

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

Judgment R.A- 6105

pg- 1 to 7 Date- 18/08/05

allowed

INDEX

O.A/T.A No. 136/2004.....

R.A/C.P No. 6/05.....

E.P/M.A No.....

1. Orders Sheet O.A- 136/04 Pg..... 1 to 3
RA- 6105 order Pg - 1 to 2 disposed
2. Judgment/Order dtd. 09/06/2005 Pg..... 1 to 5
3. Judgment & Order dtd. 19/05/06 Received from H.C/Supreme Court
W.P.C. Pg - 1 to 2
4. O.A..... 136/04 Pg..... 1 to 55
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... 6/05 Pg..... 1 to 15
7. W.S. filed by the respondent- 1, 2 & 3 Pg..... 1 to 61
8. Rejoinder filed by the Applicant Pg..... 1 to 3
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

Office Note Pg- 1

SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALI 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) ... Mr. C. T. J. D. M. Chanda, G. N. Chakraborty

Advocate for the Applicant M. Chanda, G. N. Chakraborty
S. Nath, S. Choudhury

Counsel for the Railway/CGSC.....

ORDER OF THE TRIBUNAL

OFFICE NOTE

DATE

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 @ O.A. & Smt
to D/Section w.r.t
joining to 25/5/2004
ms. 1666, by 21/7/04.
With A/D PSC.

Present: Hon'ble Mr. K. V. Achidanandan,
Judicial Member
Hon'ble Mr. K. V. Prahadan, Administra-
tive Member.

When the matter came up for hearing
the learned counsel for the respo-
nse party would like to file
the written statement. Four weeks
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

26/8/04
 Notice duly served on
 2-10-6
 Hon'ble been-87ed
 COPY OF ORDER
 St. 24/8/04, issuing
 to learned counsel
 of both the parties.

26/8/04
 24.8.2004 present; The Hon'ble Shri D.C.Venkateswaran (J),
 Vice-Chairman (J),
 The Hon'ble Shri K.V. Prahladan, Member (A).

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 S.D.A. matters on 13.12.2004.

In the meanwhile order of 7.6.04
 will continue until further orders.

Order St. 22/11/04
 issuing the learned
 advocate for both
 the parties.
 (cc)
 24/11/04.

13.12.04.

Member
 Let this case be listed alongwith
 other S.D.A. matters on 22.12.04 before
 Division Bench.

Vice-Chairman

lm

23.04.2005 Present: The Hon'ble Mr. Justice
 G. Sivarajan, Vice-Chairman
 The Hon'ble Mr. K.V.Prahladan,
 Administrative Member.

The case is adjourned to 24.5
 for hearing.

Member (A)

Vice-Chairman

mb

5A/136/04

Electric 22/2

3

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 9th day of June, 2005.

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

Sri Tusu 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 J.(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

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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

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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)

2. 9.2004

2. 9.2004
Guwahati Bench
Guwahati, Assam

Dated by the Applicant
through Ranjit Choudhury
Advocate
6. 22.03.05

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 136/2004

Shri Tusr 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 humbie 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

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.

193

VERIFICATION

I, Sri Tushar Kanti Paul, aged about 48 years, working as Assistant Accounts Officer, office of the Executive Engineer, CWC, Middle Brahmaputra 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

14

Central Administrative Tribunal

31 JUN 2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

D.A. No. 136 /2004

Sri Tusrar 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:

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.

INDEX

Sl. No.	Annexure	Particulars	Page No.
1	----	Application	1 - 18
2	----	Verification	-19-
3	1	Extract of O.M dated 14.12.83.	20-22
4	2	Judgment and order dated 12.5.1989 in O.A No.105/87.	23-27
5	3	Copy of letter dated 9.10.89.	28-29
6	4	Copy of judgment date 02.11.2000.	30-32
CA	4A	Copy of the judgment dated 18.11.96.	33-38
7	5	Copy of the letter dtd 03.09.02.	-39-
8	6	Copy of impugned letter dated 13.05.04.	-40-
9	7	Copy of impugned order dated 18.05.04.	-41-
10	8	Copy of judgment date 14.05.04	42-50
11	9	Copy of the O.M dated 12.01.96.	51-53
12	10	Copy of OM dated 29.5.2002	54-55

Filed by
Subrata Deka
Advocate

Date: 03.06.04

17

filed by the applicant -
Subrata Deka
Advocate
Guwahati
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 Tusr Kanti Paul,
S/o- Sri Amulya Chandra Paul
Assistant Accounts Officer,
Office of the Executive Engineer
Central Water Commission
Middle Brahamaputra 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,
Minstry 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.

Tusr 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 Brahmaputra 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 Brahmaputra 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

Yusor 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 Brahmaputra Division, Guwahati, Assam.

Yuvan 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:

Yerav 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

Yusankanta Ray

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

Yasor Kanta Paul

7 24

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

Yusen 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."

Yusor Kanti Deka

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 13th 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

Yusar Kanti Paul

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

Yasir Kanti Ray

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 arbitrary, 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

Yusaf 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

Yusuf Kanti Patel

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.

Yasir Kanti 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

Yasir Kausar 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.

Yusor Kanti 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.

Yusor 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. : 154389381.
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.

Yasar Kanti Paul

VERIFICATION

I, Sri Tushar Kanti Paul, aged about 48 years, working as Assistant Accounts Officer, office of the Executive Engineer, CWC, Middle Brahmaputra 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 3rd day of June, 2004.



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 :-

*Abdul Latif Advocate
6.3.83*

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years of less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible.

