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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No..... 250/2004
R.A/C.P No.....
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SECTION OFFICER (Judl.)

14/11/17

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI BENCH

ORDER SHEET

Regd. App./Misc. Petn/Cont. Petn/Rev. Appl..... 250/04.....

In O.A.

Name of the Applicant(s) Chikkhanthang Vante

Name of the Respondent(s) H. C. I. T. only

Advocate for the Applicant M. Chanda, G. N. Chakraborty, S. Nal S. Chaudhury

Counsel for the Railway/C.G.S.C. ✓

REF. NO.	DATE	ORDER OF THE TRIBUNAL
Application no. 1 Dated 28.10.04 Petn. No. 250/114863 Dated 28.10.04	29.10.2004	Having noticed the application filed by the applicant Mr. B.C. Pathak, learned Addl.C.G.S.C. was present on behalf of the respondents. Adjourn, call for the records, returnable within four weeks. List the case on 29.11.2004. In the meanwhile, the operation of order dated 29.10.2004 is stayed till the returnable date.
Dy. Registrar S. P. S.	29.11.2004	Mr. D. Baruah, learned counsel appearing on behalf of Mr. B.C. Pathak, learned Addl.C.G.S.C. for the respondents pray for four weeks time to file written statement. List on 3.1.2005 for further order. Interim order dated 29.10.2004 will continue till the next date.

Steps taken with
envelopes.

Notice of order
sent to D/Section
for issuing to
resp. Nos. 1 to 5
by regd. A/D post.

Order dt. 29/11/04
issuing to learned
advocate for both
the parties.

bb

ICV Baruah
Member

3.1.2005 None present for the respondents.
List on 10.01.2005 for orders.

31/12/04
Service of notice awaited from
the respondents.

a) No W/S has been
filed.

31/12/04

V. S. S. S. S.
Member (A)

mb

10.01.2005 List on 17.01.2005 for orders.
Interim order dated 29.10.2004 shall
continue.

K. V. Prahla
Member (A)

mb

15.1.05
S/R awaited.

17.1.05

It appears that n. A. I. C. O. S. C. has
been app. inted. with the expiry of the
Lump of the previous A. I. C. O. S. C.
Hence stand over t. 1.3.05.

Interim order to continue till next
date.

K. V. Prahla
Member

R. S.
Vice-Chairman

Order of 15.1.05
issuing to
Learned advocates
for both the parties

fl. 18/1/05

4.3.2005 Present: The Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman.
The Hon'ble Mr. K. V. Prahla,
Member (A).

At the request of the parties post the
matter on 23.3.2005 for hearing along
with the connected matters relating to
SDA.

K. V. Prahla
Member

R. S.
Vice-Chairman

9.3.05
W/S submitted
by the Respondent Nos.
1 to 5.

bb

23.03.2005 Present: The Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman.
The Hon'ble Mr. K. V. Prahla,
Administrative Member.

The case is adjourned to 24.3.05
for hearing.

K. V. Prahla
Member (A)

R. S.
Vice-Chairman

mb

3

Order of the Tribunal

Notes of the Registry, Date

24.3.2005

Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

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

11.4.05

Rejoinder submitted by the Applicant.

870

Mr. M. Chanda, learned counsel for the applicant submits that this matter may be taken up on another date. List on 12.4.2005 for hearing.

K.V. Prahladan
Member (A)

Vice-Chairman

Notice duly served on resp.
Mr. J. D. G.

25/4

mb

12.4.05.

Post the matter on 9.5.05.

K.V. Prahladan
Member

Vice-Chairman

lm

9.5.2005

At the request made by learned counsel for the parties the case is adjourned to 2.6.2005.

K.V. Prahladan
Member

Vice-Chairman

bb

2.6.05.

List again on 7.6.2005 for orders/judgment.

K.V. Prahladan
Member

Vice-Chairman

pg

7.6.2005

post on 14.6.2005 for hearing.
No further adjournment.

K.V. Prahladan
Member

Vice-Chairman

bb

Case is

earing.

870

Notes of the Registry Date Order of the Tribunal

14.6.05

Mr M.Chanda, learned counsel for the applicant wants somemore time. Post on 21.6.05 for hearing.

K.C. Chaudhuri
Member

Q. Jaiswal
Vice-Chairman

pg

16.6.05

21.06.2005

Post on 19.7.2005. No further adjournment under any circumstances.

K.C. Chaudhuri
Member

Q. Jaiswal
Vice-Chairman

bb

19.7.2005

At the request of learned counsel for the parties the case is adjourned to 27.7.2005 as first item.

K.C. Chaudhuri
Member

Q. Jaiswal
Vice-Chairman

nkm

27.7.2005

Heard Mr. M. Chanda, learned counsel for the applicant and Mr. A.K. Chaudhuri, learned Addl. C.G.S.C. for the respondents. Hearing concluded. Orders reserved.

K.C. Chaudhuri
Member

Q. Jaiswal
Vice-Chairman

mb

18.8.05.

Judgment delivered in open Court. Kept in separate sheets. Application is disposed of.

K.C. Chaudhuri
Member

Q. Jaiswal
Vice-Chairman

1m

28.8.05

Copy of the Judg.
has been sent to the
Office for serving the
same to the applicant
by post.

sl

CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH.

O.A. No. 250 of 2004.

DATE OF DECISION: 18.08.2005

Shri Lienkhawthang Varte

APPLICANT(S)

Mr.M.Chanda, G.N.Chakraborty,
& S.Choudhury

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Others

RESPONDENT(S)

Mr.A.K.Chaudhuri, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

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

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

100
Judgment delivered by Hon'ble Vice-Chairman.

2 - 9
Nep

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.250 of 2004.

Date of order This, the 18th Day of August, 2005

HON'BLE MR.JUSTICE G.SIVARAJAN, VICE-CHAIRMAN

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

Shri Lienkhawthang Varte.
Son of Sri H.V.Varte.
Rehabilitation Officer.
VRC for handicapped.
Rehabari, Guwahati-8.

Applicant.

By Advocate Mr.M.Chanda, Mr.G.N.Chakraborty, Mr.S.Choudhury,
Mr.S.Nath.

Versus-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Labour
New Delhi-110001.
2. Deputy Secretary to the
Government of India
Ministry of Labour,
New Delhi-110001.
3. The Director General of Employment and Training.
Joint Secretary to the Govt. of India,
Ministry of Labour(DGE&T),
Sharam Shakti Bhawan,
Rafi Marg, New Delhi-110001
4. The Dy. Director General (Employment)
Ministry of Labour (DGE&T),
Sharam Shakti Bhawan, Rafi Marg,
New Delhi-110001.
5. Assistant Director (Rehab)
V.R.C. for Handicapped.
Rehabari, Guwahati-8.

Respondents.

By Advocate Mr.A.K.Choudhury, Addl.C.G.S.C.

ORDER

SIVARAJAN, J.V.C.:

The applicant is working as Rehabilitation Officer for handicapped at Guwahati under the 5th Respondent. He was initially appointed as UDC in the office of the Commissioner of Income Tax at Shillong. While so he was selected for the post of Assistant Grade through all India competition in the 1982 and he joined as Assistant Grade in the office of the U.P.S.C, New Delhi pursuant to appointment order dated 30.1.1984. The applicant while working as Assistant Grade at UPSC, New Delhi was again selected for appointment to the post of Rehabilitation Officer under the Government of India, Ministry of Labour in the Directorate of Employment and Training, V.R.C. for handicapped. He was given offer of appointment at V.R.C., Guwahati vide letter dated 10.3.1986. He accepted the said offer and joined at V.R.C, Guwahati on 25.3.1986 from New Delhi.

2. The grievance of the applicant is that though he was being paid Special Duty Allowance (for short SDA) since then under the various Government orders for grant of Special Duty Allowance to the Central Government employees working in the North Eastern Region the same was discontinued all of a sudden vide letter dated 25.10.04 issued by the 5th Respondent. It was further ordered in the said communication that as sum of Rs.86,428/- being excess payment made will be recovered from his salary @ Rs. 1,800/- p.m. in 48 installments with effect from November, 2004. It is stated that the said communication has been issued following Audit Report without providing any opportunity or show cause notice as required under law. It is further stated that on a mere reading of the Office Memorandum dated 12.1.1996 and 29.5.2002 issued by the

S.P.A.

Government of India and Cabinet Secretariat U.O. letter dated 2.5.2000 it will be evident that a Civilian Central Government Employee on posting to N.E.Region from outside Region having All India Transfer Liability and recruitment , promotion and seniority are also based on All India basis he is entitled to SDA. It is further stated that Cabinet Secretariat U.O. letter dated 2.5.2000 further makes it abundantly clear that even a resident of N.E.Region is also entitled to payment of SDA on his posting to N.E.Region from outside the N.E.Region provided employee concerned is saddled with all India Transfer Liability even on his first posting at N.E.Region from outside the N.E.Region. The applicant has also relied on the decision of this Tribunal in that regard. According to the applicant he is legally entitled to payment of SDA and the impugned office order dated 25.10.2004 is liable to set aside and quashed.

3. The Respondents have filed their detailed written statement and contended that only Central Government Civilian Employees transferred from outside Region to N.E.Region and having all India Transfer liability and all India common seniority are entitled to get SDA under the various Government orders and as per the decisions of the Supreme Court. The applicant has filed a rejoinder wherein he had reiterated the stand taken in the O.A. and he has also produced certain communications particularly the communication dated 30.1.2004 (Annexure B) issued by the Chief Engineer, Shillong where it is stated that all Group A & B officers of MES covered by the criteria of all India Transfer liability are considered for grant of SDA on their posting to N.E.Region from outside Region.

4. We have heard Mr.M.Chanda learned counsel appearing for the applicant and Mr.A.K.Choudhury, Addl.C.G.S.C for the Respondents.

Ghosh

The applicant is a resident of N.E.Region. At the time of his appointment as Rehabilitation officer, V.R.C., Guwahati the applicant was employed as Assistant Grade in the UPSC, New Delhi. He was serving there for approximately two years. On his selection and appointment as Rehabilitation Officer he was relieved from the office of the UPSC, New Delhi, to take up the new assignment as Rehabilitation Officer at VRC, Guwahati retaining his view in the UPSC, New Delhi. In that sense the applicant was posted to the N.E.Region from outside Region namely; from New Delhi.

5. We have considered the question of admissibility of SDA to the Central Government Civilian Employees in our common order dated 31.5.05 in O.A.No.170 of 1999 and connected cases with reference to all the relevant Government orders including the government orders dated 12.1.1996, 2.5.2000 and 29.5.2002 and also the decisions of the Supreme Court and of this Tribunal. The principles deduced from the above, were summarized in paragraph 52 and 53 of the said common order which read thus:

"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 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.

Spf

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

6. As per the above SDA is admissible to Central Government Employees having All India Transfer liability on posting to N.E.Region from outside Region. By virtue of Cabinet clarification dated 2.5.2000 an employee belonging to N.E.Region and subsequently posted to outside N.E.Region if he re-transferred to N.E.Region is also entitled to grant of SDA provided he is also having promotional avenues based on a common All India Seniority and All India Transfer Liability. Same is the position in the case of resident of N.E.Region originally recruited from outside region and later transferred to N.E.Region by virtue of All India Transfer Liability provided the promotion are also based on All India common seniority. As already noted if we consider the case on hand based on the factual situation as it obtained it would appear that the case of the applicant would fall in the first category itself namely; Central Government Employees having All India Transfer Liability on posting to N.E.Region from outside the region. The only special feature is that the applicant is a resident of N.E.Region and that his posting in the N.E.Region is not by way of transfer from outside region.

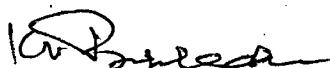
7. Having considered the matter we are of the view, particularly in view of the special factual situation in this case the second Respondent - Deputy Secretary, Government of India, must be directed to consider the case of the applicant for continued payment of SDA. We accordingly, direct the applicant to make a detailed representation pointing out the special circumstances and to request for continued payment of SDA to the applicant within a period of two months from to-day. If the applicant makes such a representation as directed the 2nd respondent will consider the same

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and pass appropriate orders in accordance with the law and in the light of the observations contained in this order and with reference to our decision in the common order dated 31.5.2005 and connected cases extracted above within a period of four months thereafter.

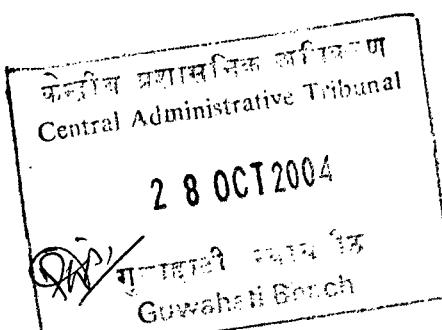
8. So far as ~~the~~ the question of recovery of excess payment of SDA is concerned, since the applicant cannot ~~be~~ ^{for} in any manner be held responsible for payment of excess amount by way of SDA the Respondents are not justified in recovering of such excess payment as ordered in the impugned order dated 25.10.2004. We accordingly, set aside the impugned order dated 25.10.04 in so far as it related to the recovery part and restrain the Respondents from recovering any amount from the applicant by way of excess amount paid to the applicant as SDA.

Application is disposed of as above. The applicant will produce a copy of this order, alongwith the representation to the 1st Respondent for compliance.


 (K.V.PRAHLADAN)
 ADMINISTRATIVE MEMBER


 (G.SIVARAJAN)
 VICE-CHAIRMAN

Im



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 250 /2004

Sri Lienkhawthang Varte

-Vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

1982- Applicant was initially appointed as UDC in the office of the Commissioner of Income Tax, N.E.R, Shillong.

1984- While serving as UDC at Shillong he was selected for the post of Assistant Grade through all India competition and posted at New Delhi.

10.3.86- The applicant while working as Assistant Grade at New Delhi he was again selected for the post of Rehabilitation officer under Govt. of India, Ministry of labour and accordingly he was joined at VRC Guwahati on 25.3.1986 from New Delhi.

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.

25.10.04- The Assistant Director, Rehabilitation Centre, for VRC handicapped, Guwahati issued an impugned order where by payment of SDA has been discontinued to the applicant from the month of October, 2004 and it has been directed to make recovery of Rs. 86,428/- by 18 equal installments at the rate of Rs.1800/- per month on the alleged ground that the audit has objected the payment of SDA to the Applicant, without consulting/examining the

Lienkhawthang Varte

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1 circulars/memorandums issued by the Govt. of India regarding entitlement of SDA and also without taking into the consideration the fact that the applicant is posted to Guwahati from outside N.E.Region.

12.1.96, 29.5.02 Govt. of India issued memorandum clarifying certain points of doubts and stated that civilian employees posted to N.E.Region having all India transfer liability, whose seniority, recruitment and promotions are being made on all India basis, entitled to payment of SDA, applicant fulfill all aforesaid criteria laid down by the Govt. of India, hence entitle to payment of SDA.

22.12.2000, 3.6.03 That the case of the applicant is covered following the decision rendered by this Hon'ble Tribunal in the similar facts and circumstances in O.A. 237 of 2000 and in O.A 30 of 2003.

20.11.2002 Applicant submitted representation claiming his right for entitlement to draw SDA.

P R A Y E R S

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):

Renuarthapu Nath

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- 8.1 That the impugned order issued under letter no. VRCG-G.11014/2/2004/2135 dated 25.10.2004 be set aside and quash.
- 8.2 That the respondents be directed to continue to pay, SDA to the applicant in terms of O.M dated 14.12.1983, 1.12.1988 and O.M dated 22.7.1998 with arrear monetary benefit if any.
- 8.3 That the Hon'ble Tribunal be pleased to declare that the respondents are not entitled to make any recovery on account of SDA already paid to the applicant.
- 8.4 Costs of the application.
- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

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 letter dated 25.10.2004 (Annexure 8) till disposal of the original application.
- 9.2 That the respondents be directed not to make any recovery of SDA pursuant to the impugned order dated 25.10.2004.

.....

Hemkhantha Vati

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLICATION NO.....250/ou.

1. (a) Name of the applicant: *R. Varte*

b) Respondents: Union of India & Ors.

c) No. of Applicant:

2. Is the Applicant in the proper form: YES/NO

3. Whether name & designation and Address of all the papers been furnished in cause title: YES/NO

4. Has the application been duly signed and verified : YES/NO

5. Have the copies duly signed : YES /NO

6. Have sufficient number of copies of the application been filed: YES/NO.

7. Whether all the annexures parties are impleaded: YES/NO

8. Whether English translation of documents in the language: YES/NO

9. Is the application is in time : YES/NO

10. Has the Vakalatnama/Memo of Appearance/Authorisation filed: YES/NO.

11. Is the application by IPO/BD/For Rs.50/- : 200,114 863

12. Has the application is maintainable : YES/NO

13. Has the impugned order original duly attested been filed: YES/NO

14. Has the legible copies of the annexures duly attested filed: YES /NO.

15. Has the Index of documents been filed all available: YES/NO

16. Has the required number of enveloped bearing full address of the Respondents been filed: YES/NO

17. Has the declaration as required by item 17 of the form: YES/NO

18. Whether the relief sought for arises out of the Single: YES/NO

19. Whether the interim relief is prayed for: YES/NO

20. In case of condonation of delay is filed is it support: YES/NO

21. Whether this case can be heard by SINGLE BENCH/DIVISION BENCH.

22. Any other points:

23. Result of the scrutiny with initial of the scrutiny clerk :
6/20/04 The application is in order.

SECTION OFFICER

DEPUTY REGISTRAR

28 OCT 2004

गुवाहाटी ब्राह्मण
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

250

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

Sri Lienkhawthang Varte. : Applicant

- Versus -

Union of India & Others: Respondents.

