

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

(DESTRUCTION OF RECORD RULES, 1990)

Judgment RA-6/05

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allowed

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SECTION OFFICER (Judl.)

FORM No.4  
(SEE RULE 12)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ORDER SHEET

136/04

rg. App./Misc Petn/Cont. Petn/Rev. Appl.

In O.A. *T.K. Paul*  
Name of the Applicant(s) *T.K. Paul*  
Name of the Respondent(s) *M. Chandra, G.N. Chakrabarti, S. Nath, S. Choudhary*  
Advocate for the Applicant

Counsel for the Railway/CGSC.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

7.6.2004

Heard Mr.M.Chanda, learned counsel for the applicant and also Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents. The O.A. is admitted. Issue notice to the parties, returnable by four weeks.

In the meanwhile, operation of the order dated 13.5.2004 as well as order dated 18.5.2004 Annexure 6 & 7 respectively, is stayed till the returnable date. List on 12.7.2004 for order.

Member (A)

Notice & order sent to D/Section and issuing to respondents. mas. 1 do 6, by regd. with A/D post.

Present: Hon'ble Mr.K.V.Jachidanandan Judicial Member  
Hon'ble Mr.K.V.Prahladan, Administrative Member.

When the matter came up for hearing the learned counsel for the respondent would like to file the written statement. Four weeks time is allowed to file written statement. The applicant may file rejoinder if any within two weeks. List on 24.8.04 for orders.

Member(A)

Member(B)

24.8.2004 present; The Hon'ble Shri D.C.Verma,  
Vice-Chairman (J).  
The Hon'ble Shri K.V.  
Prahlaadan, Member (A).

~~xxxx~~ Mr.M.Chanda, learned coun-  
sel for the applicant as well as Mr.  
B.C.Pathak, learned Addl.C.O.S.C.  
for the Respondents were present.

As prayed by Mr.B.C.Pathak  
four weeks time is given to file  
written statement.

List on 4.10.2004 for  
order.

Interim order to continue.

Member (A)

Vice-Chairman

bb

22.11.2004

Mr.M.Chanda was present for the  
applicant.

List the matter alongwith the  
other SDA matters on 13.12.2004.

In the meanwhile order of 7.6.1  
will continue until further orders.

13.12.04.

Let this case be listed alongwith  
other S.D.A. matters on 22.2.05 before  
Division Bench.

Member

Vice-Chairman

lm

23.04.2005

Present: The Hon'ble Mr. Justice  
G. Sivarajan, Vice-Chairman,  
The Hon'ble Mr. K.V.Prahl:  
Administrative Member.

The case is adjourned to 24.5  
for hearing.

Member (A)

Vice-Chair

mb

Noter duly served on  
R-10-6

No. has been filed

Copy of order

dt. 24/8/04, issuing  
to learned counsel  
of both the parties.

26/8/04.

order dt. 22/11/04,  
issuing to learned  
advocate for both  
the parties.

24/11/04.

SA-136/04

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Notes of the Registry | Date | Orders of the Tribunal

24.03.2005

Heard Mr. M. Chanda, learned counsel for the applicants and also Ms. U. Das, learned Addl. C.G.S.C. for the respondents. Hearing concluded. Orders reserved.

Member (A)

Vice-Chairman

mb

09.06.2005

Judgment delivered in open Court, kept in separate sheets. The application is disposed of in terms of the order. No order as to costs.

Member

Vice-Chairman

mb

Notes of the Registry Date

Order of the Tribunal

## CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 136 of 2004.

Date of Order : This the 9<sup>th</sup> day of June, 2005.

THE HON'BLE MR JUSTICE G.SIVARAJAN, VICE CHAIRMAN  
 THE HON'BLE MR K.V.PRAHLADAN, ADMINISTRATIVE MEMBER

Sri Tusar Kanti Paul,  
 Assistant Accounts Officer,  
 Office of the Executive Engineer,  
 Central Water Commission,  
 Middle Brahmaputra Division,  
 CWC Complex, Behind Adabari Bus Stand,  
 P.O. Gauhati University,  
 Guwahati-781014, Assam.

... Applicant

By Advocate Sri M. Chanda

- Versus-

1. 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-110001.
4. The Chairman,  
 Central Water Commission,  
 Govt. of India,  
 Sewa Bhawan,  
 R.K.Puram, New Delhi - 110066.
5. The Under Secretary, Estt. IV  
 Government of India,  
 Central Water Commission,  
 303, Sewa Bhawan,  
 R.K.Puram,  
 New Delhi - 110066.
6. The Executive Engineer,  
 Government of India,  
 Central Water Commission,  
 Middle Brahmaputra Division,  
 CWC Complex, Behind Adabari Bus Stand,  
 P.O. Gauhati University,  
 Guwahati - 781014, Assam.

... Respondents

By Miss Usha Das, Addl. C.G.S.C

ORDERSIVARAJAN I.(V.C)

The applicant is working as Assistant Accounts Officer in the office of the Executive Engineer, Central Water Commission, Middle Brahmaputra Division at Guwahati. He has filed this application being aggrieved by orders dated 13.5.2004 and 18.5.2004 issued by the Under Secretary, Government of India and by the Executive Engineer who are respondents No.5 and 6 respectively. The applicant was getting Special Duty Allowance (SDA for short) pursuant to the orders passed by this Tribunal in the orders dated 12.5.1989 in G.C.No.105/1987 and as per order dated 2.11.2000 in O.A.7/1999. The payment of SDA was again discontinued as per the impugned proceedings dated 13.5.2004 followed by 18.5.2004 (Annexures 6 and 7 respectively). These two orders are impugned in this application. The applicant also seeks for a declaration that the payment of SDA in terms of various Government orders and also in terms of judgments and orders passed in G.C.105/87 and O.A.7/99 (inter parties).

2. The respondents have filed their written statement referring to various Government orders in the matter of grant of SDA and the decisions of the Supreme Court and of this Tribunal where it is stated that only those employees irrespective of their Grades in A, B, C & D, who fulfilled the criteria underlined in the concerned Government orders are entitled to get SDA. It is also stated that the amount paid to the ineligible employees upto 5.10.2001 would be waived and payment made thereafter would be recovered, as observed by the Supreme Court.

3. It is stated that the applicant is a local resident of the defined area of the North Eastern region, that the applicant was appointed initially in the North Eastern Region and he has continued to work in



the N.E. Region without any transfer to outside the said Region and hence the applicant is not entitled to grant of SDA and the amount so far paid is liable to be recovered. On the question of inter party judgment pleaded by the applicant it is stated that in view of the subsequent Government orders in implementation of the decision of the Supreme Court, the applicant is not entitled to grant of SDA after the said Government orders and that the principle of estoppel and the finality of judgment in such circumstances would not apply.

4. We have considered the rival submissions on the question of admissibility of SDA. There are a number of Government orders and also decisions of this Tribunal and of the Supreme Court on this issue. True that in the case of the applicant there are two decisions of this Tribunal, one rendered on 12.5.1989 and the other rendered on 2.11.2000 in G.C.105/87 and O.A.7/99 (Annexures 2 and 4 respectively). The said decisions, it must be noted, were rendered with reference to the Government orders as it obtained at that time. Subsequently the Supreme Court had spoken on the question of admissibility of SDA and the Government itself had issued various Government orders and the last being one issued on 29.5.2002. This Bench had considered the question of admissibility of SDA in a batch of cases O.A.No.170/99 and connected cases and rendered judgment on 31.5.2005 after elaborately considering all the relevant Government orders and the decisions of the Supreme Court. The legal position was summarized thus in para 52 and 53 of the said judgment :

"52. The position as it obtained on 5.10.2001 by virtue of the Supreme Court decisions and the Government orders can be summarized thus:

Special Duty Allowance is admissible to Central Government employees having All India

*Im*

Transfer liability on posting to North-Eastern Region from outside the region. By virtue of the Cabinet clarification mentioned earlier, an employee belonging to North Eastern Region and subsequently posted to outside N.E. Region if he is retransferred to N.E. Region he will also be entitled to grant of SDA provided he is also having promotional avenues based on a common All India seniority and All India Transfer liability. This will be the position in the case of residents of North Eastern Region originally recruited from outside the region and later transferred to North Eastern Region by virtue of the All India Transfer Liability provided the promotions are also based on an All India Common Seniority.

53. Further, payment of SDA, if any made to ineligible persons till 5.10.2001 will be waived."

5. Here it must be noted that the Office Memorandum F.No.11(5)97-E II (B) dated 29.5.2002 was also considered. It would appear from the averments in the written statement that the applicant was initially posted in the North Eastern Region and continued as such till date. The applicant also belongs to this Region. The case of the applicant in such circumstances would not fall within the governing principle stated in para 52 of the common judgment extracted above. However, the payment of SDA made till 5.10.2001 cannot be recovered as noted in para 53 of the common judgment.

6. Now the contention of the applicant is that question of entitlement of SDA was considered by this Bench in the two decisions mentioned above and decided in their favour. As already noted that those decisions were rendered with reference to the Government orders as it obtained then. There cannot be any dispute that the question of grant of SDA is a matter of Government policy. If the Government modified the earlier Government orders revising the criteria for grant of SDA there cannot be any doubt that the modified criteria would govern prospectively in the matter of grant of SDA. For applying such modified criteria issued by the Government

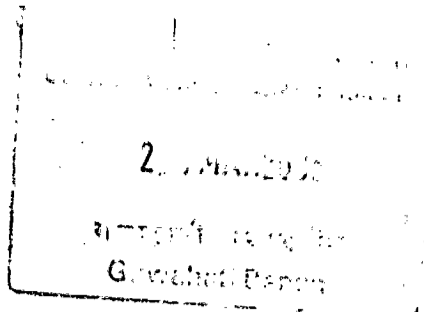
*gms*

subsequently the decision rendered in the matter prior to such Government order will not in any way stand in the way of doing so. The decisions of this Tribunal admittedly are of the year 1989 and 2000. The Government order dated 29.5.2002 and the common judgment in O.A.170/1999 and connected cases decided on the basis of the said Government orders would govern the field. The decision of this Tribunal rendered on 23.5.2003 in a batch of O.As (O.A. 249, 316, 342 and 367 of 2002) were with reference to the Government order dated 29.5.2002 and declined to grant relief by way of grant of SDA to similarly situated persons. However, the said judgment directs the respondents not to recover the SDA already paid. The present case, as already noted, pursuant to the directions issued by this Tribunal in the earlier mentioned two O.As the applicant was being paid SDA till the date of the impugned orders i.e. 18.5.2004. In the circumstances while rejecting the claim for continued grant of SDA we direct the respondents not to recover SDA paid to the applicant upto 18.5.2004. In this view of the matter we are not elaborately discussing the various decisions cited at the bar, both by the counsel for the applicant and counsel for the respondents.

O.A. is disposed of as above. No order as to costs.

Sd/VICE CHAIRMAN

Sd/MEMBER (A)



Filed by the Applicant  
Through Shriit-Choudhury  
Advocate  
03.10.04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

O.A. No. 136/2004

Shri Tusar Kanti Paul.

-----Applicant.

-Vs-

Union of India & Ors.

-----Respondents.

-AND-

In the matter of:

Rejoinder submitted by the applicant against the  
written statement submitted by the respondents.

The humble applicant abovenamed most respectfully begs to state as follows: -

1. That with regard to the statement made in paragraphs 3 (a) to 3 (o), the applicant begs to say that the case of the applicant is quite different and the subsequent judgment of the Hon'ble Supreme Court i.e. Vijaykumar's case decided on 20.09.1994 and the other cases referred by the respondents in paragraph 3 of the written statement has no relevancy in the instant case of the applicant. It is a case where no appeal preferred by the respondents Union of India against the judgment and order dated 12.05.1989 passed in O.A. No. 105/87, where the present applicant was also one of the applicant and by virtue of the said judgment of the learned Tribunal applicant has been declared entitled for payment of Special Duty Allowance in terms of the Memorandum dated 14.12.1983 of the Govt. of India, Ministry of Finance. But the respondents, Union of India did not prefer any appeal or Special Leave Petition against the said judgment in the appropriate

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forum and as such the said judgment dated 12.05.1989 passed by the learned Tribunal has attained finality, therefore, the brief fact narrated in the written statement is not relevant in the instant case of the applicant.