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

ii) Weightage for Central deputation/training abroad and Special mention in confidential Records:

xx

ii) Special (Duty) Allowance :

Central Government civilian employees who have all India Transfer Liability will be granted a Special (Duty) Allowance at the rate of 25 per cent of

basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempted from payment of Income Tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and pre-Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus Special pay/deputation (Duty) Allowance will not exceed Rs.400/- P.M. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

Sd/-

S.C. MAHALIK
Joint Secretary to the
Government of India

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

G. C. 105 of 1987

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

RANENDU DUTTA CHOUDHURY & ORS

VS

UNION OF INDIA & ORS

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

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

Heard on : 11.5.1989 : Judgement on : 12.5.89

JUDGEMENT

A.P. Bhattacharya, J.M. :

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

2. The applicants are Central Government employees belonging to Central Civil Accounts Service (Group C) cadre. They carry with them All India transfer liability and in their appointment letters it was specifically stipulated. Govt. of India, Ministry of Finance, Deptt. of Expenditure, by its memorandum dated 14.12.1983 had sanctioned certain allowance known as Special (Duty) Allowance at the rate of 25% of the basic pay subject to the maximum of Rs. 400/- per month with effect from 1.11.1983 to all civilian employees of the Central Government serving in the States and in the Union Territories of North Eastern Region carrying all India Transfer liability.

It is their contention that they are entitled to get that benefit.

By its letter dt. 16.8.1984, the Accounts Officer, quoting the Ministry of Finance letter dt. 8.8.84 wrote to the Pay & Accounts Officer, Geological Survey of India, Shillong, that the Special (Duty) Allowance would not be admissible to the Group B, C and D

Attala
D. P.
Advocate
9-6-84

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 ~~xxxi~~ 14.12.83 issued by the Govt. of India, Ministry of Finance, Department of Expenditure. Under that Memorandum, Central Govt. civilian employees who have All India transfer liability will be granted Special(Duty) allowance at the rate of 25% of their basic pay subject to the ceiling of Rs. 400/- per month on posting to any station in the North Eastern region.

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

93

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 appointment. 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. ^{The fact that} As they have never been transferred outside the region where they were originally appointed, ⁱⁿ would not cease their liability of serving/any part of India. We think that such liability still exists and can be give effect to by the administration as and when required in the interest of the administration. The classifications made by the memorandums mentioned above is not founded on an intelligible differentia. Subsequent letters issued by the Govt. of India as mentioned above cannot be taken to have modified or circumscribed the contents and applicability of the O.M. issued in 1983 so far as the present applicants are concerned. We hold that when the conditions of service impose all India service liability on these applicants and so long that liability continues to exist and has not been revoked by an order by the competent authority, it is not open to the Govt. to deny that benefit to any employee on the ground that the all India transfer liability has not been, in fact enforced. We hold that as the present applicants are equally circums-tanced with the applicants of the cases decided by the Full Bench and as they fulfil the conditions stipulated in the O.M. of 1983, they are entitled to get the Special (Duty) Allowance claimed by them.

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

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
Smt. Member
12.5.89

Classified to be true copy

R. C. Roy
(S/S)
Deputy Registrar (J. General)
Central Administrative Tribunal
Guwahati Bench

scr
15.5.89

*affixed to
of Adm. Advocate
3/6/89*

आ० शा० क्रमांक/D.O. No.PAS: GC-105/R1/SDA/SMH/ 2933

15

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
of the
Government*

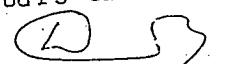
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ever is later only in respect of the following 12 applicants.

1. Ranendu Dutta Choudhury
2. Ramen Sonowal
3. Bijan Bhari Bhattacharjee
4. Smt. Harry Blanca Kharsing
5. S. Nongknsih
6. Manik Chanda
7. Ramjyoti Bhattacharjee
8. Ashutosh Paul
9. Tusr Kanti Paul
10. Hemamgshu 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,
Guwahati.

.....Applicant

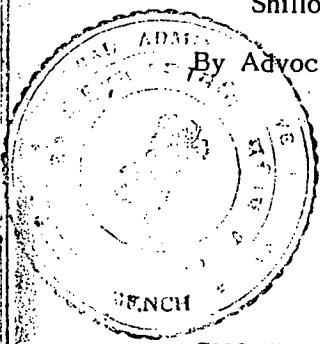
By Advocates Mr S. Ali and Ms. N.D. Goswami.

- 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.

*After a
few
Reviews
of the
Case*

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 Goverment of India, Ministry of Finance, Department of Expenditure, including arrears. The said Judgment and Order dated 12.5.1989 of the Tribunal was accepted by the respondents and the respondents never challenged the aforesaid Judgment of the Tribunal in any higher Court. The respondents accordingly paid SDA to the applicants of the aforesaid O.A. till receipt of the impugned order dated 30/31.12.1998 by the respondents. According to the respondents though the applicant is subject to All India Transfer liability he is not entitled to the benefit of SDA, moreso in view of the subsequent judgments pronounced by the Apex Court in Civil Appeal No.3251 of 1993 and No.3034.

of 1995.

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

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, ^{which has already finally} the question of challenging the wisdom of that order by the Administration is not permissible. In the circumstances the impugned communication dated 30/12.1998 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

कानूनी प्रतिलिपि

27/12/02

Deputy Officer (O)

Central Administrative Tribunal

न्यायीक प्रशासनिक उचितक

Central Bench, Guwahati

न्यायीक प्रशासनिक उचितक

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. PATTANAIK, JJ.)

V.S. CHARATI

Appellant

b

versus

HUSSEIN NHANU JAMADAR (DEAD) BY LRS.