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Filed by

Surajit Chaudhury

Advocate

Date 28.10.09

Lienkhawthang Varte

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Filed by the Applicant
through Lawyer Addey
on 28.10.09

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 Liernkhawthang Varte,
 Son of Sri H.V. Varte,
 Rehabilitation officer,
 VRC for handicapped,
 Rehabari, Guwahati-8.

...Applicant.

-AND-

1. The Union of India,
 Represented by the Secretary to the
 Government of India,
 Ministry of Labour,
 New Delhi- 110001.
2. Deputy Secretary to the
 Government of India
 Ministry of Labour,
 New Delhi- 110 001.
3. The Director general of Employment and Training,
 Joint Secretary to the Govt. of India,
 Ministry of labour (DGE & T),
 Shram Shakti Bhawan,
 Rafi Marg, New Delhi-110001.
4. The Dy. Director General (Employment)
 Ministry of Labour (DGE&T),
 Shram Shakti Bhawan, Rafi Marg,
 New delhi-110001.
5. Assistant Director (Rehab.)
 V.R.C for Handicapped,
 Rehabari, Guwahati-8.

... Respondents.

Liernkhawthang Varte

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DETAILS OF THE APPLICATION

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

This application is made against the impugned office order dated 25.10.2004, whereby the Asst. director, rehabilitation centre for handicapped, Guwahati. Whereby respondents decided to discontinue the payment of SDA from the current month i.e October 2004 and further decided to effect recovery of Rs. 86,428/- @ Rs.1800/- per month in 48 (forty eight) installments with effect from November 2004 hence the present application.

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 your humble applicant was initially appointed as UDC in the office of the Commissioner of Income Tax.

Leinkhantayi Varki

N.E.R, Shillong through Staff selection in the year 1982.

4.3 That your applicant while serving as UDC, at Shillong he was selected for the post of Assistant Grade, through All India Competition in the year 1984, thereafter he was appointed and posted as Assistant Grade in the office of the U.P.S.C, New Delhi against a permanent post of Assistant grade in the Central secretariat Service cadre of the U.P.S.C. the offer of appointment was given to the applicant vide Memorandum no. A.12025 (iii)/1/82-Admn.III dated 30.01.1984. It would further be evident from the order No. A.31015/2/85-Admn.III dated 6.3.1986 and appointment order No. A.12025(iii)/1/82-Admn.III dated 23.2.1984. The applicant accordingly joined to the post of Assistant grade and posted at new Delhi.

Copy of Memorandum dated 30.1.1984, appointment order dated 23.2.1984 and order dated 6.3.1986 are enclosed herewith and marked as Annexure-1, 2 and 3 respectively.

4.4 That your applicant while working as Assistant Grade at U.P.S.C, New Delhi, he was again selected for the post of Rehabilitation Officer under the Govt. of India, Ministry of labour in the Directorate of Employment and Training V.R.C for handicapped. Accordingly applicant was given offer of appointment for the aforesaid post at VRC Guwahati vide letter no. DGET.A-19016/17/55 EE II dated 10.3.1986, however the applicant pursuant to the order dated 10.3.1986 given his willingness and in terms of office Memorandum no. DGET.A.19018/17/85.EE. II dated 12.3.1986, and also pursuant to the order No.

Leinikharkhang, Vansi

~~✓~~ P.2706/Admn.III dated 20.3.1986, joined at VRC Guwahati on 25.3.1986 from New Delhi.

Copy of the letter dated 10.3.1986, O.M dated 12.3.1986 and order dated 20.3.1986 are enclosed as Annexure-4, 5 and 6 respectively.

4.5 That it is quite clear from above that the applicant posted at Guwahati from outside the N.E.Region i.e from New Delhi. Moreover there is a specific clause of all India transfer liability is incorporated in the offer of appointment letter dated 10.3.1986 and the same is quoted below;

"(i) you will be liable to transfer any where in India"

As such, applicant is saddled with all India transfer liability. It is categorically submitted that the appointment, seniority and promotion of the applicant are based on all India basis.

4.6 That Government of India, Ministry of Finance, Department of Expenditure, had 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

Lienkharthang Vanki

North Eastern region comprising the states of Assam, Meghalaya, Manipur, Tripura and the Union Territories of Arunachal Pradesh and Mizoram has been engaging the attention of Government for some time. The Government has appointed a committee under the Chairmanship of secretary, department of Personnel and administrative reforms, to review the existing allowances and facilities admissible to the various categories of civilian central government employees serving in the region and to suggest suitable improvements. The recommendations of the committee have been carefully considered by the Government and the president is now pleased to decide as follows:

(iii) SPECIAL DUTY ALLOWANCE

Central Government civilian employees who have all India transfer liability will be granted special (duty) allowance at the rate of 25 percent of basic pay subject to 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 Allowance like special Compensatory (remote Locality) allowance, construction allowance and project allowance will be drawn separately."

Keniarthang Vanti

It is submitted that after issuance of the office memorandum dated 14.12.1983 the Government of India has extended the aforesaid benefit from time to time the Civilian central Government Employees via O.M dated 1.12.1988 and 22.7.1998 and the said O.Ms are still in force.

An extract of the O.M.dated 14.12.1983 is annexed hereto and marked as Annexure-7.

4.7 That your applicant after being found eligible for grant of benefit of SDA, he was paid SDA since, his joining at Guwahati as Rehabilitation Officer from New Delhi as prescribed by the Govt. of India from time to time.

4.8 That most surprisingly, the Assistant Director, rehabilitation centre, for VRC handicapped, Guwahati issued the impugned office order bearing letter no. VRCG-G 11014/2/2004/2135 dated 25.10.2004, whereby payment of SDA to the applicant has been discontinued and further order has been passed for recovery of Rs. 86,428/- on the alleged ground of excess payment made to the applicant on account of SDA, and it is decided to make recovery at the rate of Rs. 1,800/- per month in 48 installments w.e.f November 2004 and no drawal of SDA with immediate effect. The aforesaid impugned order has been passed following Audit report without providing any opportunity, notice or show cause notice as required under the Law. Moreover, it appears that the Assistant Director, have passed the Impugned order dated 25.10.2004 without consulting the relevant circulars/office memorandum issued by the Govt. of India from time to time clarifying the original

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memorandum dated 14.12.1983, on a mere reading of the office memorandum dated 12.1.1996 and O.M. dated 29.5.02 issued by the Govt. of India and cabinet Secretariat U.O letter dated 2.5.2000. It would be evident that a civilian central Govt. Employee on posting to N.E.Region from outside the Region having all India transfer liability and where recruitment, promotion and seniority are also based on all India basis. They are entitled to SDA. Moreover, Cabinet Secretariat U.O letter dated 2.5.2000 further makes it abundantly clear that even a resident of N.E.Region also entitled to payment of SDA on his posting to N.E.Region from outside the N.E.Region provided employee concern is saddled with all India Transfer liability even on his first posting at N.E.Region from outside the N.E.Region.

This Hon'ble Tribunal has already dealt with similar issues in O.A.No 237 of 2000 (P.C.Paul-vs-U.O.I and Others) in O.A.no. 30 of 2003 (R.Sutradhar-vs- U.O.I and Others). Therefore case of the present applicant is squarely covered following the decision rendered by this Hon'ble Tribunal in O.A.No 237 of 2000 and also in O.A.No. 30 of 2003.

Moreover, clarification given by the Govt. of India on its O.M dated 12.1.1996 and O.M dated 29.5.2002 also support the entitlement of SDA in favour of the present applicant.

Therefore applicant is legally entitled to payment of SDA and the impugned office order dated 25.10.2004 is liable to be set aside and quashed.

A Copy of the Impugned office order dated 25.10.2004, O.M.dated 12.1.1996, O.M dated 29.5.2002

Kiranmoyee

and the judgment dated 22.12.2000 and 3.6.2003 are enclosed herewith and marked as Annexure-8,9,10,11 and 12 respectively.

4.9 That it is stated that the Judgment of the Hon'ble Tribunal passed in O.A.No 237/2000 was further confirmed by Hon'ble Guwahati High Court in WPC No. 107/2000, vide its order-dated 5.3.2001. As such applicant is entitled to payment of SDA in terms of the O.M dated 14.12.83, O.M dated 1.12.1988 and O.M dated 22.7.1998 and the impugned order dated 25.10.2004 is liable to be set aside and quashed.

A Copy order dated 5.3.2001 is enclosed herewith and marked as Annexure-13.

4.10 That it stated that the amount already paid to the applicant on account of SDA cannot be recovered from him, in view of the series of decisions rendered by this Hon'ble Tribunal which was further confirmed by the Hon'ble High Court as well as by the Hon'ble Supreme Court. Moreover the decision of recovery communicated vide memorandum dated 29.5.2002 is contrary to the decision of the Hon'ble Supreme Court which was referred in the said memorandum. As such respondents are not entitled to make any recovery on account of SDA.

4.11 That in view of the impugned order passed by the assistant Director on 25.10.2004 applicant has no other alternative but to approach this Hon'ble Tribunal for his valuable legal right and also for passing of an appropriate direction upon the respondents to continue

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to pay, SDA, as well as for a direction not to make any recovery from the applicant on account of SDA.

4.12 That your applicant submitted representation on 20.11.2003 claiming his right for continuation of payment of SDA in favour of the applicant but it appears that the said representation has not been taken into consideration by the respondent while passing the impugned order dated 25.10.2004.

A Copy of the representation dated 20.11.2003 is enclosed as Annexure-14.

4.13 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 applicant has been posted to N.E.Region from outside the N.E.Region i.e from New Delhi as such the case of the applicant for entitlement of SDA is squarely covered following the clarification given by the Govt. of India vide its memorandum dated 12.1.1996, cabinet secretariat U.O letter dated 2.5.2000 and memorandum dated 29.5.2002 issued by the Govt. of India.

5.2 For that, applicant is saddled with all India transfer liability as per offer of appointment letter to the post of rehabilitation officer, having all India transfer liability and more so, when seniority and recruitment and promotion of the applicant are also being maintained on all India basis.

5.3 For that, the applicant joined at Guwahati on 25.3.1986 from New Delhi i.e from outside the N.E.region.



5.4 For that, the case of the applicant is squarely covered following the series of decisions rendered by this Hon'ble Tribunal which were subsequently confirmed by the Hon'ble High court as stated above.

5.5 For that, the respondents have passed the impugned order dated 25.10.2004 in total violation of the established procedure of law and also in violation of principles of natural justice, which has serious civil consequences.

5.6 For that, SDA cannot be denied simply on the ground that the applicant is a resident of this town, in view of the decision rendered by this Hon'ble Tribunal in C.A.No. 217 of 2002 and also in C.A.No. 10 of 2002.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all remedies available to him and there is no alternative and efficacious remedy than to file this application.

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

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

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships

Lienkha

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 order issued under letter no. VRCG-G.11014/2/2004/2135 dated 25.10.2004 be set aside and quash.
- 8.2 That the respondents be directed to continue to pay, SDA to the applicant in terms of O.M dated 14.12.1983, 1.12.1988 and O.M dated 22.7.1998 with arrear monetary benefit if any.
- 8.3 That the Hon'ble Tribunal be pleased to declare that the respondents are not entitled to make any recovery on account of SDA already paid to the applicant.
- 8.2 Costs of the application.
- 8.3 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

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 letter dated 25.10.2004 (Annexure 8) till disposal of the original application.
- 9.2 That the respondents be directed not to make any recovery of SDA pursuant to the impugned order dated 25.10.2004.

Hemachandra Vart

10. This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No. 20 G. II 4863
ii) Date of Issue 8-10-04.
iii) Issued from A.P.O. Court
iv) Payable at

12. List of enclosures.
As given in the index.

Leinkhartang Varli

VERIFICATION

I, Shri Lienkhawthang Varte S/o Shri H.V.Varte, aged about 47 years, working as Rehabilitation officer, VRC for Handicapped, Rehabari, Guwahati-8 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 28th day of October
2004.

Lienkhawthang Varte

Registered A.D.

No. A.12025(iii)/1/82-Admn.III
UNION PUBLIC SERVICE COMMISSION

New Delhi-110011, the

30.1.84

M E M O R A N D U M

The undersigned is directed to say that on the basis of the results of the Assistants' Grade Examination 1982 held by the Union Public Service Commission, Shri/Km. L.K. Vaish (Rank 467) is hereby offered an appointment to a permanent post of Assistant in the Central Secretariat Service cadre of the U.P.S.C. The appointment will be provisional subject to the production of original documents in support of date of birth, educational qualifications and claim to belong to Scheduled Caste, where applicable. The appointment will also be subject to medical fitness and suitability in other aspects.

2. The scale of pay admissible is Rs.425-15-500-EB-15-560-20-700-EB-25-800 and his/her initial pay will be fixed in this scale in accordance with the normal rules. In addition, he/she will also be entitled to the usual allowances admissible to other officers of his/her class and grade under the rules and orders in force from time to time.

3. He/She will be on probation for a period of two years, which period may be extended or curtailed at the discretion of the competent authority. During the period of probation, he/she may be required to undergo such training and to pass such tests as the Ministry of Home Affairs (D.O.P. & A.R.) may from time to time prescribe. Failure to complete the period of probation to the satisfaction of the Government or to pass the prescribed tests will render him/her liable to be discharged from service or reversion to his/her substantive post, if any, under the Central or a State Govt. on which he/she may be retaining lien. He/She will also, so long as he/she remains a probationer, be liable to be discharged from service or to reversion to his/her substantive post, if any, if on any information received relating to his/her nationality, age and health etc., Govt. are satisfied that he/she is ineligible or otherwise unfit for being a member of the Central Secretariat Service. Further, during the probation period, the appointment may be terminated at any time by a month's notice given by either side, namely, the appointee or the appointing authority, without assigning any reason. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

4. He/She will be required to pass a test in typewriting at a minimum speed of 30 words per minute in English or 25 words per minute in Hindi to be conducted by the I.S.T.M. within a

P.T.O. /

*Deb
Dhingra
A. K. Vaish
30.1.84
A. K. Vaish*

(2)

period of two years from the date of his appointment and in the event of his failure to pass the test within this period, his/her increment(s) will be withheld. His/Her pay and increments shall be regulated in accordance with the Fundamental Rules or other similar rules relating to pay for the time being in force provided that, unless the officer, within the specified period from the date of his/her appointment to the grade of Assistant, passes the typewriting test held by the I.S.T.1. at the minimum speed prescribed for this purpose, he/she shall not, unless exempted by a special or general order, be entitled to draw any further increment(s) in the Grade until he/she passes such test; and on his/her passing or being exempted from the test, his/her pay shall be refixed as if his/her increment(s) had not been withheld but no arrears of pay shall be allowed for the period the increment(s) had been withheld.

5. He/She will not be entitled to any travelling allowance for joining the appointment unless he/she is holding substantially a permanent appointment under the Central Government or a State Government or is employed under the Central Government in a temporary capacity and has been issued with a declaration of quasi-permanency under the provisions of the Central Civil Services (Temporary Service) Rules, 1965.

6. He/She should also note that all other terms and conditions of service will be regulated by or under the provisions of the Central Secretariat Service Rules, 1962 or any other rules and orders in force from time to time.

7. If Shri/Smt. L.K. Vartli claims to belong to Scheduled Caste community, then in case he/she adopts, in future, a religion other than Hinduism or Sikhism, an intimation to this effect should be given to the Appointing Authority immediately. If he/she fails to do so, action as may be deemed fit, will be taken against him/her.

8. If Shri/Smt. L.K. Vartli accepts the offer of appointment on the terms mentioned above, he/she should report to this office immediately and in any case, not later than 15.2.84. If no reply is received by the due date, the offer will be treated as cancelled and he/she will not thereafter be considered for any appointment on the results of the Assistants' Grade Examination 1982.

9. He/She should, on receipt of this communication, send to this office immediately an acknowledgement, under his/her own signature, that he/she has received the offer of appointment.

Contd....(3)

(3)

10. He/She should also furnish the following documents/information to this office on receipt of this Memorandum or at the time of joining. 53

- i) Original Matriculation or Higher Secondary Certificate in support of the date of birth;
- ii) Original Degree Certificate; and
- iii) Original S.C. Certificate, if belonging to S.C. Community.

Sd/-

(M.P. Jain)

(W.B. Gadhia)

Under Secretary (Admn)
Union Public Service Commission.

To

Shri L. K. Varte
DARTE VILLA
NONGRIM HILLS
SHILLONG - 793603
(MIGHALAYA)

P.T.O.

prescribe. Failure to complete the period of probation as may be prescribed by the Government or to pass the prescribed tests will

(4)

Copy forwarded for information to:-

✓ 1. The Ministry of Home Affairs, Department of Personnel & Administrative Reforms, New Delhi with reference to their O.M. No. 6/12/83-CST dated 4.10.83.

2. The Union Public Service Commission (Examination Branch).

3. Personal file of the person concerned.

pw/

M. P. Jain
(R.R. ~~Gandhi~~)
Under Secretary (Admn)
Union Public Service Commission.

No. A.12025(iii)/1/82-Admn.III
Union Public Service Commission
New Delhi-110011

APPOINTMENT ORDER

23.2.84

On the results of the Assistants' Grade Examination 1982, the President is pleased to appoint Shri L.K. Varte (ST) (Rank No. 468) as probationer in the Assistants' Grade of the C.S.S. cadre of the Union Public Service Commission with effect from 17.2.84 (FN) until further orders.