2. That with regard to the statement made in paragraphs 4, 6, 7, 8, 9 and 10 the applicant categorically denies the statements made by the respondents and further begs to say that similar contention has been raised by the respondents in O.A. No. 107/1999 decided on 19.12.2000, O.A. No. 7/1999 decided on 02.11.2000 as well as O.A. No. 29/2003 and O.A. No. 124/2003 decided on 14.05.2004, but the learned Tribunal rejected all those similar contention of the respondents Union of India. Therefore, the case of the present applicant is squarely covered in view of the above judgment passed by this learned Tribunal. Moreover, judgment dated 17.02.1999 passed in O.A. No. 103/1996 has already answered the issue involved in the instant case.

3. That with regard to the statements made in paragraph 11, 12 and 13 it is respectfully submitted that similar issue has been decided by the Hon'ble Supreme Court in V.S. Charati -Vs- Hussein Nhanu Jamadar (DEAD) BY LRS., reported in (1999) 1 SCC 273. Therefore, question of constitution of Larger Bench does not at all arise. It is further submitted that when judgment passed by a competent level of law and if the same is not carried in appeal, the same remain binding between the parties and if a law subsequently laid down by the Hon'ble Supreme Court on the same issue that will not affect the judgment rendered earlier by the subordinate Court, more so when it attained finality.

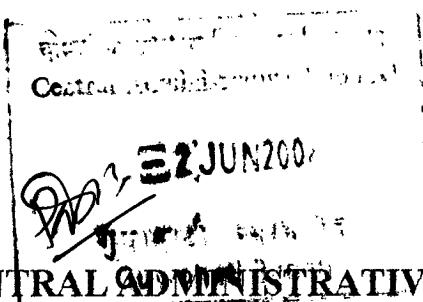
In the facts and circumstances stated above the original application deserves to be allowed with cost.

VERIFICATION

I, Sri Tushar Kanti Paul, aged about 48 years, working as Assistant Accounts Officer, office of the Executive Engineer, CWC, Middle Brahammaputra Division, CWC, Complex, Behind Adabari Bus Stand, Guwahati-14 do hereby verify that the statements made in Paragraph 1 to 3 of the rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the \_\_\_\_ day of March, 2005.

*Tushar Kanti Paul*



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

O.A. No. 136 /2004

Sri Tusar Kanti Paul

-Vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

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.

(Annexure-1)

12.5.89- 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 G.C. was disposed of on 12.5.89 declaring that the applicants of he said G.C. are entitled to draw Special Duty Allowance.

(Annexure-2)

09.10.89- 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.

(Annexure-3)

18.05.89- Applicant was transferred and posted from the office of the G.S.I, Shillong to the Regional Pay and Accounts Office (NH), Ministry of Surface Transport, Govt. of India.

12.01.96- Govt. of India issued O.M; the applicant fulfils all criteria laid down in the said O.M.

(Annexure-9)

21.01.00- Applicant was transferred and posted at office of the Executive Engineer, CWC, Middle Brahmaputra Division, Guwahati, where he is serving till date.

02.11.00- That under the similar circumstances this Hon'ble Tribunal in O.A. No. 7 of 99 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.

(Annexure-4)

29.05.02- Govt. of India issued an O.M, which has no bearing in the instant case of the applicant.(Annexure-10)

03.09.02- Respondents have continued to pay SDA to the applicant, which would be evident from the letter dated 03.09.02.

(Annexure-5)

13.05.04- Under Secretary, Govt. of India issued the impugned letter dated 13.05.04, whereby he directed the Executive Engineer, CWC for stoppage of SDA to the applicant.

(Annexure-6)

18.05.04- Executive Engineer vide his impugned order dated 13.05.04 stopped payment of SDA to the applicant w.e.f. 13.05.04.

(Annexure-7)

14.05.04- This Hon'ble Tribunal passed its Order in O.A. No. 124/03 in favour of similarly situated applicant directing to continue payment of SDA. (Annexure-8)

Hence this Original Application before this Hon'ble Tribunal.

#### P R A Y E R S

Relief(s) sought for:

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Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to grant the following relief(s):

1. That the impugned orders issued under letter No. A-51011/2/2004 Estt. IV dated 13.05.2004 (Annexure-6) and letter No.MBD/Gau/Estt-33/04/2899-2905 dated 18-05-2004 (Annexure-7), be set aside and quashed.
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, 22.07.98, and in terms of Judgment and order dated 12.05.1989 passed in G.C. No. 105/87 and also in terms of judgment and order dated 02.11.2000 passed in O.A. No. 7 of 1999 (Sri Tushar Kanti Paul Vs. U.O.I. & Ors.).
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 13.05.2004 with arrear monetary benefits.
4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.
5. Costs of the application.

Interim order prayed for.

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

1. That the Hon'ble Tribunal be pleased to stay the operation of the impugned order dated 18.05.2004 (Annexure-7) and further be pleased to direct the respondents to pay SDA to the applicant in terms of the judgment and order dated 12.5.1989 and 02.11.2000 passed G.C. No. 105/87 and O.A. No.7/99 respectively.

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## GUWAHATI BENCH: GUWAHATI

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

Title of the case : O. A. No. 136 /2004

Sri Tusar Kanti Paul : Applicant

- Versus -

Union of India & Others : Respondents.

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Filed by

*Subrata Nath*  
Advocate

Date: 03.06.04

17  
Filed by the Applicant -  
through: Subrata Nath.  
Advocate  
Date: 03.06.04

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

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

O. A. No. \_\_\_\_\_/2004

**BETWEEN**

Sri Tusar Kanti Paul,  
S/o- Sri Amulya Chandra Paul  
Assistant Accounts Officer,  
Office of the Executive Engineer  
Central Water Commission  
Middle Brahammaputra Division,  
CWC, Complex, Behind Adabari Bus Stand.  
P.O.-Gauhati University.  
Guwahati- 781014, 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,  
Ministry of Water Resources,  
Shastri Bhawan, New Delhi- 110001.
4. The Chairman  
Central Water Commission,  
Govt. of India,  
Sewa Bhawan,  
R.K. Puram, New Delhi- 110 066.

*Tusar Kanti Paul*

5. The Under Secretary, Estt. IV  
Government of India,  
Central Water Commission,  
303, Sewa Bhawan,  
R.K. Puram,  
New Delhi- 110066.
6. The Executive Engineer,  
Government of India  
Central Water Commission  
Middle Brahammaputra Division,  
CWC, Complex, Behind Adabari Bus Stand.  
P.O.-Gauhati University.  
Guwahati- 781014, 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 bearing letter No. MBD/Gau/Estt-33/04/2899-2905 dated 18.05.2004, issued by the Executive Engineer, Central Water Commission, Middle Brahammaputra Division, Guwahati, whereby discontinuation of Special Duty Allowance has been made in total disregard to the judgment and order dated 12.05.1989 passed in G.C. No. 105/87 as well as judgment order dated 02.11.2000 passed in O.A. No. 7/99 that too without providing any

*Jusan Kanti Paul*

reasonable opportunity or without issuing any show cause notice 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 12.05.1989 passed in G.C. No. 105/87 as well as judgment and order dated 02.11.2000 passed in O.A. No. 7 of 1999.

2. Jurisdiction of the Tribunal.

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, Central Water Commission, Middle Brahammaputra Division, Guwahati, Assam.

*Jivan Kanti Paul*

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 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:

*Jura Kanti Paul*

(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, 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 G.S.I Shillong. 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

*Jusar Kanta Paul*

Administrative Tribunals Act, 1985 before the Hon'ble Central Administrative Tribunal, Guwahati Bench and the same was registered as G.C 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 12.05.1989 in favour of the applicants.

A copy of Extract of the O.M. dated 14.12.1983 and a copy of the judgment and order dated 12.5.1989 passed in G.C. No. 105/87 are annexed hereto and marked as Annexure-1 and 2.

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. 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.

4.5 That the present applicant was thereafter transferred and posted from the office of the Pay and Accounts Office, GSI, Shillong to the Regional Pay Accounts Office (NH), Ministry of Surface Transport, Govt. of

*Jusan Kantu Paul*

India, Guwahati on 18.05.1989. Thereafter, the applicant was transferred and posted at office of the Executive Engineer, CWC, Middle Brahmaputra Division, Guwahati and started discharging his duties as Assistant Accounts Officer since 21.01.2000, 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 G.C 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, 12.01.1996 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. The matter of payment of SDA to the applicant was taken up on the advise of the respondent No.2 (Controller General of Accounts) with the Min. of Law, Deptt. of Legal Affairs (Central Agency Section) for filling Special leave

*Jusen Kanti Paul*

petition and obtaining stay from the Supreme Court against CAT's judgment. 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. Thereafter the validity of the judgment and order was never questioned at any point of time.

A copy of the letter dated 9.10.1989 is enclosed hereto and marked as Annexure-3.

4.7 That most surprisingly, payment of Special Duty Allowance paid to the applicant was stopped by the Regional Pay and Accounts Officer (NH), Ministry of Surface Transport, Guwahati vide letter bearing No. PAO(G)/NH/1(25)98-99/888-889 dated 30/31.12.1998. Being aggrieved with the decision of payment of SDA the applicant filed an Original Application to the Hon'ble CAT, Guwahati Bench, which was numbered as O.A. No. 7 of 1999. The Hon'ble CAT, Guwahati Bench after hearing the arguments advanced by the parties was pleased to pass its judgment on 02.11.2000 as follows:

----4. Considering all aspects of matter, I am of the view that since the Tribunal has already passed an order, which has attained finality, 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."

*Jusan Kanti Paul*

It is quite clear from the judgment and order dated 02.11.2000 that question of payment of the SDA to the applicant is settled and the respondents have no right to discontinue payment of SDA to the applicant after the judgment and order dated 02.11.2000 passed in O.A. No. 7/1999.

A copy of judgment dated 02.11.2000 is annexed herewith as Annexure-4 and a copy of the judgment dated 18.11.98 passed in Civil Appeal No. 1874 of 1984 by the Hon'ble Apex Court is annexed as Annexure-4A.

- 4.8 That it is stated that the respondents have continued payment of SDA to the applicant after the judgment and order dated 02.11.2000, which would be evident from the letter bearing No. MBD/Gau/Estt-33/SDA/02/5088-92 dated 03.09.2002 but most surprisingly the respondent no.5 in pursuance of the Under Secretary (Estt-IV) CWC, New Delhi letter No. A-51011/2/2004-Estt-IV dated 13.05.2004 stopped payment of SDA to the applicant vide his letter bearing No. MBD/Gau/Estt-33/04/2899-2905 dated 18.05.2004 with effect from 13<sup>th</sup> May, 2004 in total disregard to the Hon'ble Central Administrative Tribunal's judgment and order dated 12.05.1989 in G.C. No. 105/87 and Judgment and order dated 02.11.2000 in O.A. No.7/1999 where the present applicant was a party. Since the Government of India has accepted and implemented the judgment and order dated 12.05.1989 therefore the impugned order dated 18.05.2004 is liable to be set aside and quashed. The instant case of the applicant is quite different and the same is not covered by the O.M. dated 29.5.2002, as such Office

*Lusan Kanti Paul*

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Order dated 18.05.2004 is liable to be set aside and quashed.

A copy of the letter dated 03.09.2002, a copy of the order dated 13.05.2004 and a copy of the impugned order dated 18.05.2004 are enclosed hereto for the perusal of the Hon'ble Tribunal as Annexure-5, 6 & 7 respectively.

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 dated 18.05.2004 of withholding the payment of SDA and the proposed order of recovery of SDA is liable to be set aside and quashed.