Respondent

Civil Appeal No. 1874 of 1984[†], decided on November 18, 1998

a 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 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 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

d 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.

e 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

f 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

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[†] From the Judgment and Order dated 8-10-1980 of the Bombay High Court in S.C.A. No. 4762 of 1976

existing order, the response rate and actual sales from the campaign are
e. Another benefit of direct marketing is that the customer does not have
the location of the tourist agency. National tourist offices that have an
a a foreign country

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

(Para 5)

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 Tatoba Sawant v. Heramb Anant Panvardhan, 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 Dartu Mehajan v. Yeshodabai Huna Mahajan, (1976) 78 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

1. AIR 1986 Bom 408, *Bhimrao Tatoba Sawant v. Heramb Anant Panvardhan*
2. (1976) 78 Bom LR 427, *Nago Dartu Mahajan v. Yeshodabai Huna Mahajan*.

on page(s)

276b-c

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 Gadchinglaj 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 Marniatadar 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

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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 3. 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 31-5-1961.

b 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 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 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 20-11-1965 after he attained majority on 7-11-1965. 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 31-3-1975. An appeal from this order to the Additional Commissioner was dismissed on 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.

c 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 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 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:

d "43-1E. Nothing in this Chapter shall apply in relation to land, which 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 Tarioba Sawant v. Heramb Anant Panvardhan*¹. 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 1954 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

¹ AIR 1956 Bom 408

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)

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.

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*² 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.

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

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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.

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.

Government of India
 Central Water Commission
 Middle Brahmaputra Division
 Rajgarh Road : : Guwahati-781007

Annexure-5

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(55)/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 D)

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 I to D). In this connection a copy of this office
 letter No. MBD/Gau/Estt-II/8/2002/636 dated 31/1/2002
 is also enclosed herewith for information and necessary
 action please. However, since his service cond't. 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,

Encle:- As above.

SK
 (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, Attn. M.B.Divn., Guwahati).
4. The Pay & Appices, CWC, R.K.Puram, Seva Bhawan, New Delhi.

along with above enclosed information

SK
 (A.K.SRIVASTAVA)
EXECUTIVE ENGINEER

*After 1st
 Feb.
 2003
 Adm. 1/2/03*

*To me
 Adm. 1/2/03*

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

303, Sewa Bhawan R.K. Puram,
New Delhi-110066
Dated:- 13th 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

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

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

✓ep-56

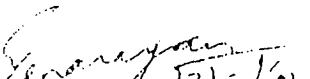
Sir,

I am directed to refer to Middle Brahmaputra Division's letter No. MBD/Gau/Estt.-33/2004/1550 dated 30.3.2004 in the above 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 29th 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)

Under Secretary, Estt.IV
Tel. 6107577

Copy to

1. Superintending Engineer, CWC Office, CWC Complex, Behind Adabari Bus Stand, Guwahati-781014. FAX-0361-2674267

2. The Superintending Engineer (C.O/O Chief Engineer), Brahmaputra River Project, Dibrugarh, Assam.

3. Dibrugarh, Assam.

*Attested
for
Parvate
Gupta*

No. MBB/Cen/Estt-33/04/ 2899-2905

Government of India
 Central Water Commission
 Middle Brahmaputra Division

Phone: 2674267
 FAX: (0361)2674267
 Email: midcwe@vifly. Com

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

Dated: 18/5/ 2004.

OFFICE ORDER

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

D.P.S.
 18.5.04
 (A.K. SHIVASTAVA)
 EXECUTIVE ENGINEER

Copy to:-

1. The Superintending Engineer, H.O. Circle, CWC, Guwahati for kind information please.
2. The Superintending Engineer (Overs) C/o C.E., BRRB, CWC, Shillong for kind information please.
3. The Pay & Accounts Officer, CWC, Seva Bhawan, R.K. Puram, New Delhi-66.
4. The Under Secretary, Estt. IV, CWC, Room No. 303, Seva Bhawan, R.K. Puram New Delhi-66. It is to inform that the necessary action regarding show cause notice etc. against recovery of S.P.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., N.R. Division, CWC, Guwahati for information.
6. Bill Clerk, N.R. Division, CWC, Guwahati for information & immediate necessary action.
7. Accounts Branch, N.R. Myn., CWC, Guwahati-14.

*Alfaz P
 2nd
 Director
 3/6/04*

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI, 700011

On 06/05/2003 and 06/12/2003

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

HON'BLE MR. KULDIP SINGH, MEMBER (JUDGE)
CHIEF MEMBER OF THE BENCH

OA No 122/2003

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 Comptroller 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.

Wesu
JMC
Arun
26/5/04

KR

VERSUS

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

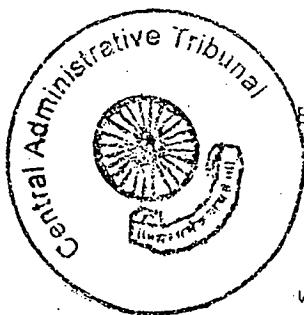
By Advocate: Shri B.C. Pathak, Learned Additional Central
Government Standing Counsel.

ORDER

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

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

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



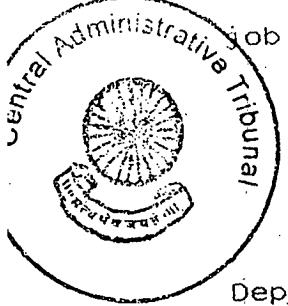
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respondents to continue to pay SDA to the applicant vide
order dated 12.5.89 and order dated 22.1.90 passed in
OA-7/99.

3. In the connected OA No.29/2003, the applicant is stated to be aggrieved of discontinuation of payment of SDA which is payable to the applicant in terms of the OM dated 14.12.1983, 1.12.1988 and 22.7.98 as well as in the light of the judgment given by the Tribunal dated 28.6.90 which was subsequently confirmed by the Apex Court in SLP preferred by the respondents.