His date of birth is 1.3.57.

Shri L.K. Varte may please note that the terms and conditions of his appointment will be as shown in this Office Memorandum of even number dated 30.1.84.

M.P.

(M.P. Jain)
Under Secretary (Admn)
Union Public Service Commission.

Copy to:-

1. M.H.A., D.O.P. & A.R., New Delhi with reference to their OM No. 6/12/83-CS I dt. 4.10.83.
2. Pay & Accounts Officer, U.P.S.C., New Delhi.
3. Shri L.K. Varte/Personal file of Shri L.K. Varte.
4. Admn.I/II/IV.
5. Gen.I/II/Accounts II/III.
6. Gen.III Section (2 copies):- Shri L.K. Varte is residing in the area which comes under the jurisdiction of the C.G.H.S. He has been medically examined and found fit.
7. Office Order File.
8. Shri S.S. Pal, U.D.C., Admn.III for making necessary entries in the Service Book.

... (2)

Address
Gopal
10.09.1984
28.10.84
Heated
Under
DLS

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9. E XVIII
10. Office of the Commissioner of Income-Tax,
North Eastern Region, Post Box-20, Shillong-
793001. The Service Book and L.P.C. of
Shri L.K. Varte may kindly be sent to this
Office at an early date.

per
(M.P. Jain)
Under Secretary (Admn)
Union Public Service Commission.

(2)

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No. A.31015/2/85-Admn.III
Union Public Service Commission
New Delhi.

Dated 6th March, 1986.

O R D E R

The President is pleased to appoint the following 1981/2 Assistants appointed as Probationers in the Assistants' Grade of the CSS cadre of the Union Public Service Commission on the results of the Assistants' Grade Examination, 1982 substantively to the Assistants' Grade of the service in the same cadre w.e.f. the dates indicated against each:-

S.No.	Name	Rank & Year of Examination	Date of confirmation
1.	Sh. A.K.Ekka(ST)	R-397/81	22.2.86
2.	Sh. L.K.Varte(ST)	R-468/82	17.2.86

The inter-seiority of the above persons will be as per the ranks obtained by them in the Assistants' Grade Examination, 1982.

Recd.

(M.P. Jain)
Under Secretary (Per. Admn.)
Union Public Service Commission.

Copy to :

- 1. Persons concerned.
- 2. Personal files.
- 3. Deptt. of Personnel & Training, New Delhi.
- 4. Admin.II/Office Order file.
- 5. Shri V.K.Jain, Admn.III Sec.
- 6. Hindi Section (6 copies only).

(M.P. Jain)
Under Secretary (Per. Admn.)
Union Public Service Commission.

Alka
Dolly
Adviser
on 28.10.09
A. H. T. A.
A. H. T. A.
A. H. T. A.
A. H. T. A.

BY REGISTERED A/D
IMMEDIATE

No. DGET. A-19018917/SS/EET
Bharat Sarker/Government of India
Shram Mantralaya/Ministry of Labour
(D.G.E. & T.)

Shram-Shakti Bhavan, Rafi Marg,
New Delhi-110001,

10-3-86

To

SK. LIENKHAW THANG VARTE
EG-1197A, VIKAS PURI
NEW DELHI-110075

Subject:- Appointment to the post of Rehabilitation Officer in the Vocational Rehabilitation Centre for Handicapped under the Directorate General of Employment & Training, Ministry of Labour.

.000.

Sir,

I am directed to say that on the recommendation of the Union Public Service Commission, the Director General of Employment and Training hereby offers you the post of Rehabilitation Officer in the Vocational Rehabilitation Centre for Handicapped GOVT/HATI (Group 'B' Gazetted) under the Directorate-General of Employment and Training, Ministry of Labour on the following terms and conditions:

1. (a) The post is temporary but likely to continue indefinitely. Your appointment will be on temporary basis. You will be on probation for a period of two years from the date you join the post. The period of probation may, however, be extended at the discretion of the Government of India.
- (b) Your initial pay in the Grade of Rs. 650-30-740-35-810-10-35-880-40-1200 will be fixed according to Rules.
- (c) Your services will be liable to termination by a month's notice given by either side viz. yourself or the appointing authority without assigning any reasons being assigned. The appointing authority, however, reserves the right of terminating your services forthwith or before the expiry of the period of notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

*Addressed
Savitri Ch.
on 26.10.09*

*Attended
Savitri Ch.
on 26.10.09*

1/2

- (d) You will be governed by the Central Government Leave Rules as applicable to the Officers of your status.
- (e) Medical facilities will be admissible to you according to Central Government rules.
- (f) You will be entitled to joining time, joining time pay and the travelling allowance for joining the post, if admissible under the C.C.S. (Joining Time) Rules, 1979.
- (g) Other terms and conditions of services will be governed by the Central Civil Service (Temporary Service) Rules, 1965 and other relevant rules and orders issued from time to time.
- (h) You will be required to declare your home town within six months of joining the post to become eligible for L.T.C.
- (i) You will be liable to transfer anywhere in India.

II. Your appointment will further be subject to:-

- (i) the production by you of a medical certificate of fitness from a Medical Board in the prescribed form, if not already done. Arrangements for the constitution of a Medical Board for your Medical Examination will be made by the Government of India on receipt of your acceptance of the appointment offered to you.
- (ii) submission of a declaration in the prescribed form and in the event of your having more than one wife living, the appointment will be subject to your being exempted from the enforcement of the requirements in this behalf.
- (iii) taking a oath of allegiance to the Constitution of India in the prescribed form.
- (iv) the communication of the change in his religion to the Administrative Section of the D.G.E. & T. immediately after such a change.

2. In case you accept this offer on the said terms and conditions, your acceptance in writing and probable date by which you will be able to join duties, may kindly be communicated to this Ministry immediately and in any case within a fortnight from the date of issue of this letter at the latest so that formal order of appointment may be issued accordingly. You are likely to be posted at Vocational Rehabilitation Centre for Handicapped GUWAHATI.

3. The receipt of this letter may kindly be acknowledged. If acceptance is not received within 15 days or latest by 17.1.85, the offer of appointment will be treated as cancelled.

Yours faithfully,

(R. MITRA)
Director of Employment Exchanges.

Copy to:-

1. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110011, with reference to their letter No. F-1/488/16B dated 3-12-85.
2. The Pay & Accounts Officer, D.G.E. & T., New Delhi.
3. The Superintendent, Vocational Rehabilitation Centre for Handicapped, GUWAHATI.
4. Adm.I/B.P. Section/P.C. (E) at DGET HQ, New Delhi.
5. ~~Special copies (10)~~ 1000 DGET/1/3/83 E&D w/2

D. SINGH
(R. V. SINGH)
Section Officer
for Director of Employment Exchanges.

No. DGET.A.19018/17/85.EE.II
Bharat Sarkar/Government of India
Shriman Mantralaya/Ministry of Labour
(D. G. E. & T.)

Shram-Shakti Bhavan,
Raj Marg, New Delhi-110001,

March 12, 1986

OFFICE MEMORANDUM

Subject:- Appointment to the post of Rehabilitation Officer in the Vocational Rehabilitation Centre for Handicapped, Guwahati under the Directorate General of Employment & Training, Ministry of Labour - Reg.

On the recommendation of the Union Public Service Commission, the Directorate-General of Employment & Training, Ministry of Labour, appoints Shri Lienkaw Theng Varte, as a temporary Rehabilitation Officer in the Vocational Rehabilitation Centre for Handicapped, Guwahati under the DGET, Ministry of Labour in the Scale of pay of Rs. 650-30-740-35-810-12-35-830-40-1200 (Group 'B' Gazetted) with effect from the date he assumes the charge of the post on the terms and conditions laid down in this Directorate-General letter No. DGET.4.19018/ 17/85.EE. II dated 10.3.1986.

2. Sri Lienkhow Thang Varto is directed to report for duty as Rehabilitation Officer to the Superintendent, Vocational Rehabilitation Centre for Handicapped, Rabbari, Guwahati-781008 (Assam), at an early date.

3. The receipt of this Office Memorandum may also please be acknowledged.

Yannett

(R. OMKANT RAO)

Director of Employment Exchanges.

Shri Lienkhan Thang Varte,
PG-1/97-A, Vikas Puri, New Delhi-110018

Copy to:

1. The Pay & Accounts Officer, DGET, New Delhi.
2. The Superintendent, Vocational Rehabilitation Centre for Handicapped, Guwahati with the request that he may get completed the formalities of Oath of Allegiance and Marriage Declaration etc. of Sri Varte and the same may be added to his Service Book. The Suptd. is further requested to send Charge Assumption Report of the Officer.
3. All the Superintendents of VRCs except VRC, Guwahati.
4. The Secretary, UPSC, Dholpur House, New Delhi with reference to their letter No. F1/486/85-RB, dated 3.12.1985.
5. Shri M.P.Jain, Under Secretary (Per. Adm.) UPSC, New Delhi w.r.to. their letter No.P.2706/Adm.III dated 6.3.1986 with a request to kindly arrange to relieve Sri Varte immediately to enable him to join his new post of RO at VRC for Handicapped, Guwahati.
6. F.No.DGET. 1/3/83-EE.II(Vol.II).

(S. FLASH RUDDIN)

Dy. Director of Employment Exchanges
for Director of Employment Exchanges

u/v

No.P.2706/Admn.III.
Union Public Service Commission.

New Delhi, dated the 20th March, 1986.

O_R_D_E_R

Consequent on his appointment to the post of Rehabilitation Officer in the Vocational Rehabilitation Centre for Handicapped, Guwahati under the Directorate-General of Employment & Training, Ministry of Labour, Shri Lienkhaw Thang Varte, a permanent Assistant of the CSS cadre of the Union Public Service Commission is relieved of his duties in this office on the afternoon of the 21st March, 1986, with instruction to report for duty at VRC for Handicapped, Guwahati.

2. Hindi version will follow.

M.P.JAIN

(M.P.JAIN)
UNDER SECRETARY (PER. ADMN.)
UNION PUBLIC SERVICE COMMISSION.

No.P.2706/Admn.III.

Copy to:-

1. Shri L.K.Varte, Assistant, U.P.S.C. His lien in the post of Assistant in the CSS cadre of the UPSC shall be retained for a period of two years from the date of his release.
2. Director of Employment Exchanges (Shri R.Omakant Rao), Ministry of Labour, Shram Shakti Bhavan, Rafi Marg, New Delhi, w.r.t. their O.M.No.DGET.A.19018/17/85-EE.II, dated 12.3.1986.
3. The Superintendent, Vocational Rehabilitation Centre for Handicapped, Guwahati.
4. The Pay and Accounts Office, U.P.S.C., New Delhi.
5. Accounts-IV Section(2 copies). The LPC of Shri L.K.Varte, Assistant, may please be issued after obtaining a 'No Objection' certificate from Admn.III.
6. Admn.IV Section(2 copies). Shri Varte is entitled for T.A. under S.R.114.
7. Admn.I/II/V/Genl.I/II/IV/Library/Reception.
8. Leader (Office Council)/Secretary, CGCU, UPSC Branch.
9. Hindi Sec. for Hindi version(4 copies only).
10. Shri V.K.Jain, Asstt. Admn.III for making entries in the S/Book of Shri Varte.

M.P.JAIN

(M.P.JAIN)
UNDER SECRETARY (PER. ADMN.)

Admn.III
on 28.10.89.

Attended
M.P.JAIN
28.10.89.

-26-

Annexure-7

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) (i) Tenure of posting/deputation :-

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

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

Dashed
 On 1st April
 on 28.10.89.
 Attended
 W. B. D.

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 the 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



Govt. of India
Ministry of Labour & Employment (DGE&T),
Vocational Rehabilitation Centre for Handicapped,
Rehabari, Guwahati-781008

No.VRCG-G.11014/2/2004 2135

Dated 25.10.2004

Office Order,

As per Audit Report from the Office of the Deputy Controller of Accounts, Ministry of Labour, Internal Audit Organization, vide letter no. AI/LAB/VRC-Guwahati /03-04/618 dt. 07.11.2003 and subsequent letter no DGE&T-G.25012/3/2004/BP dt. 27.07.2004 an excess payment of Rs.86,428/- on account of Special Duty Allowance to Shri L.K. Varle, Rehabilitation Officer of this centre will be recovered @ Rs.1,800/- PM in 48 installments w.e.f. Nov. 2004 and no drawal of Special Duty Allowance with immediate effect.

(R. Lakshmana Samy)
Asstt. Director (Rehab.)

To,

* Shri L.K. Varle, Rehabilitation Officer,
VRC for handicapped,
Rehabri, Guwahati-781008

Distribution

1. The Deputy Director General, (Emp), Govt of India, Min. of Labour, DGET, New Delhi-110001
2. Accounts Section, VRC, Guwahati

*Alphabets
Other
on 28.10.04. At last
Wishes
Adv.*

- 29 -

Annexure-9

No. II(3)/25 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.

1. 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 1.12.86 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 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.

In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few special leave Petitions

*Dealed
Delby
Abroch
Lod 28.10.09
A. H. W. A.
W. H. W.
A. H. W. A.*

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 Indi 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/- xxxxx
(C. Balachandran)
Under Secy to the Govt. of India

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

R-560/E.II(B)

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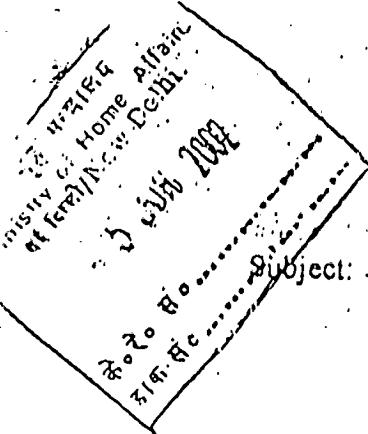
SA 166

13/6/2002

F. No. 11(5)/97-E.II.(B)
Government of India
Ministry of Finance
Department of Expenditure

Annexure - 10

48



Subject:

Special Duty Allowance for civilian employees of the Central Government Serving in the State and Union Territories of North Eastern Region including Sikkim.

New Delhi, dated the 29th May, 2002.

OFFICE MEMORANDUM

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) 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

Ad Dealed
With
Advised & Handled
on 28.10.09. *Chh. P. Ad.*

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

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

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

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

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

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

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

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

N.P. Singh
(N.P. Singh)

Under Secretary to the Government of India.

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

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

Points of Doubts		Whether SDA will be admissible or not
(i)	Whether SDA will be admissible to:- A person belongs to outside NE Region but posted on first appointment in the NE Region after selection through direct recruitment based on the recruitment made on All India basis and having a common/centralized seniority list and All India Transfer Liability	No
(ii)	An employee hailing from NE Region selected on the basis of an All India Recruitment Test and borne on the Centralised cadre/service having common seniority and All India Transfer Liability on first appointment and posted in NE Region.	No
(iii)	A person belongs to NE Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-E.IV dated 14.12.83 and 20.04.87 read with OM No.20014/16/86-E.II(B) dated 01.12.88) 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 he can be transferred out to any place outside the NE Region having All India Transfer Liability.	No
(iv)	An employee having a common All India seniority/All India Transfer Liability belongs to NE Region and subsequently posted outside NE Region; whether he will be eligible for SDA if posted/transferred to NE Region.	Yes
(v)	An employee, having All India Transfer Liability common All India seniority, hailing from NE Region, posted to NE Region initially but subsequently transferred out of NE Region and re-posted to NE Region after serving sometime in non-NE Region.	Yes
(vi)	The MoF, Deptt. of Expenditure, vide their UO No.11(3)/95-E.II(B) dated 7.8.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. Determination of the admissibility of the SDA to any Central Government Civilian employee having all India Transfer Liability will be by applying the criteria (a) whether recruitment to the Service/Cadre/Post has been made on All India basis and (b) whether promotion is also done on the basis of All India common seniority for the service/Cadre/Post as a whole. Based on the above criteria all employees recruited on the All India basis and having a common seniority list on 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 Region.	In case the employee hailing from NE Region is posted initially within NE Region he is not entitled to SDA till he is transferred out of that Region and re-posted again.

Points of Doubts	Whether SDA will be admissible or not
<p>What should be the norm for payment of SDA i.e. on fulfilling the criteria of All India Recruitment Test & promotion based on All India common seniority, having been satisfied, are all the employees eligible for the grant of SDA?</p>	<p>It has already been clarified by MoF that a mere clause in the appointment order regarding All India Transfer Liability does not make an employee eligible for grant of SDA.</p>
<p>(viii) Whether the payment made to some employees hailing from NE Region and posted in NE Region be recovered after 20.9.94 i.e. the date of decision of the Hon'ble Supreme Court and/or whether the payment of SDA should be allowed to all employees including those hailing from NE Region with effect from the date of their appointment if they have All India Transfer Liability and are promoted on the basis of All India Common Seniority List.</p>	<p>The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria on or before 5.10.2001, which is the date of judgement of the Supreme Court, will be waived. <u>However recoveries, if any, already made need not be repeat NEED NOT BE refunded.</u> The amount paid on account of Special Duty Allowance to ineligible persons after 5.10.2001 will be recovered. A copy of MoF OM No.11(5)/97-E.II(B) dated 29.5.02 issued by the Govt. based on Supreme Court judgement dated 5.10.01 is also enclosed for information and further necessary action.</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 237 OF 2000.

