

01/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No... 155/2003.....

R.A/C.P No.....

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

1. Orders Sheet O.A-155/03 Pg..... 1 to 4
2. Judgment/Order dtd. 25/08/04 Pg..... No. 8008104 Withdrawn
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 155/03 Pg..... 1 to 25
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... Pg..... to.....
7. W.S. Rebonneted by the Respondents Pg..... 1 to 9
8. Rejoinder..... Pg..... to.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 155/03

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Applicants: - Rabi Ch. Dey Forz

Respondents: - W.O. I. Govt

Advocate for the Applicants: - A. Ahmed
Mr. A. Deb Ray

Advocate for the Respondents: Mr. C. S. C. C.

Notes of the Registry	Date	Order of the Tribunal
This application is in form but not in time Condonation Petition is filed / not filed C. F. for Rs. 50.00 deposited vide IPO/B/ No 8648653 Dated..... 30.6.03	7.7.2003	Heard Mr. A. Ahmed, learned counsel for the applicant. Issue notice on the respondents to show cause as to why the application shall not be admitted. Also issue notice to show cause as to why interim order as prayed for shall not be granted, returnable by four weeks. List the case on 8.8.2003 for admission. Till the returnable date, the respondents are directed not to make any further recovery.
Steps taken alongwith enclws.		
Pl. copy to and dated 7/7/03 N.S. 8/7/03	29.8.03	Heard learned counsel for the parties. Issue notice on the respondents to show cause as to why the application shall not be admitted. Returnable by four weeks. Mr. S. Parma learned counsel for the respondents accepts notice on behalf of the respondents. List on 26.9.03 for
Notice prepared & sent to D/s for ms. the respondent No 1 to 4 by Regd. A/c. D/No 1507 to 1510 D/d - 16/7/03		Vice-Chairman Vice-Chairman

8.8.2003 Put up again on 28.8.2003
to enable the respondents to file
written statement. Interim order
dated 7.7.2003 shall continue.

⑤ Service report are
still awaited.

*My
F.8.03*

No. Written statement
has been filed

mb

29.8.03

Put up again on 19.9.03 for
orders. Interim order dated 7.7.2003
shall continue.

Vice-Chairman

*My
28.8.03*

order dtd. 29/8/03
communicated to the parties
(contd.)

lm

19.9.03

Put up again on 26.9.03.
for orders. Interim order dated
7.7.03 shall continue.

Vice-Chairman

Pl. comply order dated
19/9/03.

*WS
19/9/03*

lm

26.9.2003 List again on 31.10.2003 for
admission. Interim order dated 7.7.2003
shall continue.

*I.C. Prakashan
Member*

*Received copy of
order further
Respondent
22.9.03*

mb

Order dated 19/9/03
Sent to the D/S Section
for issuing the same
to the learned Advocate
both the parties.

*CC
22/9/03*

Pl. comply the order
dated 26/9/03

mb

Order dated 26/9/03
Sent to the D/S for issuing
the same to the learned
Advocate of both the parties.

*WS
26/9/03*

Vice-Chairman

Written statement has been filed.
The case may now be listed for hearing
on 12.12.2003. The applicant may file
rejoinder, if any, within two weeks
from today.

Vice-Chairman

③
O.A.155/03

Office Note	Date	Tribunal's Order
3.11.03 W.S. submitted by the Respondents.	17.2.2004	On the plea made by Mr.A.Ahmed, learned counsel for the applicant, the O.A. is adjourned and listed on 9.3.2004 for hearing. K.R. Palshetkar Member
	09.03.2004	On the plea of counsel for the applicant, the case is adjourned. List on 12.4.2004 for hearing. K.R. Palshetkar Member (A)
	18.5.2004	Pass over. K.R. Palshetkar Member (A)
28-7-04 Case is ready for hearing	19.5.04	Mr.A.Deb Roy, Sr.C.G.S.C. is on leave. List again for hearing on 25.6.04. K.R. Palshetkar Member (A)
	29.7.2004	List on 2.8.2004 for hearing K.R. Palshetkar Member (A)
30-7-04 Case is ready for hearing	2.8.2004	On the plea of counsel for the applicant, list on 9.8.2004 for hearing. K.R. Palshetkar Member (A)
6-8-04 Case is ready for hearing	mb	