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



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

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

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

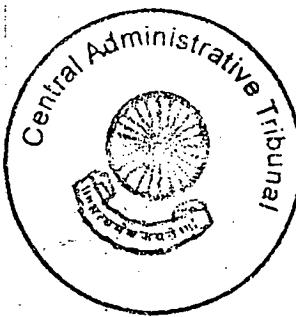
6. It is further stated that in the similar circumstances another applicant who was co-applicant alongwith applicant in OA-105/87 had also approached this Tribunal against the order of discontinuation and recovery of SDA when he filed OA No.7/99. The said OA was also allowed and respondents were directed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

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

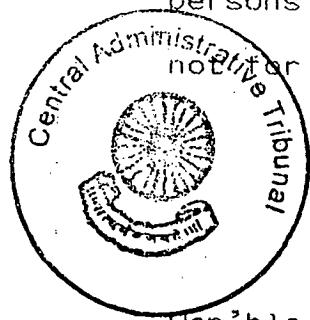
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8. Respondents are contesting that DA Respondents admit that the Govt. of India, Ministry of Finance, New Delhi vide office memorandum dated 14.12.87 brought out a scheme extending facilities of SDA to the Central Govt. employees serving in North Eastern 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. Vijay 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.Vijay 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.

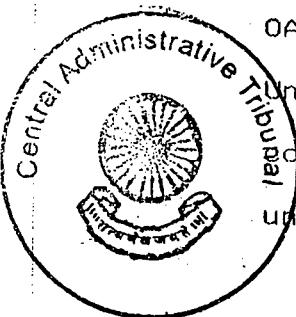


12. Now the question arises that after the dismissal of the SLP filed against the applicants, can the Govt. resort to recover the amount of SDA paid to the applicants. Learned counsel appearing for the respondents submitted that since the law as laid down in Vijoy Kumar's case by the Supreme Court of 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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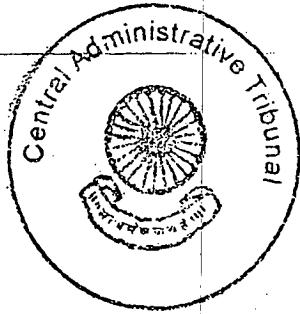
discontinued paying the SDA to the applicants and had also started recovery proceedings for the amount already paid to the applicants under SDA.

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, defendant 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
সত্যাগ্রহ প্রতিক্রিয়া

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

Abdul
for
Advocate
3/6/96

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.

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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.

*Swamy
for
signature
10/07/02*

July, 2002

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SwamysnewS

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

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

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

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

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

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

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

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

- 9 MAR 2001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ; AT GUWAHATI

O.A. No. 136/2004

Filed by
Lokha. S.C.
4/2004
CAT, Guwahati

Shri Tusr 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 out side to the N.E. Region (the defined area) which is considered as

13

inaccessibility and difficult terrain. A bare reading of the provisions of the said O.M. makes it is clear that these facilities and allowances are made available only to those who are posted in the region from outside on transfer.

A 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. Vijaykumar & 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. Bhattachrjee & 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. Vijaykumar 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.

(i) 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.Vijaykumar" 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 cause 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 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.

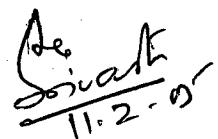
13. That with regard to the statements made in para 8.1 to 8.5 and 9 and 9.1 of the application, the answering respondents state that under the facts and circumstances of the case and the provisions of law and also the law laid down by the Hon'ble Supreme Court, the matter may be heard and considered 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.


Anup Kumar Srivastava
11.2.05

DEPONENT

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Now Delhi, the 14th December, 1983.

OFFICE MEMORANDUM

Subject :- Allowances and facilities for civilian employees of the Central Government serving in the states and Union Territories of North-Eastern Region - 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 an exceptional case in exigencies of public service as well as when the employee concerned is prepared to stay longer. Themissible deputation allowances 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.

- promotion in cadre posts;
- deputation of Central tenure posts; and
- 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.

Contd....2/-...

A specific entry shall be made in the C.R. of all employees rendered in 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 Disturbance (Duty) Allowance already being drawn subject to the condition that the total of such special (Duty) allowance plus special pay/Disturbance (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowance like special Compensatory (Rural Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

iv) Special Compensatory Allowance :

1. Assam and Nagaland

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. 1463, if on transfer to another, by 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 sole 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 of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting to 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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Official drawing pay of Rs. 2200/- for above, and those family
allowance and two dependents children (upto 10 years for boys and 12
years for girls) will be allowed air travel between Imphal/Silchar/Port Blair
and Calcutta and vice versa, while performing journeys mentioned in the
preceding paragraph.

(x) Children Education Allowance/Hostel Subsidy:

Where the children do not accompany the Government servant
to the North Eastern region, Children Education Allowance upto Class XII
will be admissible in respect of children studying at the last station
of posting of the employee concerned or any other station where the children
remain, without any reduction of pay drawn by the Government servant. If
children studying in schools are put in hospitals at the last station of
posting at 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 include imphal
apply to Central Government employees posted to Andhra and Bihar.
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 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 DHARAK)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

To,

No. 20014/3/03-E, IV
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURI

OFFICE MEMORANDUM

Subject: Job Training and Readjustment for Civilian Employment of the
Central Government residing in the States and Districts and
Conditions of the Northeastern Region and A. & N. Islands and
Bengal-Bihar and Improvement thereof.

The undersigned is directed to refer to para 1(11) of
Ministry of Finance, Department of Expenditure O.M. No.20014/3/83-
R. IV dated 14th December 1983 as amended vide Office Memorandum
of even number dated 29.10.1986 on the above subject and to
reproduce below:-

1(iii) "Special (Duty) Allowance".

"Central Government civilian employees who have all their transfer liability will be granted a special (duty) allowance at the rate of 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Special (duty) Allowance will be in addition to any special pay and/or deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/allowance (Duty) Allowance will not exceed Rs. 400/- per month. The allowances like special compensatory (remote locality), allowance and project Allowance, construction 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 calculating special (duty) allowance, the all India transfer liability of the members of any Service/Cadre or incumbents of any post/grade of posts has to be determined by applying tests of recruitment "zone", "promotion-zone", etc. i.e. whether recruitment to the service/cadre/post 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/post 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 even not make him eligible for the grant of special (duty) allowance.

Counted

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

(MR. SINGH)

DIRECTOR (EC)

TELE: 3011019

To

Financial Advisers of all Ministries/Departments.

