on 5-10-2001 that this appeal is covered by the judgment of this Court, in the case of *UoI and Others v. S. Vijayakumar and Others*, [ reported as 1994 (Supp. 3) SCC, 649 ] and followed in the case of *UoI and Others v. Executive Officers' Association Group 'C'* [ 1995 (Supp. 1) SCC, 757 ]. Therefore, this appeal is to be allowed in favour of the UoI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

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

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

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

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

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

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

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

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

And

Original Application No.367 of 2002

Date of decision: This the 23<sup>rd</sup> day of May 2003

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

O.A.No.249/2002

Shri Bangshidhar Boro and 3 others .....Applicants  
 By Advocates Mr S. Ali and Mrs K. Chetri

- versus -

The Union of India and others .....Respondents  
 By Advocates Mr A. Deb Roy, Sr. C.G.S.C. and Mr B.C. Pathak, Addl. C.G.S.C.

O.A.No.316/2002

Shri Khagen Ch Medhi and 80 others .....Applicants  
 By Advocates Mr A.C. Sarma, Mr C.M. Das and S. Saikia

- versus -

The Union of India and others .....Respondents  
 By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

O.A.No.342/2002

Shri Abhit Kumar Raha and 6 others .....Applicants  
 By Advocates Mr A.C. Sarma, C.M. Das and S. Saikia

- versus -

The Union of India and others .....Respondents  
 By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

O.A.No.367/2002

Shri P. Neogi and 60 others .....Applicants  
 By Advocates Mr A. Sarma and Mr S. Saikia

- versus -

The Union of India and others .....Respondents  
 By Advocate Mr A. Deb Roy, Sr. C.G.S.C. and Mr B.C. Pathak, Addl. C.G.S.C.

CHOWDHURY. J. (V.C.)

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

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

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

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

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

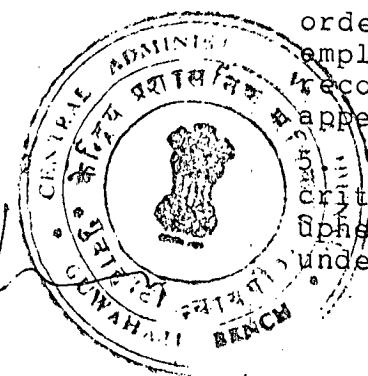
3. Some employees working in NE region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The 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 (Supp.1) SCC 757. Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

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

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

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



be regulated strictly in accordance with the above mentioned criteria.

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

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

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

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

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

contended.....

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

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

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

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

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

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

S/VICE CHAIRMAN

TRUE COPY

affidavit

5/2/03  
01/7/03

Section Officer (J)

C.A.T: GUWAHATI BANCH  
Guwahati-781005

nkm

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सर्वानन्द परम्

No. C. 18014/2/90/(PF)/MF-CGA(A)/LC /223

Government of India

Ministry of Finance

Department of Expenditure

Controller General of Accounts

Lok Nayak Bhawan, Khan Market

New Delhi - 110003

Dated : 22-3-1999

**Office Memorandum**

**Subject :** Special (Duty) Allowance to officers/employees of the Civil Accounts Organisation posted in North-Eastern Region

This office has received a number of representations regarding grant of Special (Duty) Allowance to the officers/employees of the Civil Accounts Organisation, posted in North-Eastern Region. Special (Duty) Allowance is being claimed on the premise that (i) officers/employees of the Civil Accounts Organisation are under all-India transfer liability either according to terms and conditions of their appointment or according to recruitment rules applicable to them, and (ii) there are similarly situated employees within the Civil Accounts Organisation, who are already getting Special (Duty) Allowance by virtue of judgments of the Hon'ble Central Administrative Tribunal in their favour.

2. Government has consistently held the view that mere existence of all-India transfer liability clause in appointment order or in recruitment rules does not in itself entitle an employee to Special (Duty) Allowance. This position holds good for officers/employees of the Civil Accounts Organisation also. However, during the period 1987 to 1990 and afterwards, several officers/employees filed applications before the Central Administrative Tribunal. The Tribunal held that the officers/employees of the Civil Accounts Organisation, who were applicants before it, were entitled to Special (Duty) Allowance because of existence of all-India transfer liability clause in the appointment orders/recruitment rules. In some of these cases, Government either did not file SLPs, or SLPs when filed, were dismissed *in limine* by the Hon'ble Supreme Court. Thereafter, the employees who were applicants in those cases were granted Special (Duty) Allowance. However, in several subsequent cases of different Ministries/Department of the Central Government, including the cases of officers/employees belonging to the Civil Accounts Organisation, the Hon'ble Supreme Court upheld the contention of the Government that Special (Duty) Allowance is admissible only to those

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officers/employees who are posted from outside to North-Eastern Region. In this connection, the Supreme Court judgment dated 20-9-1994 in Civil Appeal No. 3251 of 1993 [*Union of India v. S. Vijayakumar*, (1994) 28 ATC 598], refers.