Date of decision - December 22, 2000.

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

THE HON'BLE MR. M.P. SINGH, ADMINISTRATIVE MEMBER.

Sri Paban Chandra Paul,
Son of Late Santosh Ch. Paul,
aged about 43 years,
Resident of Dewal Road, Jorhat.

Working as JE (Presently Survey and the work on site
Contract) in the office, GE.(1)(P)
Teliamura, C/O Ex-GE(P). Agartala,
MES No. 238713.

P.O. Salbagan, Agartala-12.

APPLICANT

By Advocates Mr. M. Chanda, Mr. V.D. Goswami
& Mr. G.N. Chakraborty.

Versus -

1. Union of India, Through the Secretary to the Government of India, Ministry of Defence, New Delhi.
2. The Headquarter Chief Engineer, Eastern Command, Fort William, Calcutta.
3. The Chief Engineer, MES, Shillong Zone, S.E. Falls, Shillong.
4. The Area Accounts Officer, MES Shillong Zone, Shillong.
5. The Garrison Engineer(I)(P), Teliamura, C/O Ex-GE(P) Agartala, P.O. Salbagan, Agartala-12.

RESPONDENTS

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

JUDGMENT

M. P. SINGH, MEMBER (ADMIN.)

By filing the original application, the applicant has challenged the Office Memorandum dated 12th January, 1996 circulated by the Ministry of Defence under letter No.1(19)/83-D(Civ.I)Vol.II dated 18.1.1996. He has sought relief by praying for a direction to the respondents not to make any recovery of Special (Duty) Allowance (S.D.A. in short) already paid to the applicant and also for a direction to continue to pay S.D.A. to the applicant in terms of the Office Memorandum (O.M. in short) dated 14th December, 1983, 1st December, 1988 and 22nd July, 1998.

2. The facts of the case as stated by the applicant is that the applicant was initially appointed as a Surveyor Assistant Grade-II during the year 1980 in the department of M.E.S. The recruitment to the post of Surveyor Assistant Grade-II (S.A.II in short) is being made on All India basis and the seniority of the applicant in the cadre of S.A.II is being maintained on All India basis. As per condition laid down in the appointment order/recruitment rules, the applicant is liable to be transferred on all India basis.

4. The applicant was promoted to the post of Surveyor Grade-I in 1988. On his promotion, he was transferred to Mumbai under Southern Command, M.E.S. He stayed in Mumbai for about 3 years in the cadre of S.A. Gr.I. He was again transferred ...

transferred to Jorhat in the year 1992 in the office of the C.W.E. Both the transfer and posting of the applicant were made in the public interest. He is presently posted as J.E. Quantity Survey and Contract in the office of the G.E. (1)

(p) Teliamura, Agartala. The Government of India granted certain allowances and facilities to civilian Central Government employees vide Office Memorandum dated 14th December, 1983. One of such allowances granted vide the above stated O.M. to the civilian Central Government employees is called "Special Duty Allowance" (S.D.A. in short). The applicant was found eligible by the respondents for payment of S.D.A. in terms of the said O.M. and accordingly, they have started paying S.D.A. to the applicant since 1983 as per O.M. dated 14th December, 1983 except for the period during his stay at Bombay. However, in the month of May, 2000, the respondents stopped the payment of S.D.A. as well as recovered an amount at the rate of Rs.1,000/- from the pay bill of the applicant for the months of May and June, 2000. The applicant came to know that the stoppage and recovery of S.D.A. has been made following the order/direction contained in O.M. dated 12th January, 1996 circulated by the Ministry of Defence vide their letter dated 18th January, 1996 whereby it is directed that the locally recruited employees are not entitled to S.D.A. as such whatever payment is made after 20th September, 1994 should be recovered from the employees concerned. It is also mentioned therein that these instructions have been issued in pursuance of the decision of the Supreme Court dated 20th September, 1994 in Civil Appeal No.3251/1993.

According to the judgment of the Hon'ble Supreme Court, the Central Government employees who have all India transfer



liability ..

liability are entitled to payment of S.D.A. on being posted to any station in the North Eastern Region from outside the region. A mere reading of the circular dated 12th January, 1996 makes it abundantly clear that the applicant fulfilled all the conditions laid down therein for grant of S.D.A. The applicant's recruitment zone, promotion zone and seniority of the cadre are being maintained on all India basis and the question of all India transfer liability is evident from his transfer and posting to Bombay during the year 1988 and as such, the applicant is entitled to S.D.A. in terms of the O.M. dated 14th December, 1983. Aggrieved by the action of the respondents to stop the payment of the S.D.A. to the applicant and issuing the order for recovery of the same, he has come before this Tribunal and sought the relief as mentioned in para-2 above.

5. The respondents have contested the case and have stated that as per O.M. dated 12th January, 1996 issued by the Ministry of Finance, mere clause in the appointment letter to the effect that persons concerned are liable to be transferred anywhere in India, did not make him eligible for the grant of S.D.A. Thus, the S.D.A. payable to the Central Government employees having all India transfer liability is stopped and recovery on account of S.D.A. paid after 20th September, 1994 was ordered. However, the respondents have not disputed the contention of the applicant made in para-4.2 about his transfer to Mumbai in the year 1988 and thereafter, he was transferred back to Jorhat in the year 1992. On perusal of the O.M. dated 12th January, 1996 issued by the Ministry of Finance, we find that the

Central Government civilian employees who have all India transfer liability are entitled to the grant of S.D.A. on being posted to any station in the North Eastern Region from outside the region. Para-6 of the O.M. dated 12th January, 1996 issued by the Ministry of Finance states as follows :-

"The Hon'ble Supreme Court in their judgment 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 S.D.A., on being posted to any station in the NE Region from outside the region and S.D.A. 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 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."

6. Heard both the learned counsel for rival contesting parties and perused the records.

7. On perusal of records placed before us, we find that the applicant in this case has the transfer liability on all India basis. He has been recruited to the post of



S.A. Grade-II ...

S.A. Grade-II on all India basis and his seniority in the cadre is being maintained on all India basis. He has been transferred to North Eastern Region from outside in 1992.

Keeping in view the criteria laid down in Ministry of Finance letter dated 12.1.1996, the applicant is entitled to the payment of S.D.A. As regards the recovery of the amount of S.D.A. already paid to the applicant, the Hon'ble Supreme Court in their judgment dated 20th September, 1994 in Union of India and others - Vs. - S. Vijayakumar and others (reported in 1994 Supp (3) SCC 649) has 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. In this view of the matter, no recovery can be made from the amount of S.D.A. already paid to the applicant. Therefore, the amount already recovered at the rate of Rs. 1,000/- from the pay Bill of the applicant for the months of May and June, 2000 as stated in para 4.5 of the O.A. will have to be refunded to the applicant by the respondents.

8. In the light of the above discussion, the O.A. is allowed and the respondents are directed to continue to pay the S.D.A. to the applicant in terms of the O.M. dated 14th 1983 and 21 January, 1996. The respondents are further directed that no recovery would be made from the amount of S.D.A. already paid to the applicant. In case, any amount of S.D.A. already paid has been recovered by the respondents, the same shall be refunded to the applicant immediately. The above direction shall be complied with within a period of 2 (two) months from the date of receipt of a copy of this order.

Ch

- 7 -

9. Application is disposed of with the above directions.
No order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

TRUE COPY

मनस्ति

mk

17/11/2001
Deputy Registrar (d)
Central Administrative Tribunal

Gandhinagar Branch

17/11/2001

ANSWER SHEET

Original Application No.: 80/01
Misc. Petition No. /
Contempt Petition No. /
Review Application No. /

Applicant (1) P. M. Chanda, Secretary

Respondent (2) Min. of Finance

Advocate for the Applicant (1) M. Chanda (A. M. Chakraborty)
Advocate for the Respondent(s) Sr. C. A. P.

3.6.2003. Present: The Hon'ble Mr. Justice
D.N. Chowdhury, Vice-Chairman.

The issue relates to payment of Special Duty Allowance (SDA). The applicants are 29 in number who were working group 'C' and 'D' cadre in the Canteen Store Department, Missamari base and except applicant No.9 who was posted at Port Blair Canteen Store Department at the time of filing this application.

Considering the nature of the cause of action and relief sought for, the applicants were allowed to espouse their cause in a single application under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1985.

According to the applicants, they were paid SDA in terms of memorandum dated 14.11.1993, 1.12.1996 and 22.7.1998 and the same was sought to be stopped whereupon the applicants moved this Tribunal by the O.A.

The respondents submitted written statement and contended that in view of the decision rendered by the Supreme Court in S. Vijaya Kumar and Ors. and like cases the Ministry of Finance issued appropriate direction for taking appropriate measure in regards payment of SDA vide communication dated 29.5.2002. According to the respondents SDA is admissible only to civilian employees posted from the outside region and not others. The decision of the Supreme Court in U.C.L. & Ors. v. Sh. S. Vijaya Kumar & Ors. has clarified this issue. It was also mentioned that SDA would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

I have heard Mr. M. Chanda, learned counsel for the applicant and



Attested
by
M. Chanda
on 28.10.09.

Attested
M. Chanda
pdv.

3.6.2003 also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents at length.

80

In view of the decision rendered by the Courts, the matter of payment of SDA is no longer unresolved. Normally, SDA is admissible to the employees posted at North-eastern region from the outside region. As a matter of fact, the same was clarified by the Cabinet Secretariat (E.A. Section) vide Cab. Sectt. U.O. No. 20/12/99- EA-1-1799 dated 2.5.2000. There is no dispute that the those officers who belong to N.E. Region, subsequently posted from the outside region have common All India Seniority and All India Transfer Liability are eligible for the SDA. As per memorandum mentioned above the applicants are also eligible for the SDA. The applicants were either posted North East on public interest or transferred out from North East and posted out who were subsequently re posted in N.E. Region. The above communication clarified and resolved the issues in favour of these applicants. In the circumstances, it would not be appropriate to deny the claim of the applicants.

Accordingly, the application is allowed in the light of the decision of this Bench in O.A. No. 88/2001 disposed on 12.9.2001.

The application is allowed.
No order as to costs.

Memo No. 17/1.

Sd/VICE CHAIRMAN

COPY FOR INFORMATION AND NECESSARY ACTION:

1) Sri Ranjit Subrahman (8017) LDC(S)
Cantonment Board Department at Mysore, Karnataka, Arun.
2) Mr. A. Deb Roy, Sr.C.G.S.C., C.A.T.

20.7.03

11.7.03
Section Officer (9)
1056/C

by Office
Advocate

Serial No.	Date	Office notes, report, orders or proceedings with signature
---------------	------	---

BEFORE :

THE HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE B.B. DED

5-3-2001

Heard Mr. P.K. Dhar, the learned
Senior Central Government Standing
Counsel for the petitioners.

This writ petition, in our
considered view, deserves to be
dismissed in limine. The impugned
judgment rendered by the Central
Administrative Tribunal, Calcutta, on the
basis of not only nullification of
a judgment of the Apex Court, we are
in respectful agreement with the order
taken by the Tribunal.

FINDING NO merit in the writ
petition, the same is dismissed in
limine.

Learned Tribunal in its aforesaid
decision granted 2-months' time. The
same should stand extended. The payment
be first made within 2 (two)
months from today.

Copy of the order be made
available to the learned Senior Central
Government Standing Counsel at the
earliest.

A. Nensed
P. Dhar
Advocate
on 28.10.09

After
revised
P.D.

To

The Assistant Director (Rehab.)
VRC for Handicapped.
Rehabati, Guwahati - 8.

Dated the 20th Nov., 2003.

Subject: Drawal of Special (Duty) allowance - reg.

Sir,

I have the honor to state that I have been drawing/enjoying the Special (Duty) Allowance given to the Central Government Employees who have All India Transfer Liability on posting to any station in the North Eastern States on the following conditions:

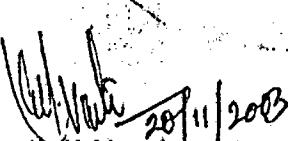
2. That Sir, my appointment to the post of Rehabilitation Officer is not a fresh appointment but appointment on transfer from my substantive post of Assistant (Group B Non-Gazetted) of UPSC, Ministry of Home Affairs, and transfer from New Delhi station to Guwahati station enjoying the old transfer facilities admissible to the Central Government Civilian Employees (relevant documents enclosed)
3. That Sir, the post of Rehabilitation that I am holding substantively and stationed presently at Guwahati (Assam) is also having All India Transfer Liability (relevant documents enclosed)

It is, therefore, requested that the points may kindly be clarified to the concerned higher authorities.

Thanking you.

Encl.: As stated above.

Yours Faithfully,


20/11/2003
(L.K. Varde)
Rehabilitation Officer,
VRC for Handicapped,
Guwahati

A. D. D. S.
P. D. S.
28.10.04

A. H. C. S.
W. H. D.
P. D. S.

1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI - 5

O.A NO.250/2004

Shri Lienkhwang Varte

Applicant

Vs

Union of India & Others.

Respondents

WRITTEN STATEMENT ON BEHALF OF RESPONDENT NO.1 TO 5

The written statements on behalf of the above noted respondents are as follows:

1. That the copies of the OA No.250/2004 (hereinafter referred to as the "Applicant") have been served on the respondents. The respondents have to gone through the same and understood the contents thereof. The interests of all the respondents being similar, therefore the common reply is humbly filled for and on behalf of all of them.
2. That the statements made in the application which are not specifically admitted by the respondents are hereby denied.
3. That, before traversing the various statements made in the application, the respondents give a brief resume to the facts and circumstances of the case as under.

*Union of India & our
- Respondent to
through:
App. Lienkhwang
Addl. Central Govt. Standing Comm. No. 5
C. A. T.
Guwahati*

(a) Brief history of the case:

That the applicant was initially appointed as Upper Division Clerk in the Office of the Commissioner of Income Tax, NE. Region, Shillong and subsequently selected for the post of Asstt. Grade and was working in UPSC, New Delhi and both the posts were direct recruitments in different departments having no All India transfer liability. Further, he was selected for the post of Rehabilitation Officer by UPSC and appointed as first posting at Vocational Rehabilitation Centre for Handicapped, under Union Ministry of Labour & Employment (DGE&T), Guwahati. The applicant is not transferred till now though the post of Rehabilitation Officer is having All India Transfer liability and he belongs to N.E. Region (Manipur). All above pertains to direct recruitment to the said posts and as such no selection and appointment to those posts with transfer and postings nor related to any posting on promotion and transfer.

b. 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 scheme thereby extending certain facilities and allowances including the SDA for the

Civilian employees of the Central Govt serving in the North Easter States and Union Territories etc. this was done to attract and retain the services of officers coming from out side the N.E. Region due to inaccessibility and difficult terrain. A bare reading of the provisions of the said O.M. 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. 14.12.83 is annexed as ANNEDURE-R1

c. 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. 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 (SDA) 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 an whether promotion is also done on the basis of the all -India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of special (duty) allowance".

A true copy of the said OM dt.14.12.83
is annexed. as ANNEDURE-R2

d. 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.

e. That in the meantime, several cases were filed in the Court/Tribunal challenging the refusal of grant SDA and some of such cases went to the Hon.ble

Supreme Court. The Hon'ble Supreme Court in Union of India & Others – vs. –Vijaykumar & Others (C.A.No.3251/93) upheld the provisions of the O.M. dt. 20.4.87 and also made it clear that only those employees who were posted on transfer from outside to the N.E. Region were entitled to grant of SDA fulfilling on criteria as on O.M. dt.20.4.87. Such SDA was not available to the local residents of the N.E. Region. The Hon'ble Supreme Court also went into the object and spirit of the O.M. dt.14.12.83 as a whole.

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

f. That the Hon'ble Supreme Court in another decision dated 23.2.95 in CA No.3034/95 (Union of India & ors – Vs. –Executive Officer 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 –Easter Region, which does not apply to the officers belonging to the North –Easter Region. The question of attracting and retaining the services of competent officers who belong to North –Easter Region itself would not arise. Therefore, in incentives granted by the said O.M. is meant for the persons posted from outside to the North –Easter 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 North -Eastern Region from outside and therefore, application of these provisions to the local residents of the N.E. Region does not arise. While passing the said judgment the Hon'ble Supreme Court referred to and relied upon its earlier decisions held in "Chief General Manager (Telecom)-vs.-Shri Rajendra Ch. Bhattacharjee & others and also the "S.Vijaykumar case".

A true copy of the said judgment dt.23.2.95 is annexed as Annexure-5

- g. 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 belongs to the N.E Region and whose transfer liability is restricted to their region only, they do not have all India transfer liability and consequently they are not entitled to grant of SDA.

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

H That after the judgment of the Hon'ble Supreme Court, the Govt. of India brought yet another office Memo. Vide No. 11(3)/95-EII(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.

i. That in another case vide writ petition No.794/1996 in Sadan 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 & D 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. Vijaykumar and in terms of the O.M. dt.12.1.96.

A true copy of the said O.M. dt.25.10.96 is annexed as ANNEXURE-R8.

j. 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 Secretarial 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 the case such employee would be entitled to SDA. Hence the applicants in the instant case have no cause of action to agitate in this Tribunal.

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

k. That in a recent decision dt 5.10.2001, in Union of India & others – vs- National Union of Telecom Engineering Employees Union & other (CA. No.7000/2001 the Hon'ble Supreme Court

P.M.

once again clinched on the vexed question of grant of SDA to the central govt. employees and by relying on the earlier decision of "S. Vijoykumar" and the "Executive Officers' Association Group C" was pleased to allow the appeal in favour of the Union of India and held that the amount already paid to such ineligible employees should not be recovered.