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E.No. 20014/16/06/14/P. (14)
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE 1 P. 3
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1st December 1960
Mad. Dated, the 1st December 1960
OFFICE OF THE SECRETARY

Subject:- Improvement in facilities for civilian employees
of the Central Govt. serving in the States of North
Bengal, Bihar, Andhra & Bihar, Jharkhand and Lakshadweep
from 1st April, 1960.

The Superintendent is directed to refer to the Ministry's
O.M. No. 20014/3/13-E.IV dt. 1st December, 1945 and 20th March
1958 on the subject mentioned above and to say that the question
of making necessary improvement in the allowances and facilities
to Central Govt. employees posted in North-Bengal and Jharkhand
States of Andhra, Bihar, Jharkhand, Bihar, Jharkhand, Tripura, Arunachal
Pradesh and Lakshadweep has been enroute the attention of the Govt.
Accordingly, the President is now pleased to decide as follows:-

(i) Exemptions of Deputation/Operation

The existing provisions as contained in the Ministry's
O.M. dated 16/12/60 will continue.

(ii) Allowances for Central deputation and working abroad

With existing provisions as contained in the Ministry's
O.M. dated 16/12/60 will continue. Under normalisation new allowances
as per the existing norms for satisfactory performance of duty for
deputation abroad to the North-East in the manner of payment
as the order, given, deputation to Central Government and Government
of Arunachal Pradesh, Jharkhand, Tripura, Lakshadweep and
Bihar.

(iii) Allowances for Civilian employees

Central Govt. civilian employees who have att. upto
1st April, 1960 will be granted special (city) allowances at the
rate of 91% of their pay subject to a ceiling of Rs 1000/- per
month on payment to any station in the North-Eastern Region.
In addition to any special pay
allowance, Central Govt. civilian employees will be granted subject to
the ceiling, the sum of Rs 100/- per month in addition to
original pay/allowances/allowances for working abroad in North-East
original allowances. The special allowances/allowances will be
allowance, Construction Allowance and Payment Allowance will be
dealt separately.

(iii) Concessional Allowance for Civilian Employees who are members of
a recognised educational institution for the benefit of
their children under 11 years and are accepted from
the institution under the Income Tax Act will also draw
a Concessional Allowance.

(iv) Original Compensation Allowance
The recommendations of the 10th Pay Commission have been
accepted by the Govt. and Original Compensation Allowance at the
prevailing rates of pay will be effective from 1.10.06.

(v) Temporary Allowance on First Appointment
The previous concession is continued in the Ministry to
the extent of 14.10.06, commensurate with the classification that on
first appointment, R.A. should be admissible for the total distance
instead of 100 km. Allowance in excess of first 100 km. only.

(vi) Concessional Allowance for Journey on Transfer
The previous provision is continued in the Ministry to
the extent of 14.10.06, commensurate with the classification that on
first appointment, R.A. should be admissible for the total distance
instead of 100 km. Allowance in excess of first 100 km. only.

(vii) Allowance for Employment of Part-time Officer

The previous provision is continued in the Ministry to
the extent of 14.10.06, commensurate with the classification that on
first appointment, R.A. should be admissible for the total distance
instead of 100 km. Allowance in excess of first 100 km. only.

(viii) Concessional Allowance on Appointment in the Ministry
The previous concession is continued in the Ministry to
the extent of 14.10.06, commensurate with the classification that on
first appointment, R.A. should be admissible for the total distance
instead of 100 km. Allowance in excess of first 100 km. only.

(ix) Concessional Allowance for Journey to School
The previous concession is continued in the Ministry to
the extent of 14.10.06, commensurate with the classification that on
first appointment, R.A. should be admissible for the total distance
instead of 100 km. Allowance in excess of first 100 km. only.
allowance for journey for 500/- or above, and their
allowance for dependents, i.e. dependent children (upto 11 years) for
boys and 10 years for girls will be admissible at the rate between
Mysore/Visakhapatnam/Hyderabad/Lucknow and Calcutta and
between Visakhapatnam/Cuttack/Bhubaneswar, Calcutta/Baroda and
between Lucknow/Baroda/Visakhapatnam and between Lucknow and
Bhopal, and between an equal distance in between.

(x) Concessional Allowance for Journey to Hospital
With the children do not accompany the government servant
to the North-Eastern frontier, Children Education Allowance upto
the age of 11 years will be admissible in favour of children studying at
the institution of posting of the employee concerned or any
other institution within the official posting. If children studying
at home, the same will be admissible in hospital in the last station of posting
or in other stations, the government servant concerned will be
admissible without any other official restrictions.

- 13 - 23

or

ation of Children Education Allowance/House subsidy will be
in the hope, Dated 10/11/1/67-HM, (K.L. 1000), dt. 31.12.67
announced. From this to 31/12/

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

(b) The probont concession on mentioned in this Ministry to
D.M. No. 11056/1/67, L. (B) /66 dt. 29.3.66 in regard to the
allowance, comming to be paid by the

(c) The D.R.O. (Mysore) Region.

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

2. The above order will also apply mutatis mutandis
to the Compt. D. Govt., employees posted in Andaman & Nicobar
Islands and Lakshadweep Island. This order will also apply
mutatis mutandis to officers posted in R.R. Compt. when they
are posted in the S.I. Region.

3. Please advise with full effect from date of issue.
In as far as the proposed award the Indian Audit &
Accounts Deptt., are concerned, this order is to be after consultation
with the Comptroller of Audit Deptt. of India,
it will be necessary that a copy of this order is
forwarded to the Comptroller of Audit Deptt. of India.

(A. S. SATYANARAYAN)

SECRETARY TO THE GOVT. OF INDIA.

ALL MINISTRIES/DEPARTMENTS OF GOVT. OF INDIA, etc.