Office Note	Date	Tribunal's Order
	25.8.2004	Present: Hon'ble Mr. D. C. Verma, Vice-Chairman. Hon'ble Mr. K. V. Prahadan, Administrative Member. Since the decision in this O.A. may involve leads to substantial financial repercussion benefits , the matter may be placed before the Division Bench. Accordingly this matter be listed on 25.8.2004 before the Division Bench for hearing.
<u>24.8.04</u> Case 5 ready for hearing	25.8.04	Present: Hon'ble Mr. D. C. Verma, Vice-Chairman. Hon'ble Mr. K. V. Prahadan, Administrative Member. Heard learned counsel for both sides. Mr. A. Ahmed the learned counsel for the applicant stated that he does not want to press the application. Accordingly the application is withdrawn as not pressed.
<u>31.8.04</u> Copy of the has been sent to the Office for issuing the same to the Advocates for the parties.	1m	KV Prahadan Member
		Vice-Chairman

केन्द्रीय अधिकारिक अधिकारी
Central Administrative Tribunal

7 JUN 2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ^{गुवाहाटी बैच}
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 155 OF 2003.

B E T W E E N

Sri Rabi Chandra Dey & Others

-Applicants

-Versus-

The Union of India & Others

-Respondents

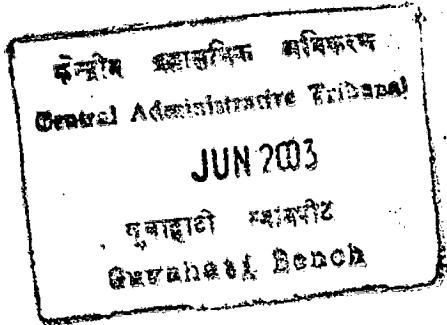
I N D E X

Sl. No.	Particulars	Page No.
A)	Application	1 to 16
B)	Verification	17
1)	Annexure-A	18 to 19
2)	Annexure-B	20 to 22
3)	Annexure-C	23
4)	Annexure-D	24
5)	Annexure-E	25

Filed by

Advocate.

(Abdul AHMED)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 155 OF 2003.

B E T W E E N

Sri Rabi Chandra Dey & Others

-Applicants

-Versus-

The Union of India &

Others

-Respondents

LIST OF DATES AND SYNOPSIS

Annexure-A is the Photocopy of extract
of Office Memorandum No.
20014/2/83/E-IV dated 14th
December 1983.

Annexure-B is the Photocopy of Office
Memorandum dated 22nd July
1998.

Annexure-C is the Photocopy of Letter No. 6D/PR/Audit/RAC/424 dated 19th May 2003.

Annexure-D is the Photocopy of Preliminary Slip No. 04 dated 17-04-2003.

Annexure-E is the Photocopy of Judgment and Order dated 08-11-02 passed in OA. No. 263 of 2002 by the Hon'ble CAT, Guwahati.

This Original application is made against the impugned order No. 6D/PR/Audit/RAC/424 dated 19-05-2003 and Preliminary No. 04 dated 17-04-2003. (At Annexures-C & D) issued by the Respondents for recovery of Special Duty Allowance from the instant applicant from 06-10-2001 to April 2003. The instant applicants seek a direction from this Hon'ble Tribunal for quashing and set aside the impugned recovery of Special Duty Allowance, which had been by the Respondents by themselves after being satisfied with the criteria for eligibility of Special Duty Allowance to the applicants?

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GAUHATI BENCH AT GAUHATI.

Filed by
Shri Rabi Chandra Dey
Applicant No:
through [S.1] (A.S. - A.H.M.E.D)
Advocate

(AN APPLICATION UNDER SECTION 19 OF THE
CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. OF 2003.