4.10 That your applicant further states that respondent No.5 has no jurisdiction under the rule as well as under the law to withhold the SDA in respect of the applicant and specially when entitlement of SDA to the applicant has been declared by the Hon'ble Tribunal in the judgment and order dated 12.05.1989 in G.C. No. 105/87 as well as judgment and order dated 02.11.2000 in O.A. No. 7/1999 and the same has been accepted and implemented by the Govt. of India. The respondents are well aware regarding the validity of the judgment and order passed

Jasar Kant Singh

in G.C. No. 105/87 as well as O.A. No. 7/1999. Therefore the stoppage of SDA to the present applicant is deliberate violation of the Hon'ble Tribunal's order dated 12.05.1989 and 02.11.20000 passed in G.C. No. 105/87 and 7/1999 respectively. Therefore the impugned order dated 18.05.2004 is liable to be set aside and quashed.

4.11 That under the facts and circumstances of the instant case the Hon'ble Tribunal be pleased to impose a cost of Rs. 25,000/- upon the respondent No.4 and 5 for causing pecuniary loss and mental agony to applicant which lead to civil consequences due to malafide intention. The impugned order dated 18.05.2004 speaks of arbitrariness and high handedness on the part of the administration. The respondents more particularly respondent No. 4 and 5 are encouraging the applicant to take recourse to multiple legal proceeding on the same point which has already been decided finally by this Hon'ble Tribunal. Therefore the order dated 18.05.2004 is arbitray, malafide, unjust and opposed to the settled law.

4.12 That it is stated that under the similar circumstances Shri Ramjyoti Bhattacharjee 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. 124/2003 (Sri Ramjyoti Bhattacharjee Vs. Union of India

*Zusar Kanti Paul*

& Ors.). However, this Hon'ble Tribunal was pleased to pass its order on 14.05.2004 in favour of the applicant, directing to continue to payment of SDA to the applicant of O.A. No. 124 of 2004.

Copy of the judgment and order-dated 14.05.2004 has been enclosed and marked as Annexure-8.

4.13 That it is stated that the respondents did not provide any opportunity or show cause notice to the applicant before passing the impugned order of discontinuation/stoppage of payment of SDA w.e.f. 13.05.2004. It is a settled position of law that reduction of pay and allowance cannot be made without providing any prior opportunity. On that score alone the impugned orders dated 13.05.2004 and 18.05.2004 are liable to be set aside and quashed.

4.14 That it is stated that the case of the applicant is squarely covered by the clarification of O.M dated 12.01.1996 issued by the Govt. of India as because the applicant is saddled with all India transfer liability, the recruitment zone, promotion zone and seniority of the applicant is maintained on all India basis. The applicant fulfills all the criterion laid down in O.M dated 12.01.1996.

A copy of the O.M dated 12.01.1996 is enclosed for the perusal of the Hon'ble Tribunal as Annexure-9.

4.15 That it is stated that the O.M dated 29.05.2002 has no bearing in the instant case of the applicant. Judgment

*Jusan Kantil Pant*

and order passed in G.C. No. 105/87 has already attained finality and the same was further confirmed by the Hon'ble Tribunal in its judgment and order dated 02.11.2000 passed in O.A. No. 7/99. The force of a judgment declared by a competent Court of law cannot be nullified by a subsequent O.M issued by the Govt. of India.

A copy of the O.M dated 29.05.02 is enclosed hereto for the perusal of the Hon'ble Tribunal as Annexure- 10.

4.16 That as a result of the order of stoppage/ discontinuation of payment of Special Duty Allowance, the applicant is approaching this Hon'ble Tribunal praying for a direction to the respondents to continue to pay him Special Duty Allowance with effect from the date of its discontinuation i.e. from 13.05.2004.

4.17 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 G.C. No. 105/87 as well as judgment and order dated 02.11.2000 in O.A. No. 7/1999.

*Yusuf Kanto Paul*

- 5.2 For that the respondents i.e. Union of India have accepted and implemented the judgment and order dated 12.5.1989 and 02.11.2000 passed in G.C. No. 105/87 and O.A. No. 7/1999 respectively 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 and O.A. No.7/99 which are 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 the present applicant.
- 5.4 For that, the order passed by respondent No.5 is in total disregard to the judgment and order passed in O.A. No. 105/87 and O.A. No. 7/99, 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 14.05.2004 in O.A. No. 124 of 2003 (Sri Ramajyoti Bhattacharjee Vs. U.O.I. & Ors.) in favour of the applicant and directed the respondents to continue to pay SDA to the applicant.
- 5.6 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

*Jasbir Kant Paul*

present applicant amounts to deliberate violation and willful disobedience of the order dated 12.05.1989 and 02.11.2000 passed by this Hon'ble Tribunal.

5.7 For that, the illegal and arbitrary decision of stoppage of SDA has been taken by the respondent No.5 with an ulterior motive and it is an act of colourable exercise of power 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 02.11.2000 passed in O.A. No. 7 of 1999.

5.8 For that, impugned order of stoppage and recovery of SDA has been issued without affording reasonable opportunity to the applicant therefore the impugned order dated 18.05.2004 is liable to be set aside and quashed.

5.9 For that, the applicant is meted with differential treatment amongst the similarly situated applicants of G.C. No. 105/87 (Sri R. Dutta Choudhury & Ors. Vs. U.O.I. & Ors.).

5.10 For that, there is no mention about the judgment and order dated 12.5.89 passed in G.C. No. 105/87.

5.11 For that, the judgment and order passed by the Hon'ble Tribunal in G.C. No. 105/87 and O.A. No. 7/99 is still in force.

6. Details of remedies exhausted.

*Juraj Kantil Paul*

That the applicant states that he had no scope to submit any representation as the payment of SDA has been stopped without affording any reasonable 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 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 previously filed G.C No. 105/87 and O.A. No. 7/99 this Hon'ble Court, which were disposed of by this Hon'ble Court.

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 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 orders issued under letter No. A-51011/2/2004 Estt. IV dated 13.05.2004 (Annexure-6) and letter No.MBD/Gau/Estt-33/04/2899-2905 dated 18-05-2004 (Annexure-7), be set aside and quashed.

*Jusan Kanti Paul*

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, 22.07.98, and in terms of Judgment and order dated 12.05.1989 passed in G.C. No. 105/87 and also in terms of judgment and order dated 02.11.2000 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 13.05.2004 with arrear monetary benefits.

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 18.05.2004 (Annexure-7) and further be pleased to direct the respondents to pay SDA to the applicant in terms of the judgment and order dated 12.5.1989 and 02.11.2000 passed G.C. No. 105/87 and O.A. No.7/99 respectively.

*Tushar Kanti Paul*

10. ....  
This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No. : 15Q389381,  
ii) Date of Issue : 13.5.04  
iii) Issued from : G.P.O. Guwahati  
iv) Payable at : G.P.O. Guwahati

12. List of enclosures.

As given in the index.

*Tusar Kanti Paul*

VERIFICATION

I, Sri Tushar Kanti Paul, aged about 48 years, working as Assistant Accounts Officer, office of the Executive Engineer, CWC, Middle Brahammaputra Division, CWC, Complex, Behind Adabari Bus Stand, Guwahati-14 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 3<sup>rd</sup> day of June, 2004.

*Tushar Kanti Paul*

Annexure-1

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 :-

- i) Tenure of posting/deputation :-

*Affected  
Part  
Advocate  
03.6.84*



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

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Annexure-2

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

J U D G E M E N T

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 the <sup>applicants'</sup> 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

*Submitted  
Advocate  
3.6.89*

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 East 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.A. 20-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 carrying 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

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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, <sup>in</sup> 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 circumstanced 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 <sup>to the applicants</sup> as per O.M. No. 20014/3/83-E.IV, dt. 14.12.1983 issued by the Ministry of

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  
Indt. Member  
12.5.89

Certified to be true copy

*P. C. Jais*  
Deputy Registrar (J. Adm.)  
Central Administrative Tribunal  
Guwahati Bench  
15/5/89

*Attested  
P. C. Jais  
Advocate  
3/6/89*

आ. शा. क्रमांक/D.O. No. PAS: GC-105/R1/SDA/SH/1/ 2933

45

G P GUPTA  
DY CONTROLLER OF ACCOUNTS

मुख्य लेखा 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

दिनांक १६  
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 OM 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/-

*Shri S V S Sharma*  
*Advocate*  
*2/10/89*

: 2 :

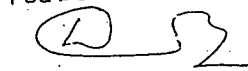
ever is later only in respect of the following 12 applicants.

1. Ranendu Dutta Chowdhury
2. Ramen Sonowal
3. Bijan Chari Bhattacharjee
4. Smt. Harry Blanca Kharsing
5. S Mongknsih
6. Manik Chanda
7. Ramjyoti Bhattacharjee
8. Ashutosh Paul
9. Tusar Kanti Paul
10. Himangshu 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 disbursing 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 B B Das  
PAO, Care-Late S Kar Gupta's House  
Lower New Colony  
Shillong-3  
Pin 793 003  
(Meghalaya)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Annexure-4

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 Tushar Kanti Paul,  
Assistant Accounts Officer,  
Regional Pay and Accounts Officer(NH),  
Ministry of Surface and Transport,  
Government of India,  
Guwhati.

.....Applicant

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

- 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.

.....Respondents

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

.....

O R D E R (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.

*Shri A. Deb Roy  
Advocate  
2/11/00*

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 aforementioned application alongwith the present applicant sought for a direction for grant of Sepcial (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/Estt.-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, moroso 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.....

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 already finally</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.

The application is allowed. No order as to costs.

Sd/VICE CHAIRMAN

nkm

Certified to be true copy

प्रमाणित प्रतिलिपि

27/8/02  
Deputy Officer (A)

सांख्यिक अधिकारी (न्यायिक शाखा)  
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण  
Central Bench, Guwahati  
प्रधान न्यायाधीश, प्रशासनिक

5. The costs shall be deposited in the account of the Supreme Court Legal Services Committee within four weeks.

Court Masters

(1999) 1 Supreme Court Cases 273

(BEFORE SUJATA V. MANOHAR AND G.B. PATTANAIAK, JJ.)

V.S. CHARATI

Appellant;

Versus

HUSSEIN NHANU JAMADAR (DEAD) BY LRS.

Respondent.

Civil Appeal No. 1874 of 1984<sup>†</sup>, decided on November 18, 1998

A. Tenancy and Land Laws — Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) — S. 43-1B — Overrides preceding provisions of the Act

B. Tenancy and Land Laws — Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948) — Ss. 43-1E, 43-1B and 32-G — Right of landlord, if a member of armed forces, to terminate tenancy under S. 43-1B — Bar under S. 43-1E against applicability of Ch. III-AA if land purchased by the tenant before commencement of Amendment Act of 1964 — Word 'purchased' in S. 43-1E — Held, refers to completed purchase — A tenant who is only a deemed purchaser cannot seek operation of bar under S. 43-1E so as to claim that the landlord is not entitled to invoke S. 43-1B for terminating the tenancy

C. Judgment — A decision rendered by a Tribunal/Court in absence of challenge becomes final and binding on both the parties and merely because it may be wrong, it would not become a nullity — Res judicata — Judgment unopposed becomes final and binding

The respondent-tenant became a deemed purchaser under Section 32(1) of the Bombay Tenancy and Agricultural Lands Act, by virtue of dismissal of appellant-landlord's application under Section 31(1) for recovery of possession of the land. But subsequent proceedings under Section 32-G taken for determination of purchase price was dropped by the Agricultural Lands Tribunal on ground that since the appellant was a minor at the time of his filing the application under Section 31(1) the respondent could not purchase the land. The order of the Tribunal was not challenged by the respondent and as such it became final and binding on the parties. After commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1969, the tenant was also given an additional opportunity to give intimation under Section 32-F(1-A) but the same was not availed by him. On attaining majority (after introduction of Chapter III-AA in the Act) the appellant joined the armed forces and served a notice in 1972 terminating the tenancy of the respondent under Section 43-1B(2). In the proceedings which took place thereafter, his application was allowed by the Sub-Divisional Officer. An appeal from this order to the Additional Commissioner was dismissed. The respondent-tenant thereupon moved the High Court by way of a writ petition which was allowed. Allowing the appeal of the landlord-appellant

Held:

Section 43-1B overrides the preceding provisions of the Act in view of the non obstante clause contained therein and therefore, in spite of dismissal of the original

<sup>†</sup> From the Judgment and Order dated 8-10-1980 of the Bombay High Court in S.C.A. No. 4762 of 1976

application under Section 31(1); it was open to the appellant to invoke Section 43-1B.