A true copy of the O.M. dt.29.5.2002 and other dated 4.8.2003 is annexed as ANNEXURE -10

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 up to 5.10.2001 i.e. the date of the said judgment. That in another recent decision the Hon'ble Gauhati High Court (Division Bench) in WP(C) No. 2737/2000 held vide order dated 4.8.2003 that the SDA paid by mistaken interpretation of law to intelligible employees may be recovered.

The true copy of the O.M. dt. 29.5.2002 and other dated 4.8.2003 is annexed as ANNEXURE R11 and R12 respectively.

m. That it is also pertinent to mention here that under the settled provisions of law, only the outsiders transferred to posted in the N.E. Region (defined area) would be eligible for the grant of SDA and the payment of SDA to the employees who are local residents of N.E. Region does not arise. Considering this situation, the respondents have prepared a Statement on a tabular form about the transfer and posting of all the applicants including their place, date of initial posting place of residence etc. on the basis of their service books and personal files. The respondents crave the leave of this Hon'ble Tribunal to allow them to rely upon the said statements and also to consider as a part of this written statement.

A true copy of the said statement is annexed as the ANNEXURE -R13.

4. That with regard to the statements made in para 1 of the application, the respondents state that as explained hereinabove about the eligibility criteria and entitlement for SDA and the settled provisions of law, the applicant has no right to claim SDA and or to continue to get the same. The applicant is also not protected by any law in recovering the SDA from his salary that has been paid to him illegally. Hence there is no cause of action to justify the filling of the application and the same is liable to be dismissed with cost.
5. That with regard to the statements made in para 2,3, and 4.1. of the application, the respondents have no comments to offer.
6. That with regard to the statements made in para 4.2.4.3 and 4.4. of the application, the respondents state that the selection and appointment of the applicant as UDC in the office of the Commissioner of Income Tax, Shillong, his appointment as Assistant Grade in UPSC and the subsequent selection and appointment in the post of rehabilitation officer the Director of Employment and his

initial posting at Guwahati, all pertains to direct recruitment to the said posts and as such the selection and appointment against those posts are not correct with transfer and posting nor it is related to any posting on promotion and transfer. As such, such direct recruitee who are posted at a place in the defined area as his initial posting does not make him entitled for grant of SDA. The ratio laid down by the Hon'ble Supreme Court in United Bank of India -vs- Meekshi Sundaram & others reported in 1998(2) SCC 609(A copy of the judgment is Annexed and marked R-14) squarely applicable in this case also. Moreover, the clarification given by the Govt of India, Ministry of finance dated 2.5.2000 Annexure-R9 is also very much indicative that the applicant is not entitled to SDA as he is a local resident of the North East Region (Please refer to Annexure-R0)

7 That with regard to the statements made in para 4.5,4.6, and 4.7 of the application, the respondents state that as clarified hereinabove and the law being well settled, the applicant being a local resident of the North East Region and his initial posting being

made at a place in the North East as direct recruitee, as such he is not covered by any provisions of the Office Memorandum dated 14.12.83 and 20.9.87 for grant of SDA. The Hon'ble Supreme Court has also made it clear that a mere clause laid down in the appointment letter for All India Transfer Liability will not be sufficient to claim SDA. Hence the applicant has not vested right to claim grant of SDA or to stop the recovery of SDA illegally paid to him

8 That with regard to the statements made in para 4.8 and 4.9 of the application, the respondents state that the Govt of India, Ministry of Finance, Department of Expenditure issued of the Office OM No. F.11/(5)/97-E.II(B) dated 29.5.2002 as a result of the decision take by the Hon'ble Supreme Court as stated hereinabove and as a mater of compliance of the said direction, the respondents issued the order dated 25.10.2004. (A copy of the order is annexed as R-15) Hence, there is no illegality or infirmity in issuing the said order, which is challenged in this application. The respondents also deny that the case of the applicant is squarely

covered by the decisions of this Hon'ble Tribunal held in OA No. 237/2000 and OA No. 30/2003. The facts and circumstances of these cases are not similar to the present applicant.

9 That with regard to the statements made in para 4.10, 4.11, 4.12, and 4.13, of the application, the respondents state that under the facts and circumstances of the case and the provisions of law, the applicant is not entitled to grant of SDA and the SDA illegally paid to him is liable to be recovered.

10 That with regard to the statements made in para 5.1 to 5.6 of the application, the respondents state that the grounds shown by the applicant are not tenable in law as well as in fact of the instant case and therefore, the application is liable to be dismissed.

11 That with regard to the statements made in para 6 and 7 of the application, the respondents have no comment to offer.

12 That with regard to the statements made in para 8.1 to 8.5 including 9.1 and 9.2 of the application, the respondents state that in any view of the matter and the facts of the case and the provisions of law as explained

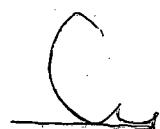
hereinabove, the applicant is in no way entitled to get SDA and the SDA so granted to him illegally is liable to be recovered. The law is also well settled that the court or Tribunal shall not legitimize the illegal act of officers and court shall not issue mandamus to the Govt to act contrary to law or to refrain from enforcing law. As such, the application is liable to be dismissed and the interim order passed by this Hon'ble Tribunal on 29.10.2004 is liable to be set aside/ vacated/modified accordingly.

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 dismissed the application with cost.

VERIFICATION

I, Shri R. Lakshmana Samy, at present working as Asstt. Director (Rehab.) at Vocational Rehabilitation Centre for Handicapped, Ministry of Labour & Employment, DGE&T, Rehabri, Guwahti being duly authorized and competent to sign this verification, do hereby solemnly affirm and state that the statements made in para 1, 2, 4 & 5 are true to my knowledge and belief, those made in para 3(a)-3(m), 6&8 being matter of records are true to my information derived there from and the rest are my humble submission and statements made on legal advice before this Hon'ble Court. I have not concealed and suppressed any material fact.

And I sign this verification on this 28 th day of Feb. 2005 at Guwahti.



DEPONENT
 Shri R. Lakshmana Samy
 Asstt. Director (Rehab.)
 Vocational Rehabilitation Centre for Handicapped
Asstt. Director (Rehab.)
 VRC For Handicapped
 Rehabri, Guwahti

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

ANNEXURE

R-1 X
R-1

New Delhi, the 14th

OFFICE MEMORANDUM

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

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

(1) Tenure of posting/deputation

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

The period of deputation of the Central Government employees to the States/Union Territories of the North East-Stern 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 depository/training abroad and special mention in Confidential records.

Satisfactory performance of duties for the

Centraal
Instituut
N.G.C. Directeur (V.G.)
K.P. Hillen
F. G. Zwijndreker

scribed tenure in the North East shall be given due recognition in the case of eligible officers in the matter of:-

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

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

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

(iii) Special (Duty) Allowance

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

(iv) Special Compensation Allowance

1. Assam and Meghalaya

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

2. Manipur

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

Pay upto Rs.260/-	Rs.40/- p.m.
Pay above Rs.260/-	15% of basic pay subject to a maximum of Rs.150/- p.m. i.e.

.....3....

Final 6/9/81

3. Tripura

The rates of the allowance will be as follows:-

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

(b) Other Areas

Pay upto Rs.260/- Rs.10/- p.m.

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

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

(v) Travelling Allowance on first appointment

In relaxation of the present rules (S.R.105), that travelling allowance is not admissible for journeys undertaken in connection with the initial appointment, in case of journeys for taking up initial appointment to a post in the North-Eastern region, travelling allowance limited to ordinary bus fare/second class rail fare for road/rail journey in excess of first 100 Kms. for the Government servant himself and his family will be admissible.

(vi) Travelling Allowance for journey on transfer

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

Contd....4....

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(vii) Road and Lighterage Transportation of personal effects on transfer:

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

(viii) Joining Time with leave:

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

(ix) Leave Travel Concession:

A Government servant who leaves his family behind at the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing leave travel concession of journey to home town once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North-East to his home town or place where the family is residing and in addition the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee at the station of posting in the North-Eastern Region. In cases, the option is for the latter alternative, the cost of travel for the initial distance (400 Nms./160 Kms.) will not be borne by the officer.

Officers drawing pay of Rs.2250/- or above, and their families, i.e., spouse and two dependent children (upto 10 years for boys and 24 years for girls) will be allowed air-travel between Tinsukia/Silchar/Agartala and Calcutta and vice-versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance / Hostel Subsidy:

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

Contd... 5....

- 5 -

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

3. These orders will take effect from 1st November, 1903 and will remain in force for a period of three years upto 31st October, 1906.

4. All existing special allowances, facilities and concessions extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North-India-Burma region will be withdrawn from the date of effect of the orders contained in this Office Memorandum.

5. Separate orders will be issued in respect of other recommendations of the Committee referred to in paragraph 1(a) 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. MAHALIK)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

To:

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

Copy (with spare copies) to C. & A.G., U.P.S.C. etc.

DR. 20014/3/R3-12
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE R2

New Delhi, the 20th April, 1987.

OFFICE MEMORANDUM

Subject: Allowances and Facilities for civilian employees of the
Central Government serving in the States and Union Territories of North-Eastern Region and A.C.H. Islands and
Lakshadweep - Improvement thereof.

The undersigned is directed to refer to para 1(111) of
Ministry of Finance, Department of Expenditure O.M. No. 20014/3/83-
E. IV dated 14th December 1983 as amended vis-a-vis Office Memorandum
of even number dated 29.10.1986 on the above subject, which is
reproduced below:-

1(111) "Special (Duty) Allowance".

"Central Government civilian employees who have all-India
transfer liability will be granted a special (duty) allowance
at the rate of 25% of basic pay subject to a ceiling of
Rs. 400/- per month on posting to any station in the North
Eastern Region. Special (Duty) Allowance will be in addi-
tion 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/deputa-
tion (duty) allowance will not exceed Rs. 400/- p.m. Special
allowance like special compensatory (remote locality)
allowance, construction allowance and Project allowance
will be drawn separately".

2. Instances have been brought to the notice of this Ministry
where special (duty) allowance has been allowed to Central Government
employees serving in North East Union without the fulfilment
of the condition of all-India transfer liability. This is against
the intent of orders on the subject. For the purpose of correction
of any special (duty) allowance, the all-India transfer liability of
the members of any Service/cadre or incumbents of any posts/group
of posts has to be determined by applying tests of recruitment
area, 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 career seniority for the service/cadre/posts
as a whole. The clause in the appointment order (as is dominant)
the case of almost all posts in the Central Secretariat etc. is
the effect that the person concerned is liable to be transferred
anywhere in India. It is not made liable for the grant of
special (duty) allowance.

Concl.../2/-

Cited

S.D./R.M.

ASST. Director (M)

S.V. L.D.M.

S.V. L.D.M.

- 6 -

17

22-3

3. Financial Divisions of the Administrative Ministries/Departments are requested to review all such cases where regular (duty) allowance has been sanctioned to the Central Government employees serving in the various offices including those which are under administrative control of their Ministries/Departments.

Chandigarh

(A. N. SINGH)
DIRECTOR (EO)
TELE: 3011019

Financial Divisions of all Ministries/Departments.

To

J-K

18
19
R3
ANNEKURE R3

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File No. 20014/16/06/E.17/1/1(1B)

GOVERNMENT OF INDIA
MINISTRY OF FINANCES
DEPARTMENT OF EXPENDITURE
EXCISE DEPARTMENT

ANNEKURE : R3 ANNEKURE : R3

Howrah, the 1 December, 1960

OFFICE MEMORANDUM

Subject:- Improvement in facilities for civilian employees
of the Central Govt. serving in the States of North
Eastern Region, Andhra & Bihar, Jharkhand and Lakshadweep.

The undersigned is directed to refer to this Ministry's
O.M. No. 20014/3/63-B.IV dt. 1st December, 1963 and 20th March
1964 on the subject mentioned above and to say that the question
of establishing suitable improvements in the allowances and facilities
to Central Govt. employees posted in North-Eastern Region comprising
States of Assam, Nagaland, Manipur, Meghalaya, Tripura, Arunachal
Pradesh and Bihar has been occupying the attention of the Govt.
accordingly the President has now pleased to issue the following:-

(1) Allowance of Special Duty/Deputation

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

(2) Allowance for Central deputation and Deputed officer

The existing provisions as contained in this Ministry's
O.M. dated 14.12.63 will continue. Under normal circumstances
no extra allowances for unsatisfactory performance of duty for
any prolonged period in the North-East in the nature of promotion
in the cadre, etc., deputation to Central Governmental bureaux
is continuing already.

(3) General Duty Allowance

Central Govt. Civilian employees who have left India
for a period of 12 months will be granted Special(Duty) Allowance at the
rate of 12% of basic pay subject to a ceiling of Rs 1000/- per
month posted to any station in the North-Eastern Region. The
Special(Duty) Allowance will be in addition to any special pay
1/3 or deputation(duty) allowance already being drawn subject to
the condition that the total of such Special(Duty) Allowance plus
Special Pay/Deputation(Duty) Allowance will not exceed Rs 1000/- per
month. Allowance to the Special Commissioner (North-Eastern Region)
allowance, Construction Allowance and Project Allowance will be
dealt separately.

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The Central Govt. Civilian employees who are members of Scheduled Tribes and other classes eligible for the grant of concession of 10% will also under this para and who are exempted from Schedule (First) will also draw.

(iv) Provision for dependents' Allowance:-

The recommendations of the 11th Pay Commission have been accepted by the Govt. and Special Expenditure Allowance at the revised rates have been made effective from 1.10.06.

(v) Reimbursement of expenses on first appointment:-

The revised concessions as contained in the Ministry's O.M. dt. 14.12.03 will continue with the exception that on first appointment, T.A. should be admissible for the total distance, instead of 200 the distance in excess of first 100 Kms. only.

(1) Reimbursement of expenses for journey on transfer:-

The revised provisions as contained in the Ministry's O.M. dt. 15.12.03 will continue.

(2) Reimbursement of expenses on first appointment of personnel of effect:-

The revised provisions as contained in the Ministry's O.M. dt. 14.12.03 will continue.

(3) Reimbursement of expenses on first appointment:-

The revised provisions as contained in the Ministry's O.M. dt. 14.12.03 will continue.

(4) Reimbursement of expenses on first appointment:-

The revised provisions as contained in the Ministry's O.M. dt. 14.12.03 will continue.

(5) Reimbursement of expenses on first appointment:-

The revised provisions as contained in the Ministry's O.M. dt. 14.12.03 will continue.

(6) Officer drawing pay of Rs 100/- or above, and their dependents upto 10, expenses upto the dependent children (Upto 18 years) for travel from their place of birth (or birth) will be admissible between Bengal/Chittagong/Barisal/Hazaribagh/Chittagong and Calcutta and between Port Blair and Cuttack/Burdwan and vice versa in case of Port Blair with a 100/- Reimbursement between Port Blair and Cuttack/Burdwan and between Dacca and Port Blair, 100/- Reimbursement in case of posting in Loknepoole.

(7) Officer drawing pay of Rs 100/- or above, X

Where the children do not accompany the government servant in the North-Eastern states, children Education Allowance upto 100/- will be admissible in respect of children studying at places not mentioned above in respect of children studying at the institution of posting of the government concerned or any other institution where the officer posted. If children studying in institution other than in North-Eastern states the institution of posting or any other institution, the Government servant concerned will be given hardship allowance without any restriction.

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The rates of Children Education Allowance/Household subsidy will be
as in the P.D.P. O.M. 18911/1/07-Extr. (11105...con). dt. 21.12.07.
as amended from two to three.

(xi) Consultation regarding grant of House Rent Allowance to
officers posted to the States of North Western Region,
Andhra & Madras, Bengal, Bihar, Jharkhand, Jharkhand, Jharkhand

The present concession as obtained in this Ministry's
O.M. No. 11016/1/II, I.I.(B)/06 dt. 29.3.06, as regards grants to
them will continue to be applicable.

(xii) Tel. during 1987-88

The officers who are obliged to have residential telephone
may be allowed to retain their telephone at their residence in
their duty stations as the premises subject to the condition that the
rental and all other charges are paid by such officers.

2. The above order will also apply with the following
to the Central Govt. employees posted in Andaman & Nicobar
Islands and Lakshadweep Islands. These orders will also apply
mutatis mutandis to officers posted to U.K. Comsols, when they
are stationed in the U.K. Islands.

3. The officers will take offage from the date of issue.

In view of the various services the Indian Audit &
Accounts Deptt. are concerned with, prior to this, after consultation
with the Comptroller of Audit of Government of India,

3. All services as the circumstances so required.

(R. S. VYASANAH)

JOINT SECRETARY TO THE GOVT. OF INDIA

To

all Ministers/Departments of Govt. of India, etc.
Copy (with serial number of each copy) forwarded to
C.S.A.O., U.D.O., etc., etc., pp. with other endorsement
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Anvayakar

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

AMENDMENT: R

CIVIL APPEAL NUMBER 11054

Union of India and others

Appellants

versus

Mr. Jayakumar and others

Civil Appeal No. 6103-01

SLP(C) No. 11054 of 1984 (certifying out of

10401/90, 16794/91, 16970-79/89, 16971-92/93,

10401/90, 9210/91).