3. After taking into account the above judgment of the Supreme Court, Government of India has issued fresh instructions in O.M. No. 11(3)/95-E.II(B), dated 12-1-1996, *inter alia* stating 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 clause in the appointment order relating to All India Transfer Liability." Recently, the Government of India in its O.M. No. 11(2)/97-E.II(B), dated 22-7-1998 has again drawn attention to the O.M. dated 12-1-1996.

4. Effect of various court judgments and the above mentioned OMs has been examined in consultation with Establishment Division of this Ministry and Ministry of Law & Justice (Department of Legal Affairs). Government is of the view that the judgment dated 20-9-1994 in *Union of India v. S. Vijayakumar*, being a speaking judgment, is the law of the land under Article 141 of the Constitution. The O.M. dated 12-1-1996 in turn is based on this judgment and therefore grant of Special (Duty) Allowance is to be regulated according to this O.M., irrespective of the fact that there are a few C.A.T. judgments under which some of the employees have been paid the Allowance.

5. In view of the above, it is clarified that Special (Duty) Allowance is admissible only in those cases where criterion of posting from outside to North-Eastern Region is satisfied, but not in the cases where officers/employees are recruited/promoted within North-Eastern Region. Consequently, payment of Special (Duty) Allowance shall also be stopped forthwith in those cases where it has been paid by virtue of C.A.T. judgments against which either SLPs were not filed or SLPs were dismissed *in limine*. Government has however decided to waive of recovery of the amount already paid for the period upto 20-9-1994.

*on file*  
(S.N. Sahi)

Asstt. Controller General of Accounts

To

All CCAs/CAs/Dy CAs  
All Ministries / SICIT,  
N. Delhi



D.O. No.

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ANNEXURE - R-14

भारत सरकार

महालेखा प्रधानमंत्री का कार्यालय

वित्त मंत्रालय

ब्राह्मण विभाग

लोकनायक भवन, नई दिल्ली-110 003

GOVERNMENT OF INDIA

OFFICE OF CONTROLLER GENERAL OF ACCOUNTS

MINISTRY OF FINANCE

DEPARTMENT OF EXPENDITURE

LOK NAYAK BHAVAN, NEW DELHI-110 003

TELE : 24610173 FAX : 24619008

DATE :  
D.O. No. F.140/99-LC  
Dated : 26-9-2003

H. N. NAYER  
JOINT CONTROLLER GENERAL OF ACCOUNTS

Dear Shri Kaila

I am bringing to your notice an instance which shows serious lapse on the part of your office in handling a court case. In this connection, your office last letter no. CA/RTHS/ Admn/ PAO(G)/ NH/SDA/ CAT/ 98-99/2003-04/ 862, dated 19-8-2003, also refers.

2. Shri T.K. Paul who was working as Assistant Accounts Officer in Regional Pay and Accounts Office (NH), Guwahati filed an Application no. 7 in the year 1999, in the Central Administrative Tribunal, Guwahati Bench, against denial of Special (Duty) Allowance to him. The draft Written Statement which was to be filed in the Tribunal, was sent to us for vetting vide your office letter No. CCA/SFT/Admn/PAO(G)/NH/SDA/CAT/98-99/3009, dated 30-3-1999. The vetted reply was returned vide our letter of even no. dated 7-4-1999, wherein it was requested that contents of "Note" annexed with the abovementioned letter be incorporated in the Written Statement. This "Note" made pointed submissions as to why Shri Paul was not entitled to Special (Duty) Allowance despite an earlier judgment of the Tribunal in his favour.

3. The Hon'ble Tribunal decided Shri Paul's case vide Order dated 2-11-2000 holding that Shri Paul was entitled to the Allowance. We came to know about this Order in June, 2003 when a copy of it was found enclose in another court case. Details of the case were subsequently sought from your office.

4. On perusal of the papers now received from your office, the following shortcomings have been noticed :

- (i) Contents of the "note" sent vide this office letter dated 7-4-1999 were not incorporated in the Written Statement filed in the Tribunal and therefore specific instructions issued vide this office O.M. no. C.18014/2/90/(PF)/MF-CGA(A)/LC/223, dated 22-3-1999, regarding discontinuance of Special (Duty) Allowance, could not be brought to the notice of the Hon'ble Tribunal;
- (ii) No serious attempt appears to have been made at the time of arguments to put forth the submissions of the Government before the Hon'ble Tribunal;
- (iii) The Order dated 2-11-2000 of the Hon'ble Tribunal, which is adverse to the Government, was not brought to our notice within a reasonable time after it was pronounced, as a consequence of which opinion of the nodal Ministries/Departments regarding desirability of filing Writ Petition in the High Court could not be obtained. This was necessary because the Order of the Hon'ble Tribunal was against the instructions issued vide this office O.M. No. C.18014/2/90/(PF)/MF-CGA(A)/LC/223, dated 22-3-1999.

I shall be grateful if you could personally look into the matter and take action as deemed appropriate in this case and keep us informed of the same.

Yours sincerely

(H.N. Nayer)

Shri V.N. Kaila  
 Chief Controller of Accounts  
 Ministry of Road Transport & Highways  
 and Ministry of Shipping  
 New Delhi