Copy (with serial number of each copy) forwarded to
S. & A. G. R. U. P. 9/67, etc., for per standard endorsement

— 20 — 21/22

ANNEXURE A

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NUMBER 2000 OF 1934

ANNEXURE B

ANNEXURE C RA

Union of India and others

... Appellant

versus

S. VIJAYAKUMAR and others

... Respondent

With Civil Appeal Nos. 6163-83, 10724-83, 10720-79/83, 16231-83/85,
SLP(C) Nos. 10461/83, 9240/84/85.

Order

MANAGER

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

202

whether the employees are entitled to receive
allowance therewith referred to as "the
allowances", 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 this question in affirmatively.
These legal opinion have been preferred by the Union of India.

The Tribunal took the aforesaid view because
the Office memorandum dated 15.4.1907, in
regarding the allowances and facilities for civilian
employees of the Central Government, serving in the
North-Eastern and Union Territories of the North-Eastern
Region improvement thereof had stated that, allowance
shall be payable if the post be those which have "All
India Transfer Liability". The aforesaid Office
memorandum, however, is that this Office memorandum, 15.4.1907
agrees with what was stated subsequently in another
memorandum dated 20.4.1907, it would become clear that
the allowance was intended to be paid to those
incumbents who had been posted to North-Eastern Region
carrying their administrative condition and, not to
those who were residents of this region. The office
memorandum of 1907 has clearly stated that the allowance

from 1907

of inaccessibility and difficult terrain
said so because even the 1980 memorandum of
1980 is that the need for the allowances was due to
the non-renewal of the service of the competent
officers for service in the North-Eastern Region.
However, 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 days would be excluded while counting the period of
service of posting which was required to be of 2/3 years
to claim the allowance depending upon the period of
service of the incumbent. The 1980 memorandum makes this
clear by making All India Transfer Liability
of All India Employees who have All India Transfer Liability
would be granted the allowance on posting to in
station to the North Eastern Region. This intent is
made clear beyond doubt by the 1987 memorandum which
stated that allowance would not become payable more
because of the clause in the appointment order relating
to All India Transfer Liability. Merely because in a
Office memorandum of 1980 the subject was not mentioned
quoted above is not be enough to consider it a
submission of Dr. Ghosh.

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that he became payable merely because of the claim
of this appointment order to the effect that the person
concerned is fit to be transferred anywhere in India.
Solicitor Dr. Ghosh, appearing for the Government,
contends that the letter memorandum of 1903, having
been dated 1903, is contained in the memorandum of 1907, and
therefore cannot be applied to the former that the allowance
is payable only to those who have been given
employment in the North-Eastern region; and has to show
that the residents of this region, it is also contended,
are entitled to the allowance to the residents, while
the same to the non-residents, would be
in violation of the principle of equal pay for equal work and an
article 14 and 16 of the Constitution.
He has duly considered the rival submissions
and are inclined to agree with the contention, advanced
by Mr. Learned Additional Solicitor General Siri Tulsi
for two reasons. The first is that a close perusal of
the letter memorandum, nimbly with what was stated
in the memorandum dated 25.9.1903, which has been
referred to in the memorandum of 26.9.1907, clearly shows
that the allowance in question was meant to attract operations
inside the North-Eastern Region to work in that Region.

The submission of Dr. Ghosh that the denial of allowances to the respondents would violate the fundamental doctrine of justice and that what was held in Officers Association and Reserve Bank of India shall which an application was soon invited before the Additional Solicitor General, in which grant of special compensatory allowances or remote locality allowances only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while giving the name to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution. In view of the above, we hold that the respondents were not entitled to the allowance and the impugned judgments of the Tribunal are, therefore, set aside. Explanations in view of the full 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 employes, would not be recovered from them in so far as the allowance is concerned.

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ALL INDIA R 5 (1955)	98
<p>certified to be true copy <u>.....</u> At <u>.....</u> <u>Assistant Registrar (Sudh)</u></p>	
<p>..... 11/3/55</p>	
<p>Supreme Court of India.</p>	

IN THE SUPREME COURT OF INDIA

CIVIL APPEALS JURISDICTION

589905

APPENDIX 5

ANNEXURE B

16

CIVIL APPEAL NO. 3034
Arising out of S.L.P. (2) NO. 18717, 21

Location of house & drug

• • • • • Appellants

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Executive Officers Association Group C

.....Respondents.....

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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 20, 1990 passed by the Central Administrative Tribunal, Guwahati 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 form 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 No. 2 and 3 are its President and General Secretary respectively. The respondents approached the Tribunal claiming Special Duty Allowance on the strength of Office memorandum No. 20014/2/83-E.IV dated December 14, 1983 and the Office Memorandum No. 20014/16/86, 1976, 11(B) dated December 1, 1986 issued by the Ministry of Finance, Government of India. The respondent-association claimed that its members have all 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

confirmed and otherwise. With the signature of briefing has been posted at Goa under the said Recruitment Rules and, therefore, they are eligible and entitled to claim Special Duty Allowance. The appellants herein opposed and contested the aforesaid claim of the respondents before the Tribunal. The appellants took the defence by stating that the Office Memorandum No. 20014/E/83.E/IV dated April 20, 1983 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. Keeping in view the original Office Memorandum dated March 14, 1983 and that the conditions stipulated in the Recruitment Rules, 1979 referred to above cannot be taken as basis for gauging 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/cause or incumbent of any post/Group of posts is to be determined by applying the tests of recruitment to the service/cause/post made on all India basis and that mere inclusion in the Recruitment Rules/Appointment Order stipulating all India transfer liability does not make him/hem 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. 7747748, 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 erroneously 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

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.

8.