Section 43-1E will come into operation only in those cases where there is a completed purchase in favour of the tenant. It will not protect a tenant who is only a deemed purchaser, but in respect of whom proceedings under Section 32-G have not been completed. The appellant, therefore, in the present case, did not lose his rights under Chapter III-AA because the proceedings under Section 32-G had been dropped, and the tenant remained only a deemed purchaser and could not be called a purchaser as contemplated under Section 43-1E. Therefore, the bar under Section 43-1E against applicability of Chapter III-AA (which includes Section 43-1B) will not operate in favour of the respondent. (Paras 7 and 8)

*Bhimrao Taroba Sawant v. Heramb Anant Panwardhan*, AIR 1986 Bom 408, approved

It is not possible to accept the contention of the respondent that the Agricultural Lands Tribunal was not right in dropping proceedings under Section 32-G and that its order was bad in law. The order of the Tribunal having not been challenged by the respondent, it became final and binding on both the parties. A decision, simply because it may be wrong, would not thereupon become a nullity. It would continue to bind the parties unless set aside. The effect of the decision on the parties, therefore, cannot be ignored. In the present case, since the tenant could not complete his purchase by reason of the proceedings under Section 32-G being dropped, he cannot now contend that the decision has no legal effect or that the proceedings under Section 32-G ought to have been completed and, therefore, he should be looked upon as a purchaser. (Para 9)

*Nago Dattu Mahajan v. Yeshodabai Huna Mahajan*, (1976) 7S Bom LR 427, referred to

R-M/TZ/20455/C

Advocates who appeared in this case :

S.V. Deshpande, Pramit Saxena and Suhas, Advocates, for the Appellant;

P.R. Ramasesh and Ms Promila Chaudhary, Advocates, for the Respondent.

#### Chronological list of cases cited

- |   | on page(s) |
|---|------------|
| 1. AIR 1986 Bom 408, <i>Bhimrao Taroba Sawant v. Heramb Anant Panwardhan</i>  | 276b-c     |
| 2. (1976) 7S Bom LR 427, <i>Nago Dattu Mahajan v. Yeshodabai Huna Mahajan</i> | 277d       |

#### ORDER

1. The appellant is the landlord. He has claimed that in a partition effected in the year 1956 in the joint family of which he was a member, an area admeasuring 1 acre 19 gunthas out of Revision Survey No. 8 of Village Kudnoor in Gadhinglaj Taluka came to his share. This land is agricultural land of which the original respondent was a tenant at the material time.

2. On the coming into force of the Bombay Tenancy & Agricultural Lands Act, 1948, the appellant filed an application under Section 31(1) read with Section 29 of the said Act for possession on the ground that he bona fide required the land for personal cultivation. Although the appellant was a minor at the time of the application, he chose to exercise his rights under Section 31(1). This application was ultimately dismissed by the Mamlatdar on 29-5-1957 on the ground that under Section 31-B, there is a prohibition against termination of tenancy if such termination would result in contravention of the provisions of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947. Therefore, by virtue of the dismissal of the appellant's application under Section 31(1), under the

provisions of Section 32(1), the respondent became a deemed purchaser of the said land on the postponed date 29-5-1957, the latter being the date on which the application of the appellant was dismissed.

a 5. Thereafter proceedings under Section 32-G were taken for determination of purchase price. These proceedings, however, were dropped by the Agricultural Lands Tribunal on 31-5-1961 on the ground that the appellant was then a minor and the tenant could not purchase the land. The tenant did not take any steps to challenge the decision of the Tribunal dated b 31-5-1961.

4. On 20-10-1964, by Maharashtra Act 39 of 1964, Chapter III-AA was added in the said Act to confer certain benefits on the members and ex-members of the armed forces. Under this Chapter, Section 43-1B provides, inter alia, that it shall be lawful for a landlord at any time after commencement of the said Amendment Act, to terminate the tenancy of any c land and obtain possession thereof, but of so much of such land as will be sufficient to make the total land up to the ceiling area. Under sub-section (4) of Section 43-1B, nothing in the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947 shall affect the termination of any tenancy under this Chapter. The "landlord" for the purposes of this Chapter d is defined in Section 43-1A as a person who is, or has ceased to be, a serving member of the armed forces. The appellant, in the present case, joined the armed forces on 20-11-1963 after he attained majority on 7-11-1963. He served on 11-4-1972 a notice terminating the tenancy of the respondent under Section 43-1B(2). In the proceedings which took place thereafter, his application was allowed by the Sub-Divisional Officer on 31-5-1975. An appeal from this order to the Additional Commissioner was dismissed on e 25-4-1976. The respondent-tenant thereupon moved the High Court by way of a writ petition which has been allowed by the impugned judgment and order dated 8-10-1980. Hence, the present appeal.

✓ 5. The short question that requires consideration is whether in view of the dismissal of the original application filed by the appellant-landlord under Section 31(1) on 29-5-1957, it was open to the appellant to avail of the f provisions of Chapter III-AA. Under Section 43-1B, it is provided that notwithstanding anything contained in the foregoing provisions of this Act, but subject to the provisions of this section, it shall be lawful for a landlord (a member or ex-member of the armed forces) at any time after the commencement of the Tenancy and Agricultural Lands (Amendment) Act, 1964 to terminate the tenancy of any land and obtain possession thereof in g the manner set out in the section. Section 43-1B, therefore, overrides the preceding provisions of the said Act. Section 43-1E which forms a part of Chapter III-AA, provides as follows:

"43-1E. Nothing in this Chapter shall apply in relation to land, which h before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964 is purchased by any tenant under the provisions of Chapter III."

6. According to the appellant, Section 43-1E will come into operation only in those cases where there is a completed purchase in favour of the tenant. It will not protect a tenant who is only a deemed purchaser; but in respect of whom proceedings under Section 32-G have not been completed. The appellant therefore contends that as a member of the armed forces, he can avail of Chapter III-AA and Section 43-1B forming a part thereof, to terminate the tenancy of the respondent and obtain possession of the said land. According to the respondent, Section 43-1E will protect him against Chapter III-AA provisions because he has become a deemed purchaser on 29-5-1957.

7. This issue came up for consideration before a Division Bench of the Bombay High Court in the case of *Bhimrao Tatoba Sawant v. Heramb Anant Panvardhan*<sup>1</sup>. While considering the scheme of Chapter III-AA, the Bombay High Court held that Section 43-1E would come into operation only if there has been, so to say, a completed purchase of the land by the tenant under the provisions of Chapter III. It will not be possible to introduce, while interpreting that section, the theory of "deemed purchase" and its ineffectiveness under certain circumstances. What is material is that the vested rights flowing from the purchase of the land by the tenant under Chapter III should not be disturbed. If the rights of the tenant as a purchaser have not been crystallised, the landlord belonging to the armed forces can claim benefit of the provisions of Chapter III-AA. In the present case, as Section 32-G proceedings were dropped, the rights of the respondent-tenant as a purchaser have not been crystallised. The very purpose of introducing Chapter III-AA by the Amending Act of 1964 is to give additional benefits to those landlords who are members of the armed forces. The High Court has rightly observed in connection with Chapter III-AA as follows:

"All these provisions would be set at naught if we accept the contention of Shri Bhonsale that under Chapter III a tenant would be the purchaser in every case except where the purchase has become ineffective under Section 32-G(3) or Section 32-F. It is material to note that wherever the purchase has become ineffective under these two provisions, it is the landlord who had a first preference to get possession of the land. This right has been conferred on the landlord under Section 32-P. What is important is that under that section the landlord, whether he is a member of the armed forces or not, is entitled to have his first preference. It would thus mean that the provisions of Chapter III-AA could not be implemented to the benefit of the landlord belonging to the armed forces if we record a finding that prior to the introduction of Chapter III-AA on the statute-book the tenant should be held to have become the owner except under the two contingencies covered by Sections 32-G(3) and 32-F. In our opinion, the interpretation sought to be put by Shri Bhonsale on Section 43-1E would take away all the benefits which the legislature intended to confer on the landlords who

a have been serving as members of the armed forces. It is material to note that Section 43-1E uses the words 'purchase by the tenant'. It appears that the legislature has purposefully chosen not to use the words 'deemed to have been purchased by the tenant' under Chapter III. The words 'purchased by the tenant' will have to be interpreted in such a manner that the intention of the legislature to give additional benefits to the landlords belonging to the armed forces is implemented. This is permissible if there is no violence to the language used by the legislature and the meaning of the phrase 'purchased by the tenant' can be properly understood as not to cover 'deemed to have been purchased by the tenant'." (emphasis ours)

b 8. The appellant, therefore, in the present case, did not lose his rights under Chapter III-AA because the proceedings under Section 32-G had been dropped, and the tenant remained only a deemed purchaser and could not be called a purchaser as contemplated under Section 43-1E.

c 9. It is submitted by the respondent that the Agricultural Lands Tribunal was not right in dropping proceedings under Section 32-G. Its order of 31-5-1961 is bad in law. He relied upon a decision of the Bombay High Court in the case of *Nago Dattu Mahajan v. Yeshodabai Huna Mahajan*<sup>2</sup> where this Court had held that under Section 31, the landlords have a choice to avail of one of the two provisions of resumption, namely, either Section 31(1) or Section 31(3). No landlord can avail of both the provisions. Learned counsel for the respondent, therefore, contends that in the present case, the appellant having exercised his choice under Section 31(1), could not have urged in the proceedings under Section 32-G his disability as a minor under Section 31(3). The order of 31-5-1961 of the Agricultural Lands Tribunal, however, was not challenged by the respondent. The order of 31-5-1961 has become final and the decision rendered by the Agricultural Lands Tribunal as between the appellant and the respondent is binding on both the parties. A decision, simply because it may be wrong, would not thereupon become a nullity. It would continue to bind the parties unless set aside. The effect of the decision of 31-5-1961 on the parties, therefore, cannot be ignored. In the present case, since the tenant could not complete his purchase by reason of the proceedings under Section 32-G being dropped, he cannot now contend that the decision has no legal effect or that the proceedings under Section 32-G ought to have been completed and, therefore, he should be looked upon as a purchaser.

g 10. The appellant has also drawn our attention to Section 32-F(1A) under which, if a tenant holding land from a landlord who was a minor has not been given intimation at the commencement of the Bombay Tenancy and Agricultural Lands Amendment Act, 1969, but being in possession of the land on such commencement, is desirous of exercising the right conferred on him under sub-section (1), he may give such intimation to the landlord and the Tribunal within a period of two years from the commencement of the

Act. Therefore, the tenant was given an additional opportunity to give intimation after the commencement of the Amendment Act of 1969. Even this opportunity was not availed of by the tenant. The respondent has thus continued as a tenant. His tenancy can be terminated under Section 43-1B. a

11. In the premises, the High Court was not right in coming to the conclusion that the application of the appellant was barred under Section 43-1E. We, therefore, allow this appeal, set aside the impugned judgment and order of the High Court and restore the order of the Sub-Divisional Officer as confirmed by the Additional Commissioner. There will, however, be no order as to costs. b

Dated, the 3/9/2002.

To

The Superintending Engineer,  
 Hydrological Observation Circle,  
 Central Water Commission,  
Guwahati-24.

Sub:- Admissibility of S.D.A. to CWC employees posted at N.E.R.- regarding.

Ref:- Your letter No.A-15017/12(53)/Estt-W/C/2002/2528-30 dated 26/8/2002.

Sir,

In reference to your letter cited above on the above mentioned subject, the clarifications, sought for, are furnished hereunder.