B E T W E E N

Sl.No.	P.N. No.	Name	Designation
1)	6149	Rabi Chandra Dey,	UDC
2)	1474	S.K. Biswas	Supdt.
3)	1473	A. Deb	Ex. Supdt.
4)	2475	E.C. Borah	Sec. I/C
5)	6182	Pradip Baruah	UDC
6)	6148	P.K. Prasad	LDC
7)	8312	Mahendra Prasad	-do-
8)	5212	P.N. Sing	-do-
9)	5215	Shiv Narayan Mahto	-do-
10)	2645	Sunder Rai	Driver
11)	4514	Ram Anuj Rai	Mazdor
12)	4390	Biswarup Ray	W/Man
13)	5213	L.M. Sharma	-do-
14)	5320	Laxman Rai	-do-
15)	5218	K.B. Chhatri	-do-
16)	5329	Viday Rai	-do-
17)	5551	Kamaluddin	-do-
18)	4575	Prabhu Rai	-do-
19)	6102	Dadhi Ram	-do-

Rabi

Sl.No.	P.N. No.	Name	Designation
20]	4314	Kedar Nath	Mazdoor
21]	5321	Badri Nath	-do-
22]	4033	Premchand Shah	-do-
23]	4299	U.N. Singh	-do-
24]	5270	D.S. Sonar	-do-
25]	3311	Shrikrishna Rai	H/W/Man
26]	12270	Ramchander Shah	Tea Maker
27]	12271	Ramprasad	W/boy
28]	5216	Narsingh Behra	Mazdoor
29]	5564	Bishnu Lal Chetry	W/Boy
30]	3167	Mohiuddin Khan	Peon.

Applicants

All the applicants named above are working under the Area Manager Canteen Store Department, Army Supply Depot Road, P.O. Dimapur, Nagaland.

-AND-

- 1] The Union of India represented by the Secretary to the Government of India, Ministry of Defence, New Delhi-1.

Ree.

2) The General Manager,
Canteen Store Department,
'ADELPHI' 119 Maharshi Karve
Road, Mumbai-400020.

3) The Regional Manager (East),
Canteen Store Department,
P.O.- Satgaon, Narengi,
Guwahati-781027.

4) Area Manager,
Canteen Store Department,
Area Depot,
Army Supply Depot Road,
P.O.- Dimapur, Nagaland.
-Respondents.

DETAILS OF THE APPLICATION:

1) PARTICULARS OF THE ORDER AGAINST
WHICH THE APPLICATION IS MADE:

The application is made against the order No. 6D/PR/Audit/RAC/424 dtd.19-05-2003 and preliminary slip No. 04 dated 17-04-2003(At Annexures- C & D) issued by the Respondents for recovery of Special Duty Allowance which has earlier been paid to the applicants by the Respondents.

Ree.

2) JURISDICTION OF THE TRIBUNAL:

The applicant declares that the Subject matter of the instant application is within the jurisdiction of this Hon'ble.

3) LIMITATION:

The applicant further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4) FACTS OF THE CASE:

4.1] That all the applicants are citizen of India and as such, they are entitled to all the rights and privileges guaranteed under the Constitution of India.

4.2] That your applicants beg to state that they are working under the office of the Respondent No.4 as U.D.C., L.D.C., Superintendent, Driver, Mazdoor, W/Man, Tea Maker, Peon etc. they are all Group C & D Employees. They are working as defence Civilian at Dimapur, Nagaland under the Ministry of Defence.

Reed

4.3] That your applicants beg to state that as the grievances and reliefs prayed in this application are common, therefore, they pray for grant of permission under Section 4 (5) (a) of the Central Administrative Tribunal (Procedure) rules, 1987 to move this application jointly.

4.4] That the applicants beg to state that the Government of India, Ministry of Finance, Department of Expenditure granted certain improvements and facilities to the Central Government Civilian Employees of the Central Government serving in the States and Union Territories of North Eastern Region vide Office Memorandum No. 20014/3/83-IV dated 14-12-1983. In clause II of the said office memorandum Special (Duty) Allowance was granted to Central Government Civilian Employees, who have all India Transfer Liability at the rate of Rs. 25% of the basic pay subject to ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. The relevant portion of the office Memorandum dated 14.12.1983 is quoted below:

(iii) Special (Duty) Allowance:

Central Government Civilian employee who have all India Transfer Liability will be granted a

Daval

Special (Duty) Allowance at the rate of Rs. 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North East Region. Such of these employees who are exempted from payment of Income Tax, will however not be eligible for the Special (Duty) Allowance, Special (Duty) Allowance will be in addition to any Special Pay and for allowances already being drawn subject to the condition that the total of such Special (Duty) Allowance plus Special Deputation (Duty) Allowance will not exceed Rs. 400/- per month. Special Allowance like Special Compensatory (Remote) Locality Allowance, Construction Allowance and Project Allowance will be drawn separately."