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 belongs 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

the North-Eastern region to come and serve in the North-Eastern Region. It can hardly be disputed that the geographical, climatic, living and food conditions of people living in North-Eastern region and the States comprising therein are different from other Regions of the country. The North-Eastern Region is considered to be 'hard zone' for various reasons and it appears that it is for these reasons that the Government provided certain extra allowance, benefits and other facilities to attract competent officers in the North-Eastern Region at least for two to three years of tenure posting. The Ministry's Office memorandum in question came up for consideration before this Court in General Panseer (Telecom) vs. S. Rajender S.H. Bhatnagar & Ors. [J.T. 1995 (1) 55 426] which was followed by order judgment dated January 10, 1995 in which this Court took the view that the said Office Memoranda are meant for attracting and retaining the services of competent officers in the North-Eastern Region from other parts of the country and not the persons belonging to that region, where they were appointed and posted. This was also the view expressed by this Court in yet another case reported in J.T. 1994 (6) 443 - Union of India vs. S. Vinaya Kumar & Ors.

In Vinaya Kumar (Suva) the point for consideration was exactly identical, with regard to the entitlement to Special Duty Allowance to those employees/officers who

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

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.

S/—

(S.C. Arora)

S/—

(Fazlur Uddin)

New Delhi.

February 22, 1993.

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. respondents

ORDER

It is found to be true copy
(24512)
of the Register (Judi.)
..... 27. 11. 1995
Supreme Court of India

Delay condoned.

Leave granted.

Mr. P.K. Gourami, learned senior counsel appears for
Geological Survey of India Employees' Association and Mr.
S.K. Handa, 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. i.e.,
however, direct that the appellant will not be entitled
to recover any part of payment of special duty allowance
already made to the concerned employees. Appeals are
accordingly disposed of.

S.H.

(G. H. Ray)

S.H.

(S. B. Mahmudur)

New Delhi
September 7, 1995

ANNEXURE : R

This is addressed to the Ministry of Finance
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. 20014/16/86-E, IV/E.II(B) dt.
1.12.88 on the subject mentioned above.

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

3. It was clarified vide the above mentioned OM
dt. 20.4.1987 that for the purpose of sanctioning
'Special Duty Allowance', the All India Transfer
Liability of the members of any service/cadre or
incumbents of any post/group of posts has to be
determined by applying the tests of recruitment zone,
promotion zone etc. i.e., whether recruitment to
service/cadre/post has been made on All India basis and
whether promotion is also done on the basis of an all
India common seniority list for the service/cadre/post as
a whole. A mere 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
prayer of the petitioners as their appointment letters
carried the clause of All India Transfer Liability and,
accordingly, directed payment of SDA to them.

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

6. The Hon'ble Supreme Court in their judgement delivered on 20.9.94 in Civil Appeal no. 3251 of 1993 upheld the submissions of the Government of India that Central Government civilian employees who have All India Transfer Liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA could 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 respondent 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 OM is enclosed.

(C.Balachandran)

Under Secy to the Govt of India

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

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

ANNEVURE
R-7(6) 110



No. C. 18014/2/90/(PF)/MF-CGA(A)/LC/2275

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. 3251 of 1993 (*Union of India v. S. Vijayakumar*, (1994) 23 ATC 598), refers

3. After taking into account the above judgment of the Supreme Court, Government of India has issued fresh instructions in O.M. No. 11(3)/95-E.II(B), dated 12-1-1996, *inter alia* stating that "Central Government civilian employees who have all India transfer liability are entitled to the grant of SDA, on being posted to any station in the NE Region from outside the region and SDA would not be payable merely because of clause in the appointment order relating to All India Transfer Liability." Recently, the Government of India in its O.M. No. 11(2)/97-E.II(B), dated 22-7-1998 has again drawn attention to the O.M. dated 12-1-1996.

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

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

S.N. Sankar
Asstt. Controller General of Accounts

To

AUCCAs/CAs/Dy CAs
AUCCAs/CAs/Dy CAs
AUCCAs/CAs/Dy CAs

ANNEXURE
SUPREME COURT
INDIA

41-303-
Dated New Delhi, the 26th November, 1956. 19
Fifteen ASSISTANT REGISTRAR (JUDL)

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, R.K. Puram,
New Delhi - 110 062.
3. The Divisional Organiser,
SSB Shillong Division,
A.P. Secretariat building,
Shillong, Meghalaya.
4. Commandant, Group Centre, SSB,
Tripura, Sambutan, Agartala,
Tripura West.

ANNEXURE

NOTIFICATION TO THE GOVERNMENT
(Under Article 32 of the Constitution of India)

NOTIFICATION
(NOTIFICATION TO THE GOVERNMENT)

Sadan Kumar Goswami & Ors.

To the Union of India & Ors.

Sir,

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

Please acknowledge receipt.

• PETITIONERS

• RESPONDENTS

Yours faithfully,

ASSISTANT REGISTRAR (JUDL)

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Complaint to be filed
in the Supreme Court of India
against the State of West Bengal
in the Supreme Court of India
in accordance with Article 133 of the
Constitution of India.

In the Supreme Court of India
Civil Original Jurisdiction
Date peritiating 1996

(Under Article 32 of the Constitution of India)

Sub-suspector Sambhu Kumar Goswami &

Petitioners

Respondents

THE 25TH DAY OF OCTOBER 1996

Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice S. P. Kurudkar

Mr. Debajit Ghosh, Adv. with him for
Petitioners.

Q. B. D. E. K.

Following Order of the Court was delivered:

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

W.L. PETITION NO. 793 OF 1996

Sub-Inspector Sudhan Kumar Goswami, Petitioner
0rs.

... Petitioners
... Respondents
The Union of India, a.o.s.