1. The S.D.A. in favour of Shri T.K. Paul, A.A.O. is continued as per letter No. PAO(G)/MH/1(3)(8)/99-2000/1170 dated 14/2/2000 and also under the Judgement of Hon'ble CAT, Guwahati delivered on 02.11.2000 in case of original application no.7 of 1999. (copy enclosed)  
*(Annexure I to R)*
2. The S.D.A. in favour of Shri K. Prasad, Generator Mechanic (W/C) is continued as per Office Order No. A-16021/8/Estt-II/94/3406-10 dated 10/10/94 (copy enclosed)  
*(Annexure II to R)*. In this connection a copy of this office letter No. MBD/Gau/Estt-II/8/2002/696 dated 31/1/2002 is also enclosed herewith for information and necessary action please. However, since his service condit. does not have all India transfer liability, SDA in the instant case is hereby discontinued pursuant to the Govt. of India, Min. of Finance letter No. 11(5)/97- E. II (B) dated 29/5/02.

Yours faithfully,

Encls:- As above.

*(Signature)*  
 ( A.K. SRIVASTAVA )  
EXECUTIVE ENGINEER

Copy to:-

1. Accounts Branch, M.B. Divn., CWC, Guwahati.
2. Asstt. Engineer, Mech. Sub-Division, CWC, Guwahati.
3. Persons concerned. (Sh. T. K. Paul, A.A.O. M.B. Divn., Guwahati).  
 The Pay & A/Offices, CWC, R.K. Puram, New Delhi.  
 along with above enclosures for information.

*(Signature)*  
 ( A.K. SRIVASTAVA )  
EXECUTIVE ENGINEER

*Submitted  
 2/6/04*

*To me  
 R. K. Paul*

-A0-

Annexure-6

BY FAX

No.A-51011/2/2004-Estt.IV  
Government of India  
Central Water Commission  
\*\*\*\*\*

303, Sewa Bhawan R.K. Puram,  
New Delhi-110066  
Dated:- 13<sup>th</sup> May, 2004

To

The Executive Engineer,  
Middle Brahmaputra Division,  
Central Water Commission,  
CWC Complex, Behind Adabari Bus Stand,  
PO: Guwahati University  
Guwahati-781014(Assam)  
FAX- 0361-2674267

1-9-20  
14/5

Sub: Admissibility of S.D.A. to Shri T.K. Paul, AACO -regarding.

Ref: Your Office letter No. MBD/Gau/Estt.-33/2004/1550-51 dated  
30.3.2004. *ep-56*

Sir,

I am directed to refer to Middle Brahmaputra Division's letter No.  
MBD/Gau/Estt.-33/2004/1550 dated 30.3.2004 on the above cited  
subject. The matter has been considered in the CWC Head Quarters.  
The following action may please be taken immediately:-

- a) SDA may be stopped immediately as Shri Paul does not  
fulfil the criteria for payment of SDA.
- b) Issue a show cause notice quoting Deptt. of Expenditure's  
OM dated 29<sup>th</sup> May, 2002 and asking why recovery should  
not be made w.e.f. 6.10.2001 till date.

2. A compliance report may please be sent thereafter.

Yours faithfully,

*E.S. Narayan*  
13/5/04  
(E.S.NARAYAN)

Under Secretary, Estt.IV  
Tel. 6107577

Copy to

Superintending Engineer, R.R. Circle, CWC  
Adabari Bus Stand, Guwahati-781014. FAX- 0361-2674267  
The Superintending Engineer (C.O/O) Chief Engineer, RRB  
Guwahati, Guwahati-781014. FAX- 0361-2674267  
Guwahati, Shillong, Jorhat, Tezpur, Aizawl, Dispur.

*Sh. K. Paul*  
*Advocate*  
*9/6/04*

No. MBP/Com/Patt-33/04/ 2899-2905

Government of India  
Central Water Commission  
Middle Brahmaputra Division

Phone: 2674267

FAX: (0361)2674267

Email: mbdcw@sisy. Com

CWC, Complex,  
Behind Adabari Post Stand  
P.O. Guwahati University,  
Guwahati-781014 (Assam).

Dated: 18/5/2004.

OFFICE ORDER

In pursuance of Under Secretary, (Patt-IV) CWC, New Delhi's letter No.A-51011/2/2004-Patt-IV dated 13-5-04 (copy enclosed) received from S.D., H.O. Circle, CWC, Guwahati's letter No.A-15017/12(56)/Patt-W/C/2004/1787 dated 17-5-04, S.D.A. in respect of Shri T.K. Paul, A.A.O., is hereby stopped with effect from 15th May, 2004.

(A.K. SRIVASTAVA)  
EXECUTIVE ENGINEER

## Copy to:-

1. The Superintending Engineer, H.O. Circle, CWC, Guwahati for kind information please.
2. The Superintending Engineer (Coord) G/O C.E., MBP, CWC, Shillong for kind information please.
3. The Pay & Accounts Officer, CWC, Sewa Bhawan, R.K. Puram, New Delhi-66.
4. The Under Secretary, Patt-IV, CWC, Room No.303, Sewa Bhawan, R.K. Puram New Delhi-66. It is to inform that the necessary action regarding show cause notice etc. against recovery of S.D.A. in respect of Shri T.K. Paul, A.A.O., with effect from 6-10-2001 is being taken separately.
5. Shri T.K. Paul, A.A.O., M.B. Division, CWC, Guwahati for information.
6. Bill Clerk, M.B. Division, CWC, Guwahati for information & immediate necessary action.
7. Accounts Branch, M.B. Divn., CWC, Guwahati-14.

Approved  
Sd/-  
3/6/04

## CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI REGION

On 12/29 of 2003 and On 124/2003

New Delhi, this the 14<sup>th</sup> day of May, 2004HON'BLE MR. KULDIP SINGH, MEMBER (JUDGE)  
HON'BLE MR. P. V. PRASAD ACHARY, MEMBER (JUDGE)OA No 129/2003

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

By Advocates: Shri M. Chanda.

Versus

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

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

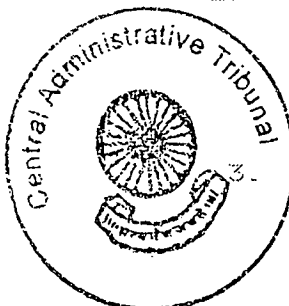
OA 124/2003

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

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

*Shri M. Chanda*  
*Shri G.N. Chakraborty*  
*Shri S. Nath*  
*2/6/04*

*Ka*



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

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

By this common judgment we will decide two OAs

2. In 0A-124/2003 applicant has assailed an

ed 26.8.2002 passed by Executive Engineer,

Water Commission, Silchar whereby he has ordered

Special Duty Allowance (SDA, for short) which

paid to the applicant to be effected from the

and also against the decision of the

s for discontinuation of SDA in total disregard

nt dated 12.5.89 passed in GC No.105/87 without

any reasonable opportunity to the applicants.

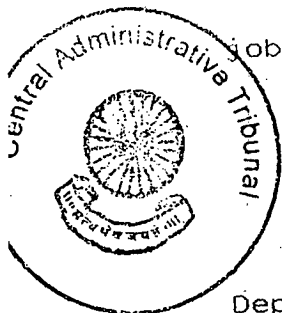
so prayed that directions be issued to the

respondents to continue to pay SDA to the applicant vide order dated 12.5.82 and order dated 2.11.88 passed in OA-7/99.

3. In the connected OA No.29/2003 the applicant is stated to be aggrieved of discontinuation of payment of SDA which is payable to the applicant in terms of the OM dated 14.12.1983, 1.12.1988 and 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.

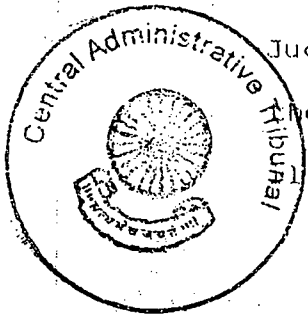
4. Facts in brief are that in both the cases applicants who belong to North Eastern region are working under the respondents as they had been recruited there. But they are working under the Govt. of India and their job is also liable to be transferred anywhere in India.

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 Centra 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



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others vs. Union of India and others. The same was contested by the respondents, however, it was allowed on 12.5.89 in favour of the applicants. Pursuant to the judgment given by the Tribunal the respondents implemented the judgment and started paying SDA. Applicant thereafter was transferred from one office to another office under the Central Govt. and still working as Assistant Accounts Officer. However, Resp. No.4, the Executive Engineer of Central Water Commission under whom the applicant is now presently working issued an order dated 26.8.2002 for recovery of SDA paid to the applicants in 20 instalments commencing from 1.8.2002 which stated that the said order of recovery is illegal. Judgment of the Tribunal in OA-105/87 is still in force. Therefore, the action of the respondents is arbitrary and illegal.



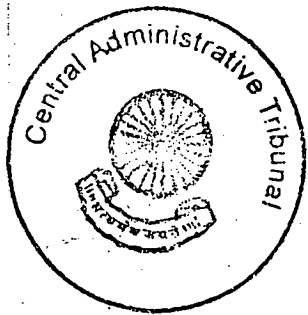
6. It is further stated that in the similar circumstances another applicant who was co-applicant alongwith applicant in OA-105/87 had also approached this Tribunal against the order of discontinuation and recovery of SDA when he filed OA No.7/99. The said OA was also allowed and respondents were directed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

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

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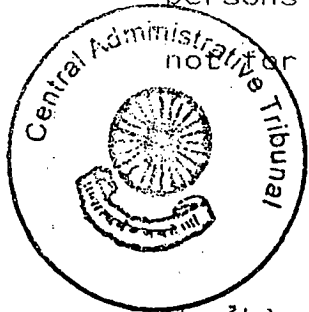
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8. Respondents are contesting the OA. Respondents admit that the Govt. of India, Ministry of Finance, New Delhi vide office memorandum dated 14.12.83 brought out a scheme extending facilities of SDA to the Central Govt. employees serving in North Eastern 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 criteria as in OM dated 20.4.87. Such SDA was not available to the local resident of the North East Region. Thus, it is submitted that incentives granted by the said OM are meant for the persons posted from outside to North Eastern Region and not for local residents of the said defined region.

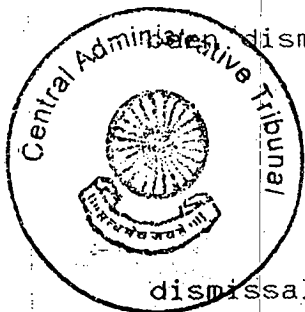


10. It is further stated that similarly Hon'ble Supreme Court in another judgment dated 7.9.95 in case of Union of India and others vs. Geological Survey of India employees' Association and others held that the Group C and D employees who belong to the North East Region and whose transfer liability is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

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



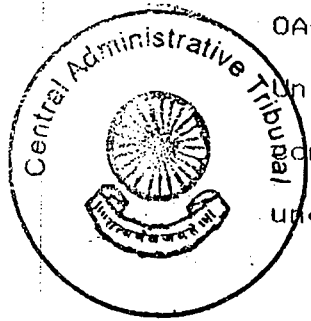
12. Now the question arises that after the dismissal of the SLP filed against the applicants, can the Govt. resort to recover the amount of SDA paid to the applicants. Learned counsel appearing for the respondents submitted that since the law as laid down in Vijoy Kumar's case by the Supreme Court of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

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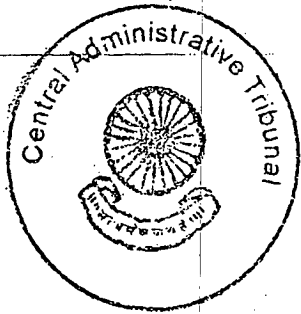
discontinued paying the SDA to the applicants and had also started recovery proceedings for the amount already paid to the applicants under SDA.

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

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



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



Sd/MEMBER(J)

Sd/MEMBER(A)

Certified to be true Copy  
प्रमाणित प्रतिलिपि

*(Signature)*  
Section Officer (J)  
C.A.T. GUWAHATI BRANCH  
Guwahati-781005  
17/5/04

Annexure-9

No. 11(3)/95-E.II(B)  
Government of India  
Ministry of Finance  
Department of Expenditure

New Delhi, the 12th Jan 1996

**OFFICE ORDER**

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

The undersigned is directed to refer to this Department's O.M. No. 20014/3/83-EIV dated 14.12.1983 and 20.4.87 read with O.M. No. 20014/16/86 E.IV/E.II(B) dated 1.12.88 on the subject mentioned above.