The Govt. of India, Ministry of Finance, Department of Expenditure vide its Office Memorandum No. F. No. 11(2)/97-E-II(B) dated 22-07-1998 continued the said facilities as per recommendation of the Fifth Central Pay Commission.

An Extract of Office Memorandum dated 14-12-1983 is annexed hereto and marked as Annexure- A.

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Annexure-B is the photocopy of Office Memorandum No. F. No. 11(2)/97-E-II(B) dated 22-07-1998.

4.6] That the present applicants beg to state that the applicants are saddled with All India Transfer Liability in terms of their offer of appointment and with this said liabilities they have received the offer of appointment and joined the service of the respondents. Be it stated that, most of the applicants on numbers of occasions are being transferred outside of the North Eastern Region. Therefore, the applicants are in practice saddled with all India Transfer Liability and in terms of Office Memorandum dated 14-12-1983 they are legally entitled for grant of Special (Duty) Allowances.

4.7] That your applicants further beg to state that the payment of Special (Duty) Allowance has been granted to the applicants by the Respondents after being satisfied. All the applicants are legally entitled and eligible for grant of Special (Duty) Allowance in terms of Office Memorandum dated 14-12-1983, 01-12-1988 and 22-07-1998 and accordingly payment of

Reet

Special (Duty) Allowance has been continued and paid to the applicants.

4.8] That your applicant begs to state that the Respondents have paid the Special Duty Allowance to the applicants with reference to the said Office Memorandums. Accordingly, they are enjoying the Special Duty Allowance till the month of May 2003 without any interruption by the Respondents.

4.9] That your applicants beg to state that the Respondents vide their Order No. 6D/PR/audit/ RAC/424 Dated 19-05-2003 and Preliminary Slip No. 04 dated 17-05-2003 Order to recover the Special Duty Allowance from the applicants with effect from 06-10-2001 to April 2003 which have already being paid to the applicants as Special Duty Allowance by the Respondents.

Annexure-C is the photocopy of order Order No. 6D/PR/audit/ RAC/424 Dated 19-05-2003.

Annexure-D is the Photocopy of Preliminary Slip No. 04 dated 17-05-2003.

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4.10] That your applicants beg to state that the Respondents by their own had paid the Special Duty Allowance to the Applicants and the Applicants have not taken Special Duty Allowance by back door policy or by fraudulently from the Respondents. The Respondents have paid the said allowances without any interruption to the applicants till April 2003. As such, the Applicants cannot be held any responsibility for any act of the Respondents. As such, the act or omission on the part of the Respondents are arbitrary regarding recovery of payment of Special Duty Allowance. As such, the Hon'ble Tribunal may be pleased to direct the Respondents not to make any recovery of any amount of the Special (Duty) Allowance, which has been paid by the Respondents to the applicants earlier.

4.11] That your applicants beg to state that in other similar case filed before the Hon'ble Central Administrative Tribunal, Guwahati Bench by the CPWD Engineering and Drawing Staff Association in O.A. No. 263 of 2002. It was held that the Union of India is not entitled for recovery of any amount of Special Duty Allowance from the applicants. Moreover, the Hon'ble courts held that the recovery order can

Reu's

have only prospective effect so in the instant case the Respondents cannot recover the said Special Duty Allowance prior to their recovery order dated 17-07-2002.

Annexure-E is the photocopy of judgment and order passed by the Hon'ble Central Administrative Tribunal in O.A. No. 263 of 2002.

4.12] That your applicant begs to state that the Respondents have already taken steps for recovery of Special Duty Allowance form the applicants. Hence, it is now necessary for the applicants to get an interim order from this Hon'ble Central Administrative Tribunal for protection of their rights.

4.13] That the applicant begs to state that under the facts and circumstances mentioned above, finding no other alternative, the applicants have approached this Hon'ble Tribunal for protection of their rights and interest through this Original application. This Hon'ble Tribunal may be pleased to stay the impugned recovery order.

Reet

4.14) That your applicants submit that they have got reason to believe that the Respondents are resorting the colorable exercise of power.

4.15) That your applicants submit that the action of the Respondents are mala fide, illegal and with a motive behind.