B R E F E

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 156 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, elected special duty allowances as per order of the Central Government. The question was considered by this Court in Union of India vs. S. Vilay Kumar (C.W. No. 3231 of 93) decided on September 20, 1994; wherein this Court had held thus:

"...that the petitioners have singly considered the rival sub-inspectors and have invited to agree with the contention suggested by the

The submission of Dr. Bush that the
model of the Supreme to the president
should include the equal pay clause is
disputed by the state has held in

1153

Reserve Bank of India vs. Reserve Bank of India Staff Officers Association & Ors. (1991) 4 SCC 1521 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 paid upto the date of the judgment was directed to be recovered from them. The petitioners are relying upon the office memorandum dated July 11, 1996 which provided that "it is not applicable from one station to another station within the region of Group A and B staff will further continue to get the facilities". They have filed this writ petition contending that while the Group C and D employees have been denied the benefit of the above judgment, special duty allowance benefit is being granted to Group A and B staff. It tantamounts to violation of Article 14 and, therefore, the writ petition should be allowed so as to give them the same benefit. Admittedly, the petitioners are Group C and D employees and are bound

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 of paragraph '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 would indicate that it did not make any distinction between Group C and D and Group A and B officers. All are governed by the law under Article 161. 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.

At late, we have been coming across this type

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

It is next contended that the Government is recovering as per Memorandum dated January 17, 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 first petition is accordingly dismissed.

(K. RAMESHWAR)

(S. P. KUMAR)

NEW DELHI,
OCTOBER 25, 1926.

MAILED IN MY PRESENCE
S. P. KUMAR

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Annexure 8/9

COURT CASE
NOTIFICATIONGolaknath Ramchandrat
(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 WO No.42/SSB/AT/99(18)-2369 dated 31.3.2000 on the subject mentioned above.

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

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

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

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

iii) An employee belongs to N.E. Region was appointed as Group I or II employee based on local recruitment whom there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/03-E.IV dated 14.12.03 and 20.4.07 read with OM No.

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Amritsar

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- 2 -

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

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

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

v) The MOF, Deptt of Exptn. vide their OO No.11(3)/95-E.II(B) dated 7.6.97 have clarified that a mere change 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 employee having All India Transfer Liability will be by applying criteria (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/BSF, 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.

Concd...3/-...

Annexure 5

151

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

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

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

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

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

sd/-
(P.H. THAKUR)
DIRECTOR (SR)

1. Shri R.S.Bedi, Director, ARC
2. Shri R.P.Kurcel, Director, SSB
3. Brig (Retd) G.S.Uban, IG, SFF
4. Shri S.R.Mehra, DD (P&C), DCR
5. Shri Ashok Chaturvedi, DD (P&C), REAW
6. Shri B.S.Gill, Director of Accounts, DACS
7. Smt. J.M.Monon, Director-Finance (S), Cab.Scott.
8. Col. K.L.Jaspal, CIOA, CJA
Cab. Scott. W.No.20712/99-EX-1-1799

dated 27.5.2000

Committed to the Bar Council

Assistant Registrar (Civil)

Supreme Court of India

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL MARCH 2000 OF 2001
BEGGING OUT OF S.C.P.C. NO. 6469 OF 1999

ANNEXURE R 10

544783

R 10

Union of India & Anr. Appellants
versus

National Union of Telecom Engineers
Employees Union Notice Respondents

2 B.O.E.B.

Leave granted. It is submitted 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.I. B. K. Kumar & Ors. reported as 1994 (Supp. 3), SCC, 649 and

followed in the case of Union of India & Ors. vs. Executive Officers Association Group 'C' 1995 (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 for admission on 15.1.2000, the learned Solicitor General gave an undertaking that whatever amount had been paid by the respondents, by way of special duty allowance will not be levied or recovered from them. It is on this basis that leave was conceded. It is made clear

the Union of India shall not be entitled to recover any
paid as special duty allowance inspite of the fact
that this appeal has been allowed. 129

(H. SANTOSH HEGDE) 40

(H. G. BAGARIKSHNA) 41

New Delhi

October 06, 2001

11/10/2002

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Swamysnews

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July, 2002

Issue A letter to the concerned posts with reference to the above mentioned order to pay the amount of Rs. 108/-

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

July, 2002

18

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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 in 1994 (Supp. 3) SCC, 640 | and followed in the case of *UoI and Others v. Executive Officers' Association Group 'C'* | 1995 (Supp. 4) SCC, 721 |. 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 23rd day of May 2003

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

O.A. No.249/2002

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

- versus -

The Union of India and othersRespondents
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 othersApplicants
By Advocates Mr A.C. Sarma, Mr C.M. Das
and S. Saikia

- versus -

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

O.A. No.342/2002

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

- versus -

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

O.A. No.367/2002

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

- versus -

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

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CHOWDHURY, J. (V.C.)

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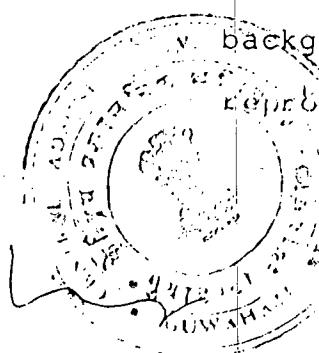
All the four O.A.s were taken up together since it involves common questions of fact as well as law pertaining to the Special (Duty) Allowance.

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

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

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

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



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

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

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

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

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

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

be regulated strictly in accordance with the above mentioned criteria.

6. All the Ministry/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 analogy of Special (Duty) Allowance which is payable on the Government Civilian employees serving in the Andaman & Nicobar and Lakshadweep Groups of Islands.

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

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

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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. Q.C.W.C. who ~~earlier~~ disputed the claim of the applicants.

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

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

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the legal policy as well as in view of the consistent decision of the Supreme Court. In the case of Union of India and another Vs. National Union of Telecom Employees Union referred to by the respondents as well as the decision rendered by the Supreme Court in Civil Appeal No.8208-8213 (Union of India and others Vs. Geological Survey of India Employees' Association and Others) itself indicated the concern expressed by the Apex Court in disentitling the authority from recovering any part of the payment of SDA already made to the concerned employees. Such recovery is inequitous and will invite misery to the employees. The action of the respondents for recovering the amount already paid is, therefore, held to 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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6/11/03

Section Officer (D)
C.A.I. GUWAHATI BANCH
Guwahati-781005

nkm