2. The Government of India vide the above mentioned OM dated 14.12.83 granted certain incentives to the Central Government civilian employees posted to the N.E. region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have 'All India Transfer Liability.

3. It was clarified vide the above mentioned OM dated 20.4.87 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

*Mustafa  
for  
Advocate  
2/6/04*

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

7. In view of the above judgment of the Hon'ble Supreme Court, the matter has been examined in consultation with the

Ministry of law and the following decision have been taken

- i. the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
  - ii. the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94 but payments were made after this date i.e. 20.9.94) will be recovered.
8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.
9. In their application to employees of India Audit and Accounts Department, these orders issue in consultation with the comptroller and Auditor General of India.
10. Hindi version of this OM is enclosed.

Sd/- xxxxxx

(C. Balachandran)

Under Secy to the Govt. of India

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

G.I., M.F., O.M. No. 11 (S)/97-E. II (B), dated 29-5-2002

**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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for  
Adm. In-  
23/6/02

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. Vijaya-kumar 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.

- 9 MAR 2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : AT GUWAHATI

O.A. No. 136/2004

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Filed by  
Ashu Das,  
Addl. C.B.S.C.  
CAT, Guwahati 4/3/05

Shri Tusar Kanti Paul

...Applicant

- Vs -

Union of India & Others

...Respondents

(Written statements filed by the respondents No. 1,2 and 3)

The written statements of the respondents are as follows:

1. That a copy of the above noted O.A. No. 136/2004 (hereinafter referred to as the "Application") has been served in the respondents. The respondents have gone through the same and understood the contents thereof.
2. That the statements made in the application, which are not specifically admitted, are hereby denied by the respondents.
3. That before traversing the various paragraphs of the application, the respondents beg to state a brief resume to the facts and circumstances of the case and the basis for entitlement/payment of Special Duty Allowance (referred to as the "SDA") as under:
  - (a) That the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi, vide Office Memorandum No. 20014/3/83-E.IV dt.14.12.1983 brought out a scheme thereby extending certain facilities and allowances including the SDA for the civilian employees of the Central Govt. serving in the North-Eastern States and Union Territories etc. This was done to "attract and retain the services" of officers coming from outside to the N.E. Region (the defined area) which is considered as

inaccessibility and difficult terrain. A bare reading of the provisions of the said O.M. 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 O.M.Dt.14.12.83 is annexed as ANNEXURE-R1.

- (b) That after some time, some departments sought some clarifications about the applicability of the said O.M. dt.14.12.83. In response to the said clarification, the Govt. of India issued another Office Memo. Vide No.20014/3/83-E.IV dt. 20.4.1987. This O.M was issued as a clarification for interpretation of the clauses/ phrases in the O.M dated 14.12.83. The relevant portion of the said O.M. is quoted below:

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

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

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

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

- (d) That in the meantime, several cases were filed in the court/Tribunal challenging the order/ action leading to refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 20.9.94 in **Union of India & others -vs- S. Vijoykumar & others** [C.A. No.3251/93 reported in (1994)3(Suppl) SCC 649] 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. This judgment is still holding the field and followed by the Hon'ble Court in subsequent cases. Prior to this decision, the Hon'ble Supreme held similar view in another case in **RBI-vs- RBI Staff Officers' Association** reported in AIR 1992 SC 485.

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

- (e) That the Hon'ble Supreme Court in another decision dated 23.2.1995, in CA No.3034/95 (**Union of India & ors -vs- Executive Officers Association Group-C**) held that the spirit of the O.M. dt. 14.12.83 is to "attract and retain" the services of the officers from outside posted in the North-Eastern Region, which does not apply to the officers belonging to the North-Eastern Region. Therefore, the question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. The incentives granted by the said O.M. is meant for the persons posted from outside to the North-Eastern Region, not for the local residents of the said defined

reason. The Hon'ble Supreme Court in this decision also held that the spirit of the O.M dt.14.12.83 is to attract and retain the services of the officers posted in the N.E Region from outside and therefore, application of these provisions to the local residents of N.E. Region does not arise. While passing the said judgment the Hon'ble Supreme court referred to and relied upon its earlier decisions held in **Chief General Manager (Telecom)-vs- Shri Rajendra Ch. Bhattacharjee & others** reported in AIR 1995 SC 813 and also the "S.Vijaykumar case".

A true copy of the said judgment dt.23.2.95 is annexed as **ANNEXURE-R5**.

- (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 the said region only, they do not have all India transfer liability and consequently they are not entitled to grant of SDA.

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

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

A true copy of the said O.M.dt.12.1.96 is annexed as **ANNEXURE-R7**.

- (h) That in another case vide Writ petition No.794/1996 in **Sadhan Kumar Goswami & others -vs- Union of India & others**, the Hon'ble Supreme Court again put reliance on the earlier decision as in S. Vijoykumar case and held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D and there is no distinction. By the

said judgment, the said Hon'ble court also held that the SDA paid to the ineligible employees after 20.9.94 be recovered as the Govt. of India has limited the recovery of SDA to the ineligible employees from the date of the judgment dt.20.9.94 passed in S.Vijay Kumar and in terms of the O.M. Dt. 12.1.96.

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

- (i) That the Ministry of Finance further in connection with query made by the Directorate General of Security, New Delhi gave some clarification to the questions raised by some employees regarding eligibility of SDA. This was done vide I.D No.1204/E-II(B)/99 and which was duly approved by the Cabinet Secretariat U.O. No.20/12/99-EA.I-1798 dt.2.5.2000. According to that clarification, an employee belonging to the N.E. Region, posted in the N.E. Region having all India transfer liability as a condition of service, shall not be entitled to grant of SDA. But if such employee is transferred out of the N.E. Region and reposted to N.E. Region on transfer from outside, in that case such employee would be entitled to SDA. The applicant in the instant case is a local resident and serving in the N.E. Region only all along during his service career, hence he is not entitled to grant of SDA atleast after the judgment passed by the Hon'ble Supreme Court in S. Vijaykumar's case. There had been similar decision of the Hon'ble Supreme Court in the matter including the concept of 'transfer' and 'posting' as reported in (1998)2 SCC 609 (UBI -vs- Meenakshi Sundaram & others)

A true copy of the said clarification of the Cabinet Secretariat Dt. 2.5.2000 is annexed as ANNEXURE-R9.

- (j) That in a recent decision dt. 5.10.2001, in **Union of India & others -vs- National Union of Telecom Engineering Employees Union & others** (CA No. 7000/2001) the Hon'ble Supreme court once again clinched on the vexed question of grant of SDA to the central govt. employees and by relying on the earlier decision of "S.Vijoykumar" and the "Executive Officers"

Association Group C" and was pleased to allow the appeal in favour of the Union of India and held that the amount already paid to such ineligible employees should not be recovered.

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

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

The true copy of the O.M. dt. 29.5.2002 is annexed as ANNEXURE-R11.

- (l) That this Hon'ble Tribunal, vide order dated 23.5.2003 passed in O.A. No. 249/02, 316/02, 342/02 and 367/02 rejected the claim of SDA by the employees of the Central Government 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-R12.

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

- (m) That as per records of the respondents, the applicant is a local resident of the defined area of the North Eastern Region. The applicant was appointed initially in the North Eastern Region and he is continuing to work in the North Eastern Region without any transfer to outside the said region. Hence, the applicant is not entitled to the grant of SDA and the amount so far paid is liable to be recovered from him.
- (n) That the legal questions that have arisen in this instant case is that where there is a decision passed by the Hon'ble Tribunal on 12.5.1989 in GC No.105/87 i.e. prior to the law laid down by the Hon'ble Supreme Court in the matter as on 20.9.1994 in S.Vijaykumar's case and such decision of the Hon'ble Tribunal attaining finality for being not challenged in any higher court, whether the employee shall continue to get the SDA by virtue of the said earlier decision of the Tribunal in spite of the fact that the Hon'ble Supreme Court has laid down law in that regard and according to that law the employee is not entitled to get SDA. It is also the question of law as to whether the provisions of Article 141 of the Constitution of India read with the catena of decisions of the Hon'ble Supreme Court, the decision of S. Vijaykumar and other ratio decidendi are binding on the respondents including this case also where there has been an order of this Tribunal allowing SDA to the employee prior to such Supreme Court's decision. The legal question involved in this case is that as to whether the law laid down in P.U.Joshi & others -vs- A.G, Ahmedabad & others as reported in (2002) 4 SCC 388 read with the ratio decidendi laid down in K.Ajit Babu -vs- UOI & Others as reported in AIR 1997 SC 3277 would be applicable in this instant case or not. In the case of K. Ajit Babu, the Hon'ble Supreme Court held that an earlier decision passed by the Tribunal may affect some other employees adversely and such decision may not be strictly a judgment in personum, but that would be judgment in rem. In that case affected employees challenged the earlier decision of the Tribunal. The Hon'ble Supreme Court held that the Tribunal has to take into account the judgment rendered in earlier case as a precedent and decide application accordingly. The Tribunal may either agree with the view taken in

earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/ Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench then has to consider the correctness of earlier decision in disposing of the later application. The larger Bench can overrule the view taken in the earlier judgment and declare the law, which would be binding on all the Benches. The legal question involved in this case is also that as whether the earlier decisions of the Tribunal by virtue of which the applicant is getting SDA although he is otherwise not entitled to SDA, is hit by the provisions of the doctrine of 'sub-silento' or 'per incurium'.

- (o) The respondent being bound by the decisions of the Hon'ble Supreme Court and in view of the settlement position of law that the employee in the instant case is not entitled to SDA but getting the same by virtue of the earlier decision of this Tribunal and in view of the fact that there has been continuous heart burning among the other similarly situated employees who not getting SDA, took the steps to stop payment of SDA to the employee vide order dated 18.5.2004, which is the subject matter in this instant case.

#### PARAWISE COMMENTS:

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 judgment 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, 4.5 and 4.6 of the application, the answering respondents state that they were bound to obey the judgment 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. These being matter of law and records, nothing is admitted which is beyond the scope of such law and records.
8. That with regard to the statements made in para 4.7 and 4.8 of the application, the answering respondents state that the respondents had to take such steps as they are bound by the decisions of the Hon'ble Supreme Court and the guidelines and instructions issued by the Government from time to time. The same issue has again come up in this instant case and it is a fit case that this Hon'ble Tribunal would be pleased to go into the

matter by referring the same to a larger Bench as per law laid down by the Hon'ble Supreme Court as stated above and set right legal point in issue.

9. That with regard to the statements made in para 4.9 and 4.10 of the application, the answering respondents reiterate 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 not only to obey the order of the Hon'ble Tribunal but also all the decisions of the Hon'ble Supreme Court pertaining to the same subject.
10. That with regard to the statements made in para 4.11, 4.12, 4.13, 4.14, 4.15, 4.16 and 4.17 of the application, the answering respondents state that the respondents are taking such steps as on the basis of law laid down by the Hon'ble Supreme Court and the subsequent Office Memo issued by the Govt. of India in that matter, the applicant is not entitled to SDA, but he is getting it by virtue of an earlier decision of this Hon'ble Tribunal, which has caused serious heart burning among the similarly situated employees who are not getting the SDA. This being a case involving substantial question of law to be resolved in the line as stated above, is a fit case that may be heard afresh on the question of law as well as facts of the case.
11. That with regard to the statements made in para 5.1 to 5.11 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 in view of the facts and circumstances of the case and the catena of decisions of the Hon'ble Supreme Court in the same subject and other laws as the respondents are bound by such law and the decisions. Therefore, the application is liable to be considered afresh and / or may be referred to a larger Bench for final decision as per law laid down by the Hon'ble Supreme Court.
12. That the answering respondents have no comments to offer to the statements made in para 6 and 7 of the application.

13. That with regard to the statements made in para 8.1 to 8.5 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 matter may be heard and considered by a larger Bench of the Hon'ble Tribunal as per direction and laid down by the Hon'ble Supreme Court as stated hereinabove and further be pleased to hold that the applicant is not entitled to grant of SDA per law laid down by the Hon'ble Supreme Court and / or pass such further or other order that this Hon'ble Tribunal may deem fit and proper.