JUDGEMENT

DISPENSED

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

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In whether the respondents are entitled to special duty allowance (hereinafter referred to as "the allowance") even though they are not ~~residents~~ of North-Eastern Region merely because of the posts to which they were appointed were of "All India Transfer Liability". The Tribunal has answered the in "G.O. in Aff. No. 145". These appeals have been preferred by the Union of India.

The Tribunal took the aforesaid view because the memorandum dated 17.12.1905 wherein all the subject of "Allowances and Facilities" for civilian employees of the Central Government serving in the States and Union Territories of the North-Eastern Region improvement thereof had stated that allowance shall be payable in the posts, be those which have "All India Transfer Liability". The Constitution of India, however, is that this office memorandum of 1905 reads along with what was stated subsequently in office memorandum dated 20.4.1907, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the aforesaid "residence condition" and not to those who were residents of this region. The office memorandum of 1907 has clearly stated that the allowance

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because of inaccessibility and difficult terrain
have said so because even the 1983 memorandum states
saying that third period for the allowances was not for
any one's remaining the service of the competent
officers for service in the North-Eastern Region
mention about retention has been made because it was
found that incumbents going to that Region on deputation
used to come back after joining them by taking leave
and, therefore, the memorandum stated that this period
of leave would be excluded while counting the period of
tenure of posting which was required to be of 2/3 years
to claim the allowance depending upon the period of
service of the incumbent. The 1983 memorandum makes it
stated that central government
posting is done by taking All India Transfer Liability
by all employees who have All India Transfer Liability
would be granted the allowance on posting to an
station to the North Eastern Region. Thus it is
made clear beyond doubt by the 1983 memorandum which
stated that allowance would not become payable merely
because of the clause in the appointment order relating
to All India Transfer Liability. Merely because in the
office memoranda of 1983 the subject was mentioned
quoted above is not bad enough to conclude that
submission of Dr. Ghosh.

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

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

He has duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Sir Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, herewith what was stated in the memorandum dated 25.4.1903 which has been quoted in the memorandum of 20.4.1907, clearly discloses that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region.

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This submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in Reserve Bank of India vs. Reserve Bank of India Staff Officers Association and others, 1991 (1992) 10 which an application 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 held violative of Article 14 of the Constitution.

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

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172 of 1972. By the said judgment the Tribunal held that the respondents are entitled to Special Duty Allowance in terms of Office memorandum dated December 14, 1983 with effect from the date specifically indicated in the said Office memorandum and directed the respondents 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.

1. The respondent No. 1 is an association of Group 'C' Inspectors of Customs and Central Excise under the Collectorate of Customs and Central Excise, Shillong and respondent Nos. 2 and 3 are its President and General Secretary respectively. The respondents approached the Tribunal claiming Special Duty Allowance on the strength of Office memorandum No. 20045/2/83-L.I.V dated December 14, 1983 and the Office Memorandum No. 20046/2/83-L.V/2,11(b) dated December 1, 1983 issued by the Ministry of Finance, Government of India. The respondents claimed that its members have all been transferred liability under the Central Excise and Land Revenue Department Group 'C' Posts Recruitment Rules, 1979 which were applicable to its members and in consequence of which three of its members had been

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transferred and one Mrs. Lisa L. Rynjan of Shillong has been posted at Goa under the said recruitment Rules and, therefore, they are eligible and entitled to claim Special Duty Allowance. The appellants herein deposed and contested the aforesaid claim of the respondents before the Tribunal. The appellants took the defence by stating that the Office Memorandum No. 20014/S/ED/LE/IV dated April 20, 1987 had clarified that the Special Duty Allowance is payable only to those officers, incumbents or incumbents of posts who are having all India transfer liability defined in the said Office Memorandum reading in view the original Office Memorandum dated March 14, 1982 and that the conditions stipulated in the recruitment Rules, 1979 referred to above cannot be taken as basis for deciding the respondents or its entitlement with all India transfer liability and consequent payment of Special Duty Allowance to them. The appellants also took the view that all India transfer liability of the members of any service/cadre for occupancy of any posts/Group of posts is to be determined by applying the tests of recruitment to the cadre/cadre/post made on all India basis and that mere clauses in the Recruitment Rules/Appointment Order stipulating all India transfer liability does not make them eligible for grant of Special Duty Allowance. In view of Office Memorandum dated December 14,

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After considering the facts, the Central Administrative Tribunal observed that the contents of Office Memorandum dated April 10, 1984 as well as the letter No. 77477/45, dated September 26, 1984 have been fully impugned on the Full Bench, Calcutta and held that the memorandum for determination in whether all India transfer liability exists and opined that without recalling the Office Memorandum issued in 1982 the concerned departments had no reason to deny the benefit of memorandum available to certain classes of employees and to withdraw its application to certain other classes, relying on the said Bench's 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.

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 occurs in the Finance Ministry Office Memorandum referred to above and the respondents erred in holding that the members of the respondent-Association are entitled to the Special Allowance. He further submitted that the package incentives contained in the minister's Office Memorandum

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dated December 14, 1953 (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 in 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.

~~2.~~ The main source for claiming the Special Duty Allowance is the Office Memorandum dated December 14, 1953 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 Assam 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:-

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

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the North-Eastern region to come and serve in the
North-Eastern Region. It can hardly be disputed that
the geographical, climatic, living and food conditions
are worse living in North-Eastern Region and the States
therein, wherein are different from other regions of
the country. The North-Eastern Region is considered to
be worse off for various reasons and it appears that
the State has said that the Government provided
various allowances, benefits and other facilities
to attract officers in the North-Eastern
Region. In fact for two to three years of tenure
of the office, the Ministry's Office Memorandum in question
was to be for consideration before this Court in Chief
Financial Manager (Telecom) Vs. S. I. Rajender S.M.
[S. M. Rajender] & Ors. [C. I. T. 1995 (1) SC 449] which
was decided by us by judgment dated January 10, 1995. In
that case Court took the view that the said Office
allowances 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
officers belonging to that region, where they were
handed and posted. This was also the view expressed
by the Court in yet another case reported in I.T. 1994
Central Board of India Vs. S. Vraja Kumar & Ors. In
S. Vraja Kumar (Case) the point for consideration was
exactly identical, with regard to the entitlement to
special duty allowance to those employees/officers who

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

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

S/—
.....J.
(B.C. Agrawal)

S/—
.....J.
(Fazlur Uddin)

New Delhi:

February 27, 1995.

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THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3203, 3214

(Arising out of SLP Nos. 12450 + 5592)

Union of India & Others

Appellants

VERSUS

Geological Survey of India
Employees' Association & Others

Respondents

ORDER

Petition condoned

Leave granted

It is observed that Mr. P. K. Goswami, Learned Senior Counsel appears for Geological Survey of India Employees' Association and Mr. S. K. Bandy, Advocate, appears for the other respondents in all the matters.

Having learned counsels 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 Group C and 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 the Court in Union of India & others Vs. S. Vijay Kumar & others (1994) (3) SCC 649.

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

Sd/- G. V. Ray,
Sd/- S. D. Lahiri, J.

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ANNEXURE

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ANNEXURE : R

ANNEXURE : R₇

— 14/1 —

Subject : "Special Duty Allowance for Civilian employees of Central Government serving in the State and Union Territories of North Eastern Region-regarding payment of SDA to the members of the service/cadre/ post who have 'All India Transfer Liability'."
Date : 12th Jan. 1996
Ref. No. : OM/R/11(3)/95-E.II(B)

OFFICE MEMORANDUM

Subject : "Special Duty Allowance for Civilian employees of Central Government serving in the State and Union Territories of North Eastern Region-regarding payment of SDA to the members of the service/cadre/ post who have 'All India Transfer Liability'."

Reference : The undersigned is directed to refer to this Departmental OM No. 20014/3/80-E.IV dated 14.12.80 and 20.4.1987 read with OM No. 20014/16/86-E.IV/E.II(B) dt. 13.12.86 on the subject mentioned above.

4. In the year 1980, the Government of India vide the abovementioned OM dt. 14.12.80 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".

5. In 1981, it was clarified vide the above mentioned OM dt. 30.4.1987, 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 zones, promotion zones etc. i.e., whether recruitment to service/cadre/post has been made on an India basis and whether promotion is also done on the basis of an All India community seniority list for the service/cadre/post as a whole. A mere change in the appointment letter to the effect that the person concerned is 'Listed' to be transferred anywhere in India, did not make him eligible for the grant of SDA.

6. In 1982, some employees working in the NE Region approached the Manipur Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them, 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.

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

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

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

7.1) The amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &

7.2) 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 issued in consultation with the Comptroller and Auditor General of India.

10. Hindi version of this is enclosed.

(C. Balachandran)

Under Secy to the Govt of India

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

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

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ANNEXURE : R8

SUPREME COURT

INDIA

Dated New Delhi the 26th November, 1996.

ANNEXURE : R8
1. GOVERNMENT OF INDIA (CONTINUED)

The Union of India,
represented by the Cabinet Secretary,
Government of India, North Block,
New Delhi.

The Director, GSB,
Office of the Director, GSB,
10th Block V, R.K.Pura,
New Delhi - 110 065.

The Divisional Manager,
BSB (Billing Division),
K.P. Governmental building,
Mahanagar, Dehradoon.

2. Government, Gram Centre, GSB,
Tripura, 781001, Agartala,
Tripura, West.

3. GOVERNMENT OF INDIA (CONTINUED)
(After Article 31 of the Constitution of India)

4. M/s

The DSB (DST) Certified by [REDACTED]
(Signature for opposite page)

5. Mr. K. K. Gopal, S. O. S.

PETITIONER

6. GOVERNMENT OF INDIA (CONTINUED)

7. RESPONDENT

8. Mr. [REDACTED]

I am directed to forward herewith for your information
that I am enclosing herewith a certified copy of the signed Writ Petition
filed on the 26th October, 1996, in this Court passed in the last
part of the application for stay.

Very truly acknowledge receipt.

Yours faithfully,

Q. M. RAZIUL HUSSAIN (H.M.)

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IN THE SUPREME COURT OF INDIA
ON THE MATERIAL APPEAL FILED
BY THE STATE OF JHARKHAND

Under Inspector General of Revenue, Ranchi
vs. State of Jharkhand

The question before the court is whether the State of Jharkhand

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has violated the provisions of Article 14 of the Constitution of India by not giving the same number of dates to the concerned officers for settling the judgments/orders of the court rendered under Article 156 of the Constitution of India after their becoming final.

The learned Counsel for the State of Jharkhand said that the concerned officers joined service under the special forces of the Indian Army in the eastern region of India. The concerned dates of service were as per order of the concerned officers. The question was remanded by the Court to be decided by the State of Jharkhand. The date of hearing was decided on September 20, 1996. After this date, the State of Jharkhand

has not given the dates to the concerned officers for settling the judgments/orders of the court rendered under Article 156 of the Constitution of India.

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learned Additional Solicitor General Shri Tulsji for two reasons. The first is that a close perusal of the aforesaid memorandum, along with what was stated in the memorandum, dated 28.10.1966 which has been quoted in the memorandum of 20.4.1967, clearly shows that allowance in question was meant to attract persons outside the North Eastern Region to work in that region because of inaccessibility and difficult terrain. We have said so because even the 1963 memorandum starts by saying that the need for the allowance was felt for "attracting and retaining the service of the competent officers for public service" in the North-Eastern Region. Mention about retention has been made because it was found that persons going to that Region on deputation used to come back after joining thereby taking leave tend. Therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1966 memorandum makes this position clear by stating that Central Government civilian employees who have All India Transfer Liability would be granted the allowance "on posting to any station to the North-Eastern Region". This aspect is made clear beyond doubt by the 1967 memorandum which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the officer memorandum of 1963 the subject was mentioned as quoted above it is not enough to concede to the submission of Dr. Ghosh.

The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is completely set by law as held in

Reserve Bank of India vs. Reserve Bank of India Staff Officers Association 2 Ors. ((1991) 4 SCC 132), to which, an attention has been invited by the learned Additional Solicitor General in which grant of special compensatory allowance, or remote locality allowance, only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

In view of the above, this Court allowed the appeals of the State and held that the respondents were not entitled to the allowances but whatever amount was paid upto the date of the judgment, was directed not to be recovered from them. The petitioners are relying upon the Office Memorandum dated July 11, 1986.

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 enjoy the facilities. They have filed this writ petition contending that since the Group C and D employees have been denied the benefit of the above judgment, special duty allowance benefit is being granted to Group A and B; it tantamounts to violation of Article 14 and, therefore, the writ petition should be allowed so as to give them the same benefit. Admittedly, the petitioners are Group C and D employees and are bound

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by the above declaration of law made by this Court. Merely, because they were not parties to the judgment, they cannot file a writ petition under Article 32. The contention that they are entitled to get the benefit along with Group A and B officers under the above Memorandum dated July 11, 1996, apart from the fact that Group A and B employees are entitled to special duty allowance contrary to the law declared by this Court in the above judgment, they too are bound by it, whether or not they are entitled to the above benefit due to this Court's judgment. The petitioners are not entitled to the benefits of the allowances as claimed by them. The judgment of this Court 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 32. 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 Vishwanath Kumar's case [supra], they cannot be permitted to raise new grounds, though not raised in the 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 petitioners that the judgment of this court binds them and cannot canvass its correctness and still, in spite of such advice, the party insisted upon filing the writ petition. It would then be for this Court to consider and deal with the case appropriately. Hereinafter, it would be necessary that the Advocate-on-Record should file, as part of the paper book of the writ petition filed under Article 52, a statement and certificate that the party concerned has advised that the matter is covered by the judgment just mentioned. 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 central classification of employees, if the 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 arrears memorandum dated January 17, 1996 the amount paid which is contrary to the direction issued

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

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

The writ petition is accordingly dismissed.

(K. R. RASHAY)

NEW DELHI:
OCTOBER 25, 1926.

G. P. KURUKAR

SEALED IN MY PRESENCE
S/ 11/11

Document No. 46
45 - 26
Date: 11.1.2000
11/1 (Admin)
From : Regional Office,
Avantika Regional Centre,
Doom Dooma
Subject: Special Duty Allowance for civilian
employees of the Central Government
serving in the States & Union Territories
of North Eastern Region - Regarding.

No. ARC/Coord/4/99-4
Directorate General of Security
(Cabinet Secretariat)
O/o The Director, ARC
East Block-V, R.K. Puram
New Delhi - 110 066. ANNEXURE : R9

Dated, the 05/05/2000

MEMORANDUM

ANNEXURE : R9

Subject : Special Duty Allowance for civilian
employees of the Central Government
serving in the States & Union Territories
of North Eastern Region - Regarding.

A copy of Cabinet Secretariat U.O. No.20/
12/99-EA.I-1790, dated 02.5.2000 on the above
subject is sent herewith for information and
necessary action.

Enclosed above.

(V.D.D. : R9)
ASSTT. DIRECTOR (I&O)

To

- (1) A.D. (A)/AD (B)/AD (C)/AD (D) of ARC Hqrs.
- (2) The A.O., ARC Hqrs.
- (3) The A.D. (A), ARC, Charbatia/Doom Dooma/Sarsawa.
- (4) File copy.

No. ESTT/DDM/SDN/96-II-
ARC, Doom Dooma

Dated the 01/05/2000

1. Copy forwarded to the Accounts Officer, ARC, Doom Dooma
for information and necessary action.
2. All Unit Heads.

(R.N. CHAKRABORTY)
SECTION OFFICER

1389
05/6/2000
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Cabinet Secretariat
(EA, 1 Section)

Subject: Special Duty Allowance for civilian employees of the
Central Government serving in the States and Union
Territories of North Eastern Region - 1999-2000

SSB Directorate may kindly refer to their UO
No. 42/SSB/A1/99(10)-2369 dated 31.3.2000 on the subject mentioned
above.

2. The points of doubt raised by SSB in their UO No.
42/SSB/A1/99(10) 5202 dated 2.9.1999 have been examined in
consultation with our Integrated Finance and Ministry of Finance
(Dept. of Expenditure) and 'clarification' to the points of doubt
is given as under for information, guidance and necessary action:

1) The Hon'ble Supreme Court in their
judgement delivered on 26.11.96 in
'Writ' Petition No. 794 of 1996 held
that civilian employees who have
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 wherein
a Central cadre employee would be
eligible for the grant of SDA
keeping in view the clarifications
issued by the Ministry of Finance
vide their UO No. 11(3)/95-E.II(10)
dated 7.6.97.

(a) A person belongs to outside N.E. region
but he is appointed and on first appointment
posted in the N.E. Region after
selection through direct recruitment on
basis on the recruitment made on All
India basis and having a common/inter-
lived 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 born on the Central
lived cadre/service common seniority on
first appointment and posted in the N.E.
Region. He has also All India transfer
liability.

(ii) An employee belongs to N.E. Region and
appointed on Group 'C' or 'D' employees
based on local recruitment when there
were no cadre rules for the post (prior
to grant of SDA vide Ministry of Finance
OM No. 20014/2/03-E.IV dated 14.12.03 and

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Executive order

Ad. 141. Constitution
can not override

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20.4.87 read with OM 20014/16/NG.E.II(B) dated 1.12.86, but subsequently the pool cadre was centralized with common seniority list/promotion/All India Transferability etc. on his continuing in the NE Region though they can be transferred out to any place/center in the NE Region having All India Transferability.

iii)

An employee belongs to NE Region and subsequently posted outside NE Region whether he will be eligible for SDA till he is posted/transferred to NE Region. Has he is also having a common All India seniority and All India Transferability. YES

iv)

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

v)

The M.P. Deptt. of Exports vide their D.O. No. 11 (3) / 95-E.II (D) dt. 24.6.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. For determination of the admissibility of the S.D.A. to any person in the SDA till he is posted with Central Govt. Civilian Employees having All India Transferability will be determined by applying tests (a) whether recruitment is done to the Service/Cadre/Post 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 SDA/PGS, 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/test 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.