4.16) That your applicants submit that the action of the Respondents is highly illegal, improper, whimsical and also against the policy adopted by the Government of India.

4.17) That in view of the facts and circumstances it is a fit case for interference by the Hon'ble Tribunal to protect the interest of the applicants.

4.18) That this application is filed bona fide and for the interest of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1] For that, due to the above reasons narrated in detail the action of the Respondents is in *prima facie* illegal, mala fide, arbitrary and without jurisdiction.

Rudi

5.2] For that, the applicants satisfied the criterion for grant of Special (Duty) Allowance laid down in Office Memorandum dated 14-12-1983 and 01-12-1988 and 22-07-2002 issued by the Government of India, Ministry of Finance, therefore, the recovery of the Special (Duty) Allowance in terms of impugned Office orders NO. 6D/PR/Audit/RAC/424 dated 19-05-2003 and Preliminary Slip No. 04 dated 17-05-2003 at Annexures-C & D are violative of the provisions of law and is liable to be set aside and quashed.

5.3] For that the impugned office orders NO. 6D/PR/Audit/RAC/424 dated 19-05-2003 and Preliminary Slip No. 04 dated 17-05-2003 at Annexures-C & D is contrary to the decision of the Hon'ble Central Administrative Tribunal Guwahati Bench Guwahati.

5.4] For that, the payment of Special (Duty) Allowance was not obtained by the applicants by any fraudulent means but the Respondents after finding them eligible, paid the Special (Duty) Allowance to the applicants.

5.5] For that the order issued in terms of impugned Office orders NO. 6D/PR/Audit/RAC/424

Rewat

dated 19-05-2003 and Preliminary Slip No. 04 dated 17-05-2003 at Annexures-C & D are without following any established procedure of principle of natural justice.

5.6] For that, the Respondents have violated the Article 14, 16 and 21 of the Constitution of India.

5.7] For that, the action of the respondents is arbitrary, mala-fide and discriminatory with an ill motive.

5.8] For that, in any view of the matter the action of the respondents are not sustainable in the eye of law and as well as fact.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6) DETAIL REMEDY EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this

Rouli

Hon'ble Court under Section 19 of the Administrative Tribunal Act, 1985.

7) MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicant further declares that he have not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority or any other bench of this Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8) RELIEF PRAYED FOR:

Under the facts and circumstances stated above your Lordships may be pleased to admit this petition, call for the records of the case, issue notice to the Respondents as to why the relief and reliefs sought for by the applicant may not be granted and after hearing the parties and the cause or causes that may be shown your

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Lordships may be please to direct the Respondents to give the following reliefs:

- 8.1 That the Hon'ble Tribunal may be pleased to direct the Respondents to quashed and set aside the impugned Office orders NO. 6D/PR/Audit/RAC/424 dated 19-05-2003 and Preliminary Slip No. 04 dated 17-05-2003 at Annexures-C & D.
- 8.2 To pass any other order or orders as deem fit and proper by the Hon'ble Tribunal.
- 8.3 Cost of the application.

9) INTERIM ORDER PRAYED FOR:

The Hon'ble Tribunal may be pleased to stay the impugned Office orders NO. 6D/PR/Audit/RAC/424 dated 19-05-2003 and Preliminary Slip No. 04 dated 17-05-2003 at Annexure-C & D.



10) APPLICATION IS FILED THROUGH ADVOCATE.

11) PARTICULARS OF I.P.O./~~BANK~~ DRAFT

I.P.O.No./~~Bank~~ Draft: 8G 488655

Date of Issue : 30.06.2003,

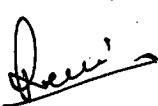
Issued from : Guwahati,

Payable at : Guwahati

12) LIST OF ENCLOSURES:

As stated in index.

-Verification.



Verification

I, Sri Rabi Chandra Dey, S/o Sri Birendra Kumar Dey, P.N. No. 8149, working as U.D.C. in the Office of the Area Manager, Canteen Store Department, Area Depot, Army Supply Depot, P.O.- Dimepur, Nagaland Applicant No.1 of the instant O.A. and I am authorized to signed this verification on behalf of the other applicants. I do hereby verify the statements made in accompanying application and in paragraphs 4.1 to 4.3, 4.6 to 4.8, 4.10, 4.12, 4.13 are true to my knowledge and those made in paragraphs 4.4, 4.9, 4.11, —

— are true to my information being matter of records and which I believe to be true and those made in paragraph 5. are true to my legal advise and I have not suppressed any material facts.