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 refer the matter to a larger Bench as per law and the law laid down by the Hon'ble Supreme Court and after such reference to a larger Bench of the Hon'ble, such larger Bench would be pleased to hold that the applicant is not entitled to get the SDA as per law laid down by the Hon'ble Supreme Court.

VERIFICATION

I, Shri Anup Kumar Srivastava, at present working as Executive Engineer at Middle Brahmaputra Division, CWC, Guwahati, who is taking steps in this case, being duly authorized and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para.....3, 6 to 11..... are true to my knowledge and belief; those made in para ...1, 2, 4, 5, 12, 13... being matter of records, are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Court. I have not suppressed any material fact.

And I sign this verification on this 11 th day of February, 2005 at Guwahati.

*De  
Srivastava*  
11.2.05

DEPONENT

New Delhi, th 14th Decomber, 1983.

OFFICE MEMORANDUM

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

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

i) Tenure of posting/deputation

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

- 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 transferred to full tenure of service in the North Eastern Region to that effect.

iii) Special (Duty) Allowance :

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

iv) Special Compensatory Allowance :

1. Assam and Meghalaya.

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

2. Manipur

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

Pay upto Rs. 260/-

Rs. 40/- p.m.

Pay above Rs. 260/-

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

3. Tripura

The rates of the allowance will be as follows :

(a) Difficult areas

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

(b) Other areas

Pay upto Rs. 260/-

Rs. 40/- p.m.

Pay above Rs. 260/-

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

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

(v) Travelling Allowance on first appointment.

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

(vi) Travelling Allowance for journey on transfer.

In relaxation of orders below S.R. 116, if on transfer to 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 excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return from leave.

(ix) & Leave Travel Concession :

A government servant who leaves his family behind the old duty station or another selected place or residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North-Eastern to his home town or place where the family is residing and in addition the facility for the family is (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employees at the station of posting in the North-Eastern Region. In case the option is for the latter alternative the cost of travel for the initial distance (400 kms/150 kms.) will not be borne by the officer.

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Officers drawing pay of Rs. 2200/- or above, and their families, i.e., spouse and two dependent children (upto 10 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartta and Calcutta and vice versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance/Hostel Subsidy: 4

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 for sub-para (iv) will also mutatis mutandis apply to Central Government employees posted to Andhra and Nishabur 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 a concession extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North Eastern Region will be withdrawn from the date of effect of the orders contained in this office Memorandum.

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

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

SD/-

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

To,

No. 20014/3/83-E.IV

Government of India

Ministry of Finance

Department of Expenditure

ANNEXURE

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.

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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 Gratuation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Gratuation (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowance like special compensatory (remote locality) allowance, construction allowance and Project Allowance will be drawn separately".

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

Contd.....

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

*Q. S. L.*

(A. R. SETHI)  
DIRECTOR (EC)  
TELE. ROOM

To

Financial Advisers of all Ministries/Departments.

19  
6-18-19  
E.No. 20014/16/CG/E.IV/E. (10)

Government of India  
Ministry of Finance  
Department of Expenditure

ANNEXURE 2

ANNEXURE 1

New Delhi, the 1 December 1955

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Ministry's O.M. No. 20014/3/13-E.IV dt. 7th December, 1955 and 20th March, 1956 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 Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram has been engaging the attention of the Govt. Accordingly the President is now pleased to decide as follows:-

(1) Exemption of employees/deputation

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

(2) Allowance for Central deputation and training abroad

The existing provisions as contained in this Ministry's P.M. dated 14.12.53 will continue. Extra remuneration will be paid to Central Govt. employees for unsatisfactory performance of duties for the period of time in the North-East in the matter of promotion in the under-mentioned deputation to Central Govt. post and course of training abroad.

(3) Special (Duty) Allowance

Central Govt. civilian employees who have All India Special Allowance will be granted Special (Duty) Allowance at the rate of 2% of basic pay subject to a ceiling of Rs. 1000/- per month on posting to any station in the North-Eastern Region. In addition to any special pay for unsatisfactory performance already being drawn subject to the ceiling of Rs. 1000/- per month, Special (Duty) Allowance shall be granted at the rate of 2% of basic pay (subject to a ceiling of Rs. 1000/- per month) on posting to any station in the North-East in the matter of promotion in the under-mentioned deputation to Central Govt. post and course of training abroad.

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in Contract Civil. Civilian employees who are members of a Pension and Provident Fund are eligible for the grant of Special Allowance under this rule and are exempted from the provisions of the Income Tax Act will also draw Special Allowance.

(iv) Special Allowance - The recommendations of the 4th Pay Commission have been accepted by the Govt. and Special Allowance at the revised rates have been made effective from 1.10.03.

(v) Travelling Allowance on first appointment - The present provisions as contained in this Ministry's O.M. dated 14.12.03 will continue with the stipulation that on first appointment, F.A. should be admissible for the total distance instead of for the distance in excess of first 400 kms. only.

(vi) Travelling Allowance for journey on transfer - The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(vii) House Allowance for temporary accommodation - The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(viii) Medical Allowance - The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(ix) Telephone Allowance - The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

(x) Dearness Allowance - The existing provisions as contained in this Ministry's O.M. dated 14.12.03 will continue.

Officers drawing pay of Rs 500/- or above, and their families (i.e. spouse and dependent children upto 15 years for boys and 10 years for girls) will be allowed air travel between Amritsar/Delhi/Agartala/Aizawl/Jalgaon and Calcutta and via Bombay/Port Blair and Calcutta/Madras and via Madras in case of postings in Andaman Islands and between Kavaratti and Cochin and via Cochin in case of postings in Lakshadweep.

(xi) Children Education Allowance/Hospital subsidy - Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto Rs 200/- will be admissible in respect of children studying at the institution of posting of the employee concerned or any other station where the children reside. If children studying at home, in hospital or in hostels at the last station of posting or any other station, the Government servant concerned will be given leave without pay without other restrictions.

ation of Children Education Allowance/Hospital Subsidy will be in the MOP&E, D.H. 10011/1/67-Rev. (Alloca. cos) dt. 31.12.67. amended from time to time.

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

The present concension as contained in this Ministry's O.M. No. 11016/1/E, 11(1)/66 dt. 29.5.66 as amended from time to time will continue to be applicable.

(1.1) The above concension

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

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

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

4. In so far as the above carries the Indian Audit & Accounts Deptt. are concerned these orders shall be issued after consultation with the Comptroller & Auditor General of India.

5. A copy of this order is attached.

(Sd/-)  
(A. JAYARAMAN)

JOINT SECRETARY TO THE GOVT. OF INDIA.

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

Copy (with serial number of order copies) forwarded to G.O. A.O. U.P. 9.8. etc, etc, for per standard endorsement list.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 08-11-2010 BY 60322 UCBAW

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

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

The Tribunal took the aforesaid view because  
of an office memorandum dated 17.12.1955 which is on the  
subject of "Allowances and facilities for civilian  
employees of the Central Government serving in the  
States and Union Territories of the North-Eastern  
Region-Improvement thereof" had stated that allowance  
shall be payable if the posts be those which have "All  
India Transfer Liability". The stand of the Union of  
India, however, is that this office memorandum, if it is  
read along with what was stated subsequently in office  
memorandum dated 20.4.1957, it would become clear that  
the allowance was required to be paid to those  
incumbents who had been posted in North-Eastern Region  
carrying the aforesaid service condition and not to  
those who were residents of this region. The office  
memorandum of 1957 has clearly stated that the allowance

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of inaccessibility and difficult terrain.

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It is said so because even the 1937 memorandum stated that the need for the allowance was felt for the service of the combatant officers in the North-Eastern Region.

(12)

It is mentioned about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining thereby taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 year to claim the allowance depending upon the period of service of the incumbent. The 1937 memorandum makes this

clear by stating that "All India Transfer Liability" would be granted to the allowance "on posting to a station in the North Eastern Region". This aspect is made clear beyond doubt by the 1937 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1933 the subject was mentioned

quoted above is not enough to concede the submission of Dr. Ghosh.

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

(13)  
3. Dr. Ghosh appearing for the Government  
contends that the office memorandum of 1903 having not  
stated, what is contained in the memorandum of 1907, a  
 rider cannot be added to the former that the allowance  
be payable only to those who had been given  
posting in the North-Eastern Region, and not to those  
who were residents of this Region. It is also contended  
that denial of the allowance to the residents, while  
permitting the same to the non-residents, would be  
violation of doctrine of equal pay for equal work and an  
such of Articles 14 and 16 of the Constitution.

4. We have duly considered the rival submissions  
and are inclined to agree with the contention advanced  
by the learned Additional Solicitor General, Shri Tulsi  
for two reasons. The first is that a close perusal of  
the two aforesaid memoranda, alongside what was stated  
in the memorandum dated 25.10.1903 which has been  
noted in the memorandum of 20.9.1907, clearly shows  
that allowance in question was meant to attract persons  
outside the North-Eastern Region to work in that Region.

The submission of Dr. Ghosh that the denial of allowance to the employees would violate the equal pay doctrine is adequately met by what was held in Officers' Association and another v. Reserve Bank of India (1977) 1 SCR 1013.

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

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

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ANNEXURE R5 28 109

Filed to be five copy  
S. M. S.  
Assistant Registrar (Judl.)  
11/3/95  
Supreme Court of India.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

579905

ANNEXURE R5

ANNEXURE R5

CIVIL APPEAL NO. 3034 OF 1995  
(Arising out of S.L.P. (C) NO. 18717 OF 1994)

Union of India & Ors.

Vs.

.....Appellants

Executive Officers Association  
Group-C

.....Respondents

J U D G M E N T

Faizal Uddin. J.

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

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. 20014/16/84.19/8.11(B) dated December 1, 1986 issued by the Ministry of Finance, Government of India. The respondent-Association claimed that its members have all India transfer liability under the Central Excise and 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 case, which is, transfer of Billong 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/EC.E/IV dated April 20, 1987 had clarified that the Special Duty Allowance is payable only to those officers, incumbents of Group (C) of posts who are having all India transfer liability defined in the said Office Memorandum. In view of the original Office Memorandum dated March 14, 1983 and that the conditions stipulated in the Recruitment Rules, 1979 referred to above cannot be taken as basis for saddling the respondents or its members with all India transfer liability and consequent payment of Special Duty Allowance to them. The appellants also took the plea that all India transfer liability of the members of any service/cadre or incumbent of any posts/Group of posts is to be determined by applying the tests of recruitment to the service/cadre/post made on all India basis and that mere clauses in the Recruitment Rules/Appointment Order stipulating all India transfer liability does not make him/them eligible for grant of Special Duty Allowance in terms of Office Memorandum dated December 14, 1983.

5. After considering the rival contentions the Tribunal observed that the contents of Office Memorandum dated April 12, 1964 as well as the letter No. 7747/48.EA dated September 26, 1964 have been fully discussed by the Full Bench, Calcutta and held that the real test/criteria for determination is whether all India transfer liability exists and opined that without recalling the Office Memorandum issued in 1963 the concerned departments had no reason to deny the benefit of memorandum available to certain classes of employees and to withdraw its application to certain other classes. Relying on the said Bench decision of the Central Administrative Tribunal, Calcutta, the Tribunal allowed the application of the respondents by the impugned judgment and granted the relief as stated above against which this appeal has been preferred.

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

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B-1  
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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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facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows."

.....

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

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the North-Eastern region to come and serve in the North-Eastern Region. It can hardly be disputed that the geographical, climatic, living and food conditions of people living in North-Eastern region and the States comprising therein are different from other Regions of the country. The North-Eastern Region is considered to be 'hard zone' for various reasons and it appears that it is for these reasons that the Government provided certain extra allowance, benefits and other facilities to attract competency 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 Dandoor (Telecom) Vs. S. Rajender S.H. Enattachari & Ors. [ JT 1995 (1) SC 440 ] which was decided by majority judgment dated January 18, 1995 in which this Court took the view that the said Office Memorandums are meant for attracting and retaining the services of competent officers in the North-Eastern Region from other parts of the country and not the persons belonging to that region where they were appointed and posted. This was also the view expressed by this Court in yet another case reported in J.T. 1994 (6) 443 - Union of India Vs. S. Vijaya Kumar & Ors. In Vijaya Kumar (Suora) 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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P-19

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are residents of North-Eastern Region itself. After considering the memorandum dated December 14, 1903 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/-  
.....  
(G.C. Agrawal)

Sd/-  
.....  
(Faiyaz Uddin)

New Delhi.