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vii)

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

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

viii)

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

The payment made to employees hailing from NE Region & posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employees hailing from NE Region and posted in NE Region be recovered from the date of payment or after 20th Sept 93 whichever is later.

3. This annex with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1349 dated 11.10.99 and Ministry of Finance (Expenditure)'s I.D. No. 1200/6-11(1)/99 dated 30.3.2000. . .

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1. Shri R.I. Bedi,	Director,	ARC
2. Shri R.I. Kurool,	Director,	SSB
3. Brig (Retd) G.S. Ubani, IG,	"	SIP
4. Shri S.R. Mehra,	JD (P&C),	DGS
5. Shri Ashok Chaturvedi JS (Pers),	"	RGAV
6. Shri B.S. Gill,	Director of Acc. into	DACS
7. Smt. J.M. Moni,	Director-Financial	Cab. Sectt.
8. Col. K.M. Jamali	CIAA	CIA
Cab. Sectt. UO No.20/12/99-EN:I-	dated 12-9-2000	

1798 date 102-5.2000
-21 MAY 2000

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1000 OF 1991
9 OUT OF S.L.P. (C) NO.

CIVIL APPEAL NO. 7000 OF 2001
Arising out of S.L.P. (C) NO. 6466 OF 1999

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Supreme Court of India

ANNEXURE

Union of India & Air

Appellants

National Union of Telecom. Employees Union N.T.U.O.

Respondent

2010.11.17

Leave ground:

It is submitted on behalf of the respondent that the appeal of the Union of India is covered by the judgment of this Court in the case of Union of India.

followed in the case of Union of Indian Or. and Officers' Association Group 'C' 1995 (supra) and

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

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

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

Now dated,
October 06, 2001

(H. SANTOSH HEGDE)

(H. G. BALAKRISHNA)

ANNEXURE : R-11

F. No. 11(3)/97-E.II.(U)

Government of India

Ministry of Finance

Department of Expenditure

ANNEXURE : R-12

New Delhi, dated the 29th May, 2001.

OFFICEMEMORANDUM

Subject: Special Duty Allowance for civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region including Sikkim.

The undersigned is directed to refer to this Department's OM No. 20014/3/R-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20014/16/86-E.IV/E.II (1) 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. Vs. Sh. S. Vijaya Kumar and Ors) have upheld the submissions of the Government of India that C.G. civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the 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 (Suppl.) SCC 619 and followed in the case of UOI & Ors. vs. Executive Officers' Association, Group C, 1995.

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b/b

(Supp.) SCC, 757. Therefore, this appeal is to be allowed in favour of the (U.O.). Hon'ble Supreme Court further ordered that whatever amount has been paid to 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 payable to Central Government employees having All India Transfer Liability on posting to North Eastern region (including Sikkim) from outside the region."

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

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

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

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

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

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

(N.P. Singh)

Under Secretary to the Government of India.

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

Copy (with spare copies) to C&ACC, UPSC etc. as per standard endorsement
Note:-

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Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
		04.08.2003	<p style="text-align: right;">WPC 2737 /2000</p> <p>THE HON'BLE CHIEF JUSTICE MR PP NAOLEKAR THE HON'BLE MR JUSTICE A.H.SAIKIA</p> <p>Heard Mr. C Choudhury, learned Sr. Central Standing Counsel for the petitioner. The Central Administrative Tribunal has noticed the decision of the Apex Court in the matter of payment of Special Duty Allowance (SDA) where under the Court has held that the persons who belong to the North Eastern Region were not entitled to SDA. The Tribunal, after consideration of the decision of the Apex Court gave directions to the respondents to first determine whether the applicants before the Tribunal are entitled for SDA or not as per decision of the Apex Court. If after examination it is found that some of the applicants are not entitled to SDA they shall not be paid SDA. The Tribunal has not stopped here and gave further direction that "However, the amount already paid to them shall not be recovered". Aggrieved by the further direction given by the Tribunal the present writ petition has filed by the Union of India.</p> <p>The challenge made in this writ petition is that if the applicants are not entitled to receive the SDA they are liable to pay back the amount so received and the Tribunal could not have issued direction for non-recovery of the amount, which has been received by some of the applicants without any authority of law. It appears that direction has been given by the Tribunal for</p>

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Serial No. Office notes, reports, orders or proceedings
 Examination of the case of the applicability whether they
 are entitled to receive SDA as per decision of the Apex
 Court. If it is found that the applicants are entitled to
 receive SDA they shall continue to get it and they are
 within their right to retain it. However, by some
 (mistaken) interpretation of law if any amount is paid
 towards SDA to some of the applicants then they are not
 entitled to receive the amount and the Tribunal cannot
 issue direction that the amount already paid to these
 applicants are not entitled to be recovered from them.
 In our view, the direction given by the Central
 Administrative Tribunal that in case where the applicants
 are found not entitled to receive the SDA they would be
 entitled to retain it and the amount so received shall not
 be recovered from them is contrary to the settled
 principle of law and thus is set aside to that extent.

With the above directions the writ petition stands
 disposed of. No costs.

S/ No. 104
 Judge

S/ P. P. D. (Signature)
 Chief Judge

True Copy If No Objection

Date
Superintendent (Copying)
Court Hall High Court
Chennai

No. 14227-
 5/8/03

CERTIFIED TO BE TRUE COPY
Date 16.8.03
Superintendent (Copying Se. 108)
Court Hall High Court
Authorised U/S 76, Act I, 1872

2/11/03

STATEMENT OF OFFICER SHOWING HIS TRANSFER AND POSTING IN THE NORTH EASTERN REGION (DEFINED AREA) SINCE HIS INITIAL APPOINTMENT IN VRC, DGET (OA NO 250/2004 DT.28.10.2004 FILED BY SHRI L.K. VARTE, REHABILITATION OFFICER, VOCATIONAL REHABILITATION CENTRE FOR HANDICAPPED, UNDER MINISTRY OF LABOUR, DGET, REGARDING RECOVRY OF SPECIAL DUTY ALLOWANCES.

Sl. No.	Name of employee	Designation	Initial appointment		If transferred from outside to NER		If transferred from NER to outside & re-transferred		Whether resident of NER If yes, then indicate the place	Remarks		
			Date	Place	Date	Place	Re-transferred Date	Re-transferred place				
1	2	3	4	5	6	7	8	9	10	11	12	13
1	Shri L.K. Varte,	Rehabilitation officer	25.03.1986	VRC, Guwahati	No.	No.	No.	No.	No.	No.	S/o.Sh.H.V.Vungle, Vill-Langza, B.P.O-Sagong, Manipur South Dist. PS-Surachandpur, (Manipur)	

Certified that the above data and facts are based on the Service Book/ Personal files/Bio-data of the officer concerned.

Office Superintendent.



(R. Lakshmana Samy)
Asstt. Director (Rehab.)

Asstt. Director (Rehab)
VRC For Handicapped
Rehabari, Guwahati-8

UNITED BANK OF INDIA v. MEENAKSHI SUNDARAM

609

(1998) 2 Supreme Court Cases 609

(BEFORE SUJATA V. MANOHAR AND D.P. WADHWA, JJ.)

UNITED BANK OF INDIA

Appellant;

Versus

MEENAKSHI SUNDARAM AND OTHERS

Respondents.

Civil Appeal No. 404 of 1993^f, decided on January 21, 1998

A. Service Law — Transfer — Policy — Differential treatment between the existing officers and the promotee officers and the direct recruits in the matter of posting to North-Eastern region — Incentives granted to the existing and promotee officers working in other regions for accepting posting in North-Eastern region but these incentives denied to direct recruits posted in North-Eastern region for the first time on probation or otherwise — The policy held, was framed in view of special circumstances prevailing in North-Eastern region and its purpose was to post experienced officer in that region — Differential treatment was therefore permissible — Incentives — Differential treatment in — Constitution of India, Arts. 14 and 16

The respondents were direct recruit officers of the appellant-Bank. Their grievance was that the benefits granted to the existing or the promotee officers on being transferred to North-Eastern region from other regions, should also be made available to them on their posting in the North-Eastern region for the first time either on probation or otherwise. These benefits were, (i) transfer back to desired station of posting on completion of posting in the North-Eastern region; (ii) retention of official accommodation; (iii) providing of accommodation at the place of posting in the North-Eastern region; (iv) mid-academic transfer allowance; (v) liberalised leave travel concession (LTC); (vi) ad hoc out-of-turn increase in salary. Policy decision regarding grant of incentives taken by the Central Government was as follows : "In view of the very special circumstances prevailing in the area, it is felt that some special, temporary incentives need to be given to such of the officers as are posted from other parts of the country to branches/offices located in States/Union Territories in the North-Eastern Region."

The appellant public sector Bank was aggrieved by the judgment of the Division Bench of the Guwahati High Court allowing the writ petition of the respondents and holding that the benefits which are being enjoyed by the transferred officers of the Bank to North-Eastern region could also be available to the respondents who are direct recruits and posted to the North-Eastern region for the first time either on probation or otherwise. Allowing the appeal

Held :

Direct recruits cannot be placed on the same pedestal as the officers already working in the Bank and being transferred to the North-Eastern region. The incentives which have been given to transferred officers are not such as can be granted to the direct recruits posted for the first time in the service of the Bank except one incentive of out of turn increase in salary. The direct recruited officers, as far as their first posting is concerned, are a class by themselves. For proper functioning of its branch the Bank also needs experienced hands. Howsoever good a direct recruit may be, he certainly has no previous experience in the working of the appellant Bank. A direct recruit has a choice whether to join the service of the Bank

^f From the Judgment and Order dated 24-5-1991 of the Guwahati High Court in Civil Rule No. 2058 of 1990

610.

SUPREME COURT CASES

(1998) 2 SCC

or not. If he does, he runs on the risk of being posted in the North-Eastern region on his first posting. The direct recruit officers cannot also equate themselves with promotee officers because a promotee already has an experience of working of the Bank at the time of his posting in the North-Eastern region. Besides, a promotee gets benefit of Special Pay Fixation (SPF) retrospectively from the date of publication of results of the promotion test, and therefore in his case, incentive has to be given for sending him to North-Eastern region. Certain incentives are necessarily required to be given to the officers of the Bank so that they accept their transfer to hardship stations in the North-Eastern region for the proper functioning of the branches of the Bank. That would certainly be within the policy of the Bank. It cannot be said that in not granting those incentives to the directly recruited officers posted for the first time in the North-Eastern branches, is in any way discriminatory and violative of Article 14 of the Constitution of India. The Supreme Court will not interfere with the policy devised by the Bank for introduction of incentives to its transferred employees when it has taken into consideration the prevalent circumstances in the North-Eastern region and the reluctance of its experienced officers to be transferred to that region.

(Para 7)

Reserve Bank of India v. Reserve Bank of India Staff Officers' Assn., (1991) 4 SCC 132

1991 SCC (L&S) 1090 : (1991) 17 ATC 295, referred to

Suggested Case Finder Search Text (*inter alia*):

transfer direct recruit promotee

B. Service Law — Transfer and Posting — Difference between — No definite opinion expressed but the court assuming for the purpose of arguments in this case that there was distinction — Words and Phrases — "Transfer" — "Posting"

(Para 7)

Appeal allowed

K-O-M/19116/CL

Advocates who appeared in this case :

M.N. Krishnamani, Senior Advocate (Sudarsh Menon, Advocate, with him) for the Appellant;

P.K. Goswami, Senior Advocate (Kailash Vasdev and C.K. Sasi, Advocates, with him) for the Respondents.

Chronological list of cases cited

on page

1. (1991) 4 SCC 132 : 1991 SCC (L&S) 1090 : (1991) 17 ATC 295, *Reserve Bank of India v. Reserve Bank of India Staff Officers' Assn.*

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The Judgment of the Court was delivered by

D.P. WADHWA, J.— The appellant Bank is aggrieved by the judgment dated 24-5-1991 of the Division Bench of the Guwahati High Court allowing the writ petition of the respondents and holding that the benefits which are being enjoyed by the transferred officers of the Bank to North-Eastern region could also be available to the respondents who are direct recruits and posted to the North-Eastern region for the first time either on probation or otherwise.

2. The appellant is a public sector Bank. A communication dated 1.6.1983 was addressed by the Central Government in the Ministry of Finance, Department of Economic Affairs (Banking Division) to all the Chief Executives of public sector banks on the subject of ad hoc and temporary incentives to the employees of the banks posted in the North-Eastern region. The reasons which led the Central Government to issue such a

communication are stated in the first para of the letter which we reproduce as under:

a "Sir,

b I am directed to say that the question of providing special ad hoc, temporary incentives to officers of public sector banks, with a view to facilitate their movement to branches/offices located in States and Union Territories in the North-Eastern region, has been under consideration of the Government for some time. In view of the very special circumstances prevailing in the area, it is felt that some special, temporary incentives need to be given to such of the officers as are posted from other parts of the country to branches/offices located in States/Union Territories in the North-Eastern region. The Bank could even ask for volunteers to be posted in the North-Eastern area for a period of two years."

c 3. Thereafter, incentives were listed which were to be made available to the transferred officers from other parts of the country. These are (i) transferred officer on completion of his tenure, be posted for a period of three years to a place of his choice out of three places to be indicated by him; (ii) the transferred officer may retain his furnished or non-furnished accommodation, as the case may be, at the last place of his posting or alternatively may be allotted accommodation at a place of his choice on payment of the usual 10% or 12% of his pay, as the case may be. Where the transferred officer has not been provided with accommodation by the Bank at his last place of posting, the Bank should, on request, provide him, on the basis of recovery of the usual rent, accommodation to his family preferably at a place indicated by the officer; (iii) the transferred officer who retains the accommodation at the last place of posting or at a place of his choice may be given free furnished single accommodation appropriate to his status at the new place of posting in the North-Eastern region; (iv) the transferred officer may be paid as per the entitlement mid-academic transfer allowance for the entire period of his posting in the North-Eastern region irrespective of the date of transfer provided the children of such officer did not join the officer on the new place of posting; (v) such transferred officer would be entitled to leave travel concession once in a year to the place where his family is residing; and (vi) the transferred officer would also be entitled to ad hoc, out-of-turn increase in salary specifically for the duration of his active duty only in a post in the North-Eastern region. The out-of-turn, ad hoc increase salary will be regulated in the manner as the salary is fixed when an officer is placed in the immediately next higher scale. Such shall not confer any other benefit than the temporary monetary gain in basic pay and DA for the specific duration of active duty in any post in the North-Eastern region.

j 4. Some additional incentives were also mentioned to be provided to all the officers of the Bank posted in the North-Eastern region.

5. On the advice of the Central Government as communicated by letter dated 1-9-1983, the appellant Bank issued guidelines on 11-1-1984 adopting the very same basis for grant of incentives. These incentives exclusively

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payable to transferred officers were not to the liking of the directly recruited officers which led them to file the writ petition in the High Court and was allowed by the impugned judgment. Their contention was that the incentives granted to the transferred officers of the Bank from other parts of the country as per communication of the Bank would also be applicable to directly recruited officers of the Bank posted in the North-Eastern region though hailing from different parts of the country as otherwise it would be violative of Article 14 of the Constitution of India. The High Court relied on its earlier decision in *Reserve Bank of India Staff Officers' Assn. v. Reserve Bank of India* decided on 14-8-1990 which the High Court said was on the same issue of discrimination. This decision in the *Reserve Bank of India case* was reversed by this Court by judgment dated 9-8-1991 on an appeal filed by the Reserve Bank of India (*Reserve Bank of India v. Reserve Bank of India Staff Officers Assn.*¹). In the case of *Reserve Bank of India*¹ certain incentives and allowances were provided by the Reserve Bank to its officers posted at Guwahati who were not from the North-Eastern region. Those allowances were generally known as special duty allowances. It included an ad hoc increase in salary for non-local officers and an option was given to them either to choose the ad hoc increase or the special duty allowance for the period during which they were posted at Guwahati. The Reserve Bank declined to allow the same allowances to local officers posted at Guwahati as were given to the officers from other regions transferred to Guwahati. This denial of allowances to the officers belonging to the North-Eastern region was challenged by them in the Guwahati High Court which upheld their stand. This Court noticed from the stand of the Reserve Bank that there was difficulty in persuading officers of the Bank posted outside the North-Eastern region to accept transfers to the unit of the Bank in the north-eastern part of the country which unit was located at Guwahati in Assam. From the record of the Reserve Bank, it appeared that Guwahati station was regarded as hardship station. In the High Court the Reserve Bank averred that the hardships faced by the non-local officers were greater than those faced by the local officers and the scheme of ad-hoc incentives was introduced to tide over the problem of adequately staffing the Guwahati office. It were the non-local officers who experienced difficulty in getting accommodation, getting familiar with the language and so on and that some incentives had to be given to them to mitigate the hardships experienced by them on transfer to Guwahati. The High Court, however, took the view that all officers at Guwahati, local or non-local, suffered from substantially the same hardship and that the action of the Reserve Bank discriminated the local officers and it, therefore, directed that they must be given the same benefits as were given to non-local officers transferred to Guwahati. Correctness of this decision was challenged in this Court. This Court was of the opinion that the High Court was in error in taking the view that the officers from the North-Eastern region who were posted at Guwahati suffered the same hardships as

UNITED BANK OF INDIA v. MEENAKSHI SUNDARAM (Wadhwa, J.) 613

officers from other regions transferred to Guwahati. This Court observed as under: (SCC p. 135, para 4)

"A person transferred from outside the North-Eastern region to Gauhati would normally have to face more severe difficulties than an officer from the North-Eastern region posted in Gauhati or, at the least, the appellant Bank could reasonably take that view. Moreover, as pointed out by the appellant Bank in the counter that they were finding it difficult to persuade their officers from outside to accept transfers to Gauhati and it is common knowledge that an office of a large bank cannot be run efficiently by officers a large number of whom have been posted there by transfers against their will and under the threat of disciplinary action. The work done by them could hardly be expected to be satisfactory. After all, the appellant, the Reserve Bank of India, is a banking institution and if in the interest of efficiency and proper working it bona fide took the decision, in the circumstances set out earlier, to grant some extra benefits to the non-local officers transferred to Gauhati with a view to maintain efficient working of its unit at Gauhati, in our opinion, they cannot be treated as being guilty of any unlawful discrimination."