I signed this verification on this the 27 th day June of 2003 at Guwahati.

Rabi chandra dey

DECLARANT

No. 20014/2/83/E.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 States of Assam, Meghalaya, Manipur, Nagaland and Mizoram has been engrossing the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and Public Administrative Reforms, to review the existing allowances & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows:-

I) Tenure of posting/deputation.

II) Flight-allow for Central deputation/training abroad and special mention in confidential Record.

III) Special (Duty) Allowance

Central Government civilian employees who have All India transfer liability will be granted a special (Duty) Allowance at the rate of 25 percent of basic pay subject to any 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

Attested
by
Advocate

Grantd..

be eligible for this special (Duty) Allowance. ~~will be~~
Special (Duty) Allowance will be in addition to any
special pay and pre Deputation (Duty) Allowance already
being drawn subject to the condition that the total of
such Special (Duty) Allowance plus special pay/deputation
(Duty) Allowance will not exceed Rs. 400/- p.m. Special
Allowance like Special Compensatory (Remote Locality)
Allowance, Construction Allowance and Project Allowance
will be drawn separately.

XXXXXX

XXXXXX

XXXXXX

XXXXXX

XXXXXX

80/- S.C. RAJULIK
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Attested
by
Abdul

Contd. —

- 20 -

New Delhi, Dated July 22, 1990.

OFFICE MEMORANDUM

Subject: Allowances and Special Facilities for Civilian Employees of the Central Government serving in the States and Union Territories of the North-Eastern Region and in the Andaman & Nicobar and Lakshadweep Groups of Islands -- Recommendations of the Fifth Central Pay Commission.

With a view to attracting and retaining competent officers for service in the North-Eastern Region, comprising the territories of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, orders were issued in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 extending certain allowances and other facilities to the Civilian Central Government employees serving in this region. In terms of paragraph 2 thereof, these orders other than those contained in paragraph 1(iv) ibid, were also to apply mutatis mutandis to the Civilian Central Government employees posted to the Andaman & Nicobar Islands. These were further extended to the Central Government employees posted to the Lakshadweep Islands in this Ministry's O.M. of even number dated March 30, 1984. The allowances and facilities were further liberalised in this Ministry's O.M. No. 20014/16/86/E.IV/E.II(B) dated December 1, 1988 and were also extended to the Central Government employees posted to the North-Eastern Council when stationed in the North-Eastern Region.

2. The Fifth Central Pay Commission have made certain recommendations suggesting further improvements in the allowances and facilities admissible to the Central Government employees, including Officers of the All India Services, posted in the North-Eastern Region. They have further recommended that these may also be extended to the Central Government employees, including Officers of the All India Services, posted in Sikkim. The recommendations of the Commission have been considered by the Government and the President is now pleased to decide as follows :

(I) **Tenure of Posting/Deputation**

The provisions in regard to tenure of posting/deputation contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read with O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(II) **Weightage for Central Deputations/Training Abroad and Special Mention in Confidential Records**

The provisions contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read with O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(III) **Special [Duty] Allowance**

Central Government Civilian employees having an "All India Transfer Liability" and posted to the specified Territories in the North-Eastern Region shall be granted the Special [Duty] Allowance at the rate of 12.5 per cent of their basic pay as prescribed in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, but without any ceiling on its quantum. In other words, the ceiling of Rs 1,000 per month currently in force shall no longer be applicable and the condition that the aggregate of the Special [Duty] Allowance plus Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs 1,000 per month shall also be dispensed with. Other terms and conditions governing the grant of this Allowance shall, however, continue to be applicable.

In terms of the orders contained in this Ministry's O.M. No. 20022/2/88-E.II(B) dated May 24, 1989, Central Government Civilian employees having an "All India Transfer Liability" and posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands are presently entitled to an Island Special Allowance at varying rates in lieu of the Special [Duty] Allowance admissible in the North-Eastern Region. This Allowance shall continue to be admissible to the specified category of Central Government employees at the same rates as prescribed for the different specified areas in the O.M. dated May 24, 1989 but without any ceiling on its quantum. This Allowance shall also henceforth be termed as Island Special (Duty) Allowance. Separate orders in regard to this Allowance have been issued in this Ministry's O.M. No. 12(1)/98-E.II(B) dated July 17, 1998.