February 22, 1975.

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Annexure R-6 106  
cf 336  
R6

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 24512 OF 1995  
(Arising out of S.L.P. No. 12450-55/92)

Union of India & Ors.

..appellants

versus

Geological Survey of India  
Employees' Association & Ors.

24512  
..respondents

O R D E R

Delay condoned.

Leave granted.

to be true copy  
(24/5/95)  
of the Judgment (Judl.)  
... 24.5.1995  
Supreme Court of India

Mr. P. K. Gowami, learned senior counsel appears for Geological Survey of India Employees' Association and Mr. S. K. Handu, 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).

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

Sd/-  
(S. B. Ray)

Sd/-  
(S. B. Maipudari)

New Delhi  
September 7, 1995

ANNEXURE : R7

GOVERNMENT OF INDIA  
Ministry of Finance  
Department of Expenditure

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20011/10/86-E.IV/E.II(B) dt. 1.12.88 on the subject mentioned above.

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

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

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

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

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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 11 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

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

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

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

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

10. Hindi version of this (QM) is enclosed.

(C. Balachandran)

Under Secy to the Govt of India

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

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

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ANNEXURE  
R-7(B)

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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 case 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. 3231 of 1993 (*Union of India v. S. Vijayakumar*, (1994) 23 ATC 398), 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.

(S.N. Saini)  
Asstt. Controller General of Accounts

To

ALL CCAs/CAs/By CAs

ALL CCAs/CAs/By CAs

in [unclear]

Communication should be made to the Registrar, Supreme Court, by post, by hand or by telegram.

ANNEXURE 1  
No. 2305/1961  
SUPREME COURT  
INDIA  
28th November, 1966

FROM: ASSISTANT REGISTRAR (JUDL)

ANNEXURE 1

- TO :
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. Park, New Delhi - 110 002
  3. The Divisional Engineer, SSB Shillong Division, A.P. Secretariat Building, Shillong, Meghalaya.
  4. Commandant, Group Centre, SSB, Tripura, Salbagan, Agartala, Tripura West.

Writ Petition No. 124 of 1966  
(Under Article 32 of the Constitution of India)

WITH  
A.P. Director Application No. 1-  
(Application for stay of stay)

Sadan Kumar Goswami & Ors.

.. PETITIONERS

Union of India & Ors.

.. RESPONDENTS

Sir,

I am directed to forward herewith for your information and necessary action a certified copy of the signed order dated the 25th October, 1966, of this Court passed in the writ Petition and application for stay.

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR (JUDL)

(Date) 28/11/66  
CP  
L.M.K. (MCA)  
M.J.

2540 42 113  
Cabled to the  
(12/10/1995)  
A. J. S. (11/1/1996)  
Supreme Court of India  
133723

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
PETITION NO. 724 OF 1995  
(Under Article 32 of the Constitution of India)

Sub-Inspector Sadhan Kumar Goswami &  
Ors.

v.  
The Union of India & Ors.

...Petitioners

...Respondents

THE 25TH DAY OF OCTOBER, 1995

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

Adv. and Anjan Ghosh, Adv. with him for  
Petitioners.

O\_R\_D\_E\_R

Following order of the Court was delivered:

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- 31 -  
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(96) 114  
(EP)

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IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION NO. 793 OF 1996

Sub-Inspector Sadhan Kumar Goswami &  
Ors.

... Petitioners

The Union of India & Ors.

... Respondents

O R D E R

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

The admitted facts are that the petitioners who joined service under the Special Security Bureau (SSB) in North Eastern Region of India, elapsed special duty allowances as per order of the Central Government.

The question was considered by this Court in Union of India vs. S. Vilay Raza ICA No. 525 of 931 decided on September 20, 1994; therein this Court had held thus:

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

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learned Additional Solicitor General, Shri Tulsī for two reasons. The first is that as clause 10 of the two aforesaid memoranda, along with what was stated in the memorandum dated 28.10.1966 which has been quoted in the memorandum of 26.3.1967, clearly shows that allowance in question was meant to attract persons outside North-Eastern Region to work in that Region because of inaccessibility and difficult terrain. We have said so because even the 1963 memorandum starts by saying that the need for the allowance was felt for attracting and retaining the service of the competent officers 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 should be excluded while counting the period of tenure of posting which was required to be of 2 1/2 years to claim the allowance depending upon the period of service of the incumbent. The 1966 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station in the North-Eastern Region". This aspect is made clear beyond doubt by the 1967 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memorandum of 1962 the subject was mentioned as quoted above it can be enough to concede to the submission of Dr. Ghosh.

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

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Reserve Bank of India vs. Reserve Bank of India Staff Officers Association & Ors. [(1991) 4 SCC 152] to which an attention has been invited by the learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

In view of the above, this Court allowed the appeals of the State and held that the respondents were not entitled to the allowances but whatever amount was paid upto the date of the judgment, was directed not to be recovered from them. The petitioners are relying upon the Office Memorandum dated July 11, 1996 which provided that "it is not applicable from one station to another station within the region of Group A and B staff will further continue to get the facilities". They have filed this writ petition contending that while the Group C and D employees have been denied the benefit of the above judgment, special duty allowance benefit is being granted to Group A and B. It tantamounts to violation of Article 14 and, therefore, the writ petition should be allowed so as to give them the same benefit. Additionally, the petitioners are Group C and D employees and are bound

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

Of late, we have been coming across this type

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(35)

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

It is next contended that the Government is recovering as per Memorandum dated January 17, 1936 the amounts paid which is contrary to the direction issued

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

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

The writ petition is accordingly dismissed.

(K. R. BHASKAR)

NEW DELHI;  
OCTOBER 25, 1976.

S. P. BHASKAR

SEALED IN MY PRESENCE  
12/11/76

- 47 - u9

- 44 - Annexure R9

COURT CASE  
DIRECT JUDICIALCollected Secretariat  
(E.A.I Section)

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

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

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

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

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

NO

b) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the centralized cadre/ service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.

c) An employee belongs to N.E. Region was appointed as Group 1st or 2nd employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-P.IV dated 14.12.83 and 20.4.87 read with

NO

ON 20014/16/06 E.II(B) dated 1.12.00 but subsequently the post/cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the NE Region though they can be transferred out to any place outside the NE Region having All India Transfer Liability.

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

YES

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

YES

v) The MOP, Deptt of Extn. 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.

Coned...3/-...

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vi) Based on point (iv) above, none of the units of BAH/BSH have authorised payment of SDA to the employees hailing from NE Region and posted within the NE Region while in the case of others, the DACS have objected payment of SDA to employees hailing from NE Region and posted within the NE Region irrespective of the fact that their transfer liability is All India Transfer liability or otherwise. In such cases what should be the norm for payment of SDA i.e. on fulfilling the criteria of All India Recruitment Test & to promotion of All India Common Seniority basis having been satisfied are all the employees eligible for the grant of SDA.

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

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

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

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

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

1. Shri R.S. Bedi, Director, ARC
2. Shri R.P. Kureel, Director, SSB
3. Brig (Retd) G.S. Uban, IG, SFF
4. Shri S.R. Mehra, JD (P&C), DCS
5. Shri Ashok Chaturvedi, JS (Pers), R&AW
6. Shri B.S. Gill, Director of Accounts, DACS
7. Smt. J.M. Menon, Director-Finance (S), Cab. Sectt.
8. Col. K.L. Jaspal, CIOA, CIA
9. Cab. Sectt. U No. 20/12/99-EX-1-1799

dated 27.6.2000

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 1000 OF 1991  
(Arising out of S.L.P.(C) NO. 6403 OF 1989)

ANNEXURE R10  
Continued to be taken into  
Assistant Registrar (Civil)  
Supreme Court of India

ANNEXURE R9  
544733

Union of India & Anr. 1... Appellants  
versus  
National Union of Telecom Engineering  
Employees Union Anr. Respondents

C.B.O.F.B.

Leave granted.

It is stated on behalf of the respondents that this  
appeal of the Union of India is covered by the judgment of  
this Court in the case of Union of India & Ors. vs. S.  
21.11.1984 reported as 1984 (Supp.3) SCC, 643 and  
followed in the case of Union of India & Ors. vs. Executive  
Officers' Association Group 'C' 1985 (Supp. 1) SCC, 757.  
Therefore, this appeal is to be allowed in favour of the  
Union of India. It is ordered accordingly.

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

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

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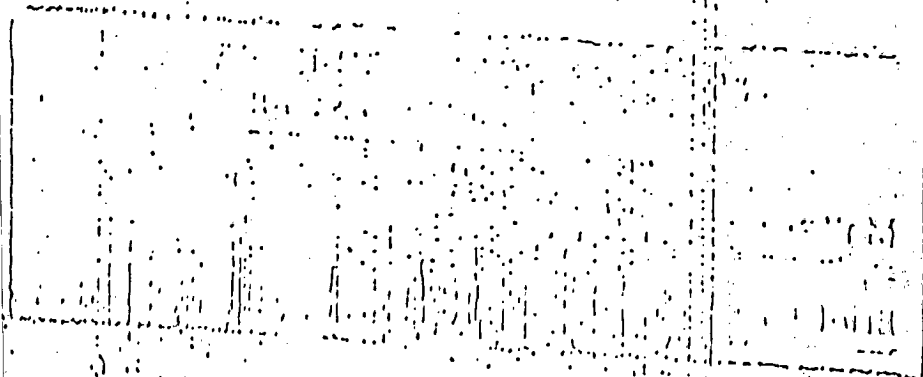
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(H. SANTOSH HEGDE)

(H. G. DAKARISHAH)

New Delhi  
October 06, 2001



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G.I., M.F., O.M. No. 11 (5)/97-E. II (B), dated 29-5-2002 (and to

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

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

Annex R11

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(2)

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. Vijaya-Kumar 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, 751]. 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.

.....

O R D E R

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CHOWDHURY. J. (V.C.)

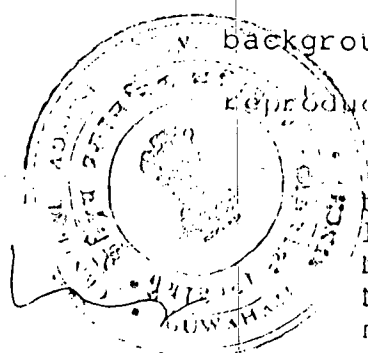
All the four O.A.s were taken up together since it involves common questions of fact as well as law pertaining to the Special (Duty) Allowance.

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



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

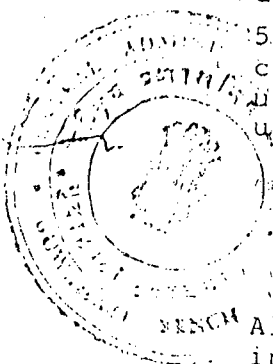
3. Some employees working in NE region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The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

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

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.....



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be regulated strictly in accordance with the above mentioned criteria.

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

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

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

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

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

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

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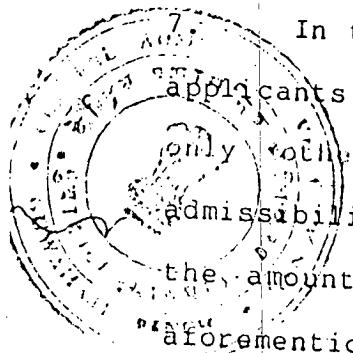
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contended that in view of the aforementioned admission of facts, the respondents cannot now turn around and contend that these applicants are not entitled for SDA.

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

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

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



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

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

sd/VICE CHAIRMAN

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Section Officer (D)

C.A.T. GUWAHATI BRANCH

Guwahati-781005

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