6. The High Court in the impugned judgment completely relied on its decision in the *Reserve Bank of India case*¹ which decision did not find favour with this Court. The facts in the present case and that in the *Reserve Bank of India case*¹ though were somewhat different but the principles as initiated by this Court would be applicable in the present case as well. While the dispute in *Reserve Bank of India case*¹ was between local officers belonging to the North-Eastern region and those transferred from other parts of the country, in the present case before us it is between the officers of the Bank transferred to North-Eastern region and those who were directly recruited and posted to North-Eastern region on their first posting.

7. In our opinion, direct recruits cannot be placed on the same pedestal as the officers already working in the Bank and being transferred to the North-Eastern region. The incentives which have been given to transferred officers are not such as can be granted to the direct recruits posted for the first time in the service of the Bank except one of the incentives being ad hoc, out-of-turn increase in salary during the duration of the posting in the North-Eastern region. The direct recruited officers, as far as their first posting is concerned, are a class in themselves. For proper functioning of its branch, the Bank also needs experienced hands. Howsoever good a direct recruit may be, he certainly has no previous experience in the working of the appellant Bank. A direct recruit has a choice whether to join the service of the Bank or not. If he does, he runs on the risk, if it is risk, of being posted in the North-Eastern region on his first posting. In this context, it was submitted by the respondents that the promotee officer cannot refuse posting in the North-Eastern region on his getting promotion and that when such a promotee officer is entitled to incentives those incentives should also be granted to a direct recruit on the same principle. But then a promotee officer is an experienced hand unlike a direct recruit. An employee in the clerical

cadre in the Bank can make to an officer in Junior Management Grade Scale I only after five years of service and after passing written test-cum-interview. He has undoubtedly experience of working in the Bank. On promotion, he gets salary as a Junior Management Grade Scale I Officer. This he gets from the date of publication of the promotion test results in his original place of posting, i.e., where he was posted as a clerk at the time of his promotion. The appellant Bank has contended that such an officer in Junior Management Grade Scale I gets remunerated at his existing place of posting and sending him to North-Eastern region as a promotee officer would be on transfer and since he was already getting SPF (*Special Pay Fixation*) and all other facilities as a clerk which were continued to him as a promotee officer he would thus be also entitled to the incentives. It was also submitted that a directly recruited probationer or a promotee officer are unequal and could not be treated alike. As a matter of fact, the plea of discrimination between a direct recruit probationer and a promotee officer on probation was not advanced before the High Court. We are of the view that the Bank is right in its submission. A distinction was also sought to be drawn between transfer and posting. Assuming there is such a distinction as contemplated by the communication dated 1-9-1983 and the circular issued by the appellant Bank dated 11-1-1984, it is clear that the incentives (mentioned in the earlier part of the judgment) are applicable only to the transferred officers and certain additional incentives would be applicable to all the officers posted in the North-Eastern region. Certain incentives are necessarily required to be given to the officers of the Bank so that they accept their transfer to hardship stations in the North-Eastern region for the proper functioning of the Branches of the Bank. That would certainly be within the policy of the Bank. It cannot be said that in not granting those incentives to the directly recruited officers posted for the first time in the Branches in the North-Eastern region in any way is discriminatory and violative of Article 14 of the Constitution of India. This Court will not interfere with the policy devised by the Bank for introduction of incentives to its transferred employees when it has taken into consideration the prevalent circumstances in the North-Eastern region and the reluctance of its experienced officers to be transferred to that region. This Court in the *Reserve Bank of India case*¹ has already upheld the distinction between local and non-local officers working in Reserve Bank unit in the North-Eastern region on similar consideration.

8. Accordingly, the appeal is allowed. The judgment dated 24-5-1991 of the High Court of Guwahati is set aside and the writ petition filed by the respondents dismissed.

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Annexure 8
ANNEXURE - R-15
(3)

Govt. of India

Ministry of Labour & Employment (DGE&T),
Vocational Rehabilitation Centre for Handicapped,
Rehabari, Guwahati-781008

No.VRCG-G.11014/2/2004 2135

Dated 25.10.2004

Office Order,

As per Audit Report from the Office of the Deputy Controller of Accounts, Ministry of Labour, Internal Audit Organization, vide letter no AI/LAB/VRC-Guwahati/03-04/618 dt. 07.11.2003 and subsequent letter no DGE&T-G.25012/3/2004/BP dt. 27.07.2004 an excess payment of Rs.86, 428/- on account of Special Duty Allowance to Shri L.K. Varle, Rehabilitation Officer of this centre will be recovered @ Rs.1, 800/- PM in 48 installments w.e.f. Nov. 2004 and no drawal of Special Duty Allowance with immediate effect.

(R. Lakshmana Samy)
Asstt. Director (Rehab.)

To,

• Shri L.K. Varle, Rehabilitation Officer,
VRC for handicapped,
Rehabari, Guwahati-781008

Distribution

1. The Deputy Director General, (Emp), Govt of India, Min. of Labour, DGET, New Delhi-110001

2. Accounts Section, VRC, Guwahati

23 MAR 200

RECEIVED
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 250/2004

Shri Lienkhawthang Varte.

----Applicant

-Vs-

Union of India & Ors.

----Respondents.

-AND-

In the matter of:

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

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

1. That with regard to the statements made in paragraph 3 (a), 3 (b), 3(c), 3(d) of the brief history supports the case of the present applicant, so far the contention raised in paragraph 3(e) to 3(m) also supports the case of the present applicant. The case of the present applicant for entitlement of Special Duty Allowance in fact covered both by the judgment of S. Vijayakumar as well as by the subsequent circulars of the Govt. of India issued on 29.05.2002.
2. That your applicant categorically denies the statements made in paragraph 4, 6 7 and 8 of the written statement and reiterates the statements made in the original Application. Moreover the judgment of the Hon'ble Supreme Court reported in 1998 (2) SCC 609 particularly paragraph 7 supports the case of the present applicant, in para 7 of the said judgment the Hon'ble Supreme Court also agreed that the direct recruit officers of the Bank who was posted in N.E.R on his appointment at least entitled to one of the incentives i.e. being adhoc out of turn

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Filed by the Applicant
through Jayit Ghoshal
on 23.03.200

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increase in salary during the duration of the posting in the North Eastern Region, therefore the present applicant is also entitled to payment of SDA which increases the total emolument of the applicant. however in view of the Apex Court's judgment applicant may not be entitled to choice station posting, double house rent etc. therefore the said case rather supports the case of the present applicant.

3. That with regard to the statements made in paragraph 8, 9, 10, 12, the applicant denies the correctness of the same and further begs to say that the memorandum dated 29.05.2002 rather supports the case of the present applicant for entitlement of SDA.

In the facts and circumstances stated above the Original Application deserves to be allowed with cost.

VERIFICATION

I, Shri Lienkhawthang Varte S/o Shri H.V. Varte, aged about 47 years, working as Rehabilitation officer, VRC for Handicapped, Rehabari, Guwahati-8 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 _____ day of March, 2005.

Lienkhawthang Varte

135
- 9 MAY 2005

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Filed by the Applicant
through Swami Chaudhury
on 9.5.2005

In the matter of:

O.A. No. 250/2005

Shri Lienkhawthang Varte.

----Applicant

-Vs-

Union of India & Ors.

----Respondents.

-AND-

In the matter of:

Additional rejoinder submitted by the applicant in reply to the written statement submitted by the Respondent.

The applicant above named most humbly and respectfully begs to state as follows:

1. That the applicant further beg to say that the Govt. of India, Department of Expenditure, Ministry of Finance finally issued O.M F.No 11(3)/2000-E-II (B) dated 13.06.2001, wherein it is further clarified that there is no bar in eligibility of SDA for the officers belonging to N.E.Region. If they satisfy the criteria that their appointment in service/post is made on All India basis and the promotion is also done on the basis of All India common seniority and it is made further clear that the SDA is admissible when the officers belonging to N.E.Region are posted in NE Region are posted in NE Region from outside the region. In the instant case the applicant is posted from outside the NE Region. Therefore he is entitled to payment of SDA in terms of the O.M dated 13.06.2001 issued by the Govt. of India, Ministry of Finance.

A Copy of the memorandum-dated 13.06.2001 shall be produced at the time of hearing.

2. That this additional rejoinder is made bonafide and for the ends of justice.

VERIFICATION

I, Shri Lienkhawthang Varte S/o Shri H.V. Varte, aged about 47 years, working as Rehabilitation officer, VRC for Handicapped, Rehabari, Guwahati-8 do hereby verify that the statements made in Paragraph 1 of the additional rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 9th day of May, 2005.

Lienkhawthang Varte

11 JUN 2005

Guwahati Bench

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Filed by the applicant
through: Subroto Das
Advocate
N.C. O.P. 85

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

In the matter of:

O.A. No. 250/2005

Shri Lienkhawthang Varte.

.....Applicant

-Vs-

Union of India & Ors.

.....Respondents.

-AND-

In the matter of:

Additional statements of facts submitted by the applicant in support of the contention raised by the applicant in O.A.

The applicant above named most humbly and respectfully begs to state as follows:

1. That the applicant approached this Hon'ble Tribunal against the order of discontinuation and recovery of SDA following the impugned order dated 25.10.04 passed by the Assistant Director, VRC, Guwahati. The applicant in support of his contention raised in Original Application, further begs to say that the service of the applicant right from the cadre of U.D.C w.e.f. 01.05.1982 till his service upto the cadre of Asstt. Grade, rendered both in the Income Tax Department as well as in the U.P.S.C, so far counted towards, the service benefits for all purposes and it is further stated that the service book which was already prepared in the department of Income Tax, while the applicant was serving as UDC at Shillong, the said service book was in fact forwarded by the Income Tax department to the U.P.S.C and the said service book infact maintained in the office of the U.P.S.C and subsequently in the office of the V.R.C, Guwahati. Therefore, it is quite clear that the entire services rendered by the applicant in the grade of U.D.C as well as in the cadre of Assistant Grade was counted for all purposes. Therefore, the benefit of service rendered by the applicant in the cadre of Assistant grade in the office of the U.P.S.C, New Delhi cannot be

denied, when the said service was counted for all purposes which would be evident from the service book of the applicant.

In the circumstances stated above applicant is entitled to the benefit of S.D.A since the entire service period both in the grade of U.D.C and Assistant Grade was counted for all purposes.

The Hon'ble Tribunal be pleased to direct the respondents to produce the service book of the applicant for proper adjudication of the case of the applicant. In this connection it may be stated that the applicant also submitted a written request to the Asstt. Director, V.R.C, Guwahati for supply of a photocopy of the service book of the applicant on 08.06.2005, but the said Asstt. Director is presently on leave as such the photocopy of the service book cannot be obtained by the applicant.

A copy of the representation dated 08.06.05 is enclosed herewith and marked as Annexure-A.

2. That your applicant further begs to say that the case of the applicant is squarely covered following the O.M. dated 13.06.2001 issued by the Govt. of India, Ministry of Finance, New Delhi as well as following the O.M dated 29.05.2002 wherein it is categorically stated that even the residents of N.E. Region having all India Transfer liability but posted from outside the N.E. Region is also entitled to S.D.A. The paragraphs 52 and 53 of the judgment passed on 31.05.2005 by this Hon'ble Tribunal categorically dealt with the question of admissibility of S.D.A in the light of the Cabinet Secretariat letter dated 02.05.2000 has no relevancy with the instant case of the applicant.

Be it stated that the applicant got T.A and D.A while joined at Guwahati from New Delhi, therefore, joining of the service of the applicant also treated in public interest.

The applicant further relied on the clarification order dated 30.01.04 passed by the Ministry of Defence, on the question of admissibility of SDA. A copy of the clarificatory order dated 30.01.04 is enclosed herewith and marked as Annexure-B.

In the circumstances stated above the Original Application deserves to be allowed with cost.

VERIFICATION

I, Shri Lienkhawthang Varte S/o Shri H.V. Varte, aged about 47 years, working as Rehabilitation officer, VRC for Handicapped, Rehabari, Guwahati-8 do hereby verify that the statements made in Paragraph 1 and 2 of the additional statements are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 14th day of June, 2005.

A handwritten signature in black ink, appearing to read "Lienkhawthang Varte".

To ✓

The Asstt. Director (Rehab.),
V.R.C. for Handicapped,
Rehabovic, Guwahati-8.

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Subject: Request for photo-copy of
my Service Book - Reg.

Part of
Asstt. Director
for Handicapped
for m.s.

Sir,
I have the honour to state that
I required photo-copy of my Service
Book for the purpose of my S.D.A.,
for which my entire Service Book
~~photo~~
~~photo~~
is to be produced on
OS the 14th June 2005 (Tuesday)^(P.N.) before the
Court of Central Administrative Tribunal
(C.A.T.), Guwahati Bench, Guwahati. I
will bear the expenses of photo stat copies.
The same may kindly be supplied
to me prior to the above court date, so
as to enable me to produced the same
on the above date & time.

Dy. No. 125.

Adm Date: 8/6/05
Dt. 9.6.05
Guwahati

Yours faithfully,

(L. K. Varste)

8/6/05
(L. K. Varste)
R.C.
VRC for Handicapped,
Guwahati

Certified to be true copy
Advocate
14.06.05

5032

-5-

Headquarters
Chief Engineer
Shillong Zone
SE Falls
Shillong - 11

30

Jan 2004

~~Col. JK Satpathy
CWE, Shillong
HQ 137 Works Engrs
C/O 99 APO
Finance Dept
Col SK Pathak
CWE Tezpur~~

77551/90/Policy/SDA/ 57 /E1 (Legal)

Col JK Satpathy
CWE, Shillong
HQ 137 Works Engrs
C/O 99 APO
Finance Dept
Col SK Pathak
CWE Tezpur

Shri GC Jain, SE
CWE Dinjan

Shri RK Pandey, SE
CWE Shillong

PAYMENT OF SDA TO MES EMPLOYEES

1. Reference is made to the following letters :-

(a) Dte Gen of Pers/EIC (Legal), E-in-C's Branch letter No 90237/7521/EIC (Legal-C) dt 04 Jun 2003 and even No dt 03 Oct 03 (copies att),

(b) This HQ letter No 77551/90/Policy/SDA/07/E1 (Legal) dt 01 Jul 2003, 77551/90/Policy/SDA/09/E1 (Legal) dt 11 Jul 2003, 77551/90/ Policy/SDA/13/E1 (Legal) dt 29 Jul 2003.

2. SDA is admissible to the Central Govt employees who have All India Transfer Liability on their posting to NE Region from outside the region. No restriction is made to the effect that the residents of NE region shall not be entitled to SDA when they fulfill the criteria of All India Transfer Liability and are transferred/posted in NE Region from outside the region.

Conld...2/

*certified to be true by
Savitri
Advocate*

3. The following categories of MES employees are covered by the criteria of all India Transfer Liability and hence considered for grant of SDA on their posting to NE Region from outside the region:-

"All Gp 'A', 'B' officers; Erstwhile Supdt ~~B/R~~ Gde I (now redesignated JE), Supvr B/S Gde I, D'Man Gde I, Steno Gde I and Asstts"

4. All other categories, such as Supvr B/S II, SK I & II, Steno Gde II & III, UDC, LDC, D'man Gde II, Peon, Chowkidar, all industrial staff are not covered for grant of SDA and hence as per Para 6 (ii) of Govt of India, Ministry of Finance, Department of Expenditure OM NO 11(5)/97-EII(B) dt 29 May 02 (copy att), the amount paid on account of SDA to ineligible persons after 05 Oct 2001 is to be recovered.

5. In view of above, you are requested to take all corrective actions stipulated above. Non-adherence of above policy and for any financial irregularities/ overpayments, your office will be held responsible.

6. Please also intimate details of ineligible pers who were paid SDA after 05 Oct 2001 alongwith financial effect. In this connection please refer our letter No. 7551/90/Policy/SDA/52/EI (Legal) dt 13.Jan.2004.

(ML Das)
Dy Dir (B/S)
for Chief Engineer

Copy to:

All GEs/GE (I) & AGE (I) File No. 10247

AAO Shillong - alongwith above policy letters.

Internal

E7 Sec - for information and necessary action please.

gbcn

ovrly

16.6.05

03.7.05

17.7.05

18.7.05

*Certified to be true copy
S. K. Advocate
14.6.05*