Attention is also invited in this connection to the clarificatory orders contained in this Ministry's O.M. No. 11(3)/95-E.II(B) dated January 12, 1996, which shall continue to be applicable not only in respect of the Central Government employees posted to serve in the North-Eastern Region but also to those posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands.

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(iv) Special Compensatory Allowances

Orders in regard to revision of the rates of various Special Compensatory Allowances, such as Remote Locality Allowance, Bad Climate Allowance, Tribal Area Allowance, Composite Hill Compensatory Allowance, etc., which are location-specific, have either been separately issued or are under issue based on the Government decisions on the recommendations of the Fifth Central Pay Commission relating to these allowances. These orders shall apply to the eligible Central Government employees posted in the specified localities in the North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands, depending on the area(s) of their posting and subject to the observance of the terms and conditions specified therein. Such of those employees who are entitled to the Special [Duty] Allowance or the Island [Special Duty] Allowance shall also be entitled, in addition, to the Special Compensatory Allowance(s) as admissible to them in terms of these separate orders.

Central Government employees entitled to Special Compensatory Allowances, separate orders in respect of which are yet to be issued, will continue to draw such allowances at the existing rates with reference to the 'notional' pay which they would have drawn in the applicable pre-revised scales of pay but for the introduction of the corresponding revised scales till the revised orders are issued on the basis of the recommendations of the Fifth Central Pay Commission and the Government decisions thereon.

(v) Travelling Allowance on First Appointment

The existing concessions as provided in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 and further liberalised in O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(vi) Travelling Allowance for Journeys on Transfer; Road Mileage for Transportation of Personal Effects on Transfer; Joining Time with Leave

The existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 shall continue to be applicable.

(vii) Leave Travel Concession

In terms of the existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, the following options are available to a government servant who leaves his family behind at the old headquarters or another selected place of residence, and who has not availed of transfer travelling allowance for the family :

(a) the government servant can avail of the leave travel concession for journey to the Home Town once in a block period of two years under the normal Leave Travel Concession Rules;

OR

(b) in lieu thereof, the government servant can avail of the facility for himself/herself to travel once a year from the station of posting to the Home Town or the place where the family is residing and for the family [restricted only to the spouse and two dependent children of age up to 18 years in respect of sons and up to 24 years in respect of daughters] also to travel once a year to visit the government servant at the station of posting.

These special provisions shall continue to be applicable.

In addition, Central Government employees and their families posted in these territories shall be entitled to avail of the Leave Travel Concession, in emergencies, on two additional occasions during their entire service career. This shall be termed as "Emergency Passage Concession" and is intended to enable the Central Government employees and/or their families [spouse and two dependent children] to travel either to the home town or the station of posting in an emergency. This shall be over and above the normal entitlements of the employees in terms of the O.M. dated December 14, 1983, and the two additional passages under the Emergency Passage Concession shall be availed of by the entitled mode and class of travel as admissible under the normal Leave Travel Concession Rules.

Further, in modification of the orders contained in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, Officers drawing pay of Rs 13,500 and above and their families, i.e. spouse and two dependent children [up to 18 years in respect of sons and up to 24 years in respect of daughters] will be permitted to travel by air on Leave Travel Concession between Agartala/Aizawl/Imphal/Lilabari/Silchar in the North East and Calcutta and vice versa; between Port Blair in the Andaman & Nicobar Islands and Calcutta/Madras and vice versa; and between Kavaratti in the Lakshadweep Islands and Cochin and vice versa.

*Attested
S. S. S.*

20-22-
90

(viii) Children Education Allowance and Hostel Subsidy

The existing provisions as contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 shall continue to be applicable. The rates of Children Education Allowance and Hostel Subsidy having been revised in the Department of Personnel & Training O.M. No. 21017/1/97-Estt.(Allowances) dated June 12, 1998, the Allowance and Subsidy shall be payable at the revised monthly rates of Rs 100 and Rs 300 respectively per child.

(ix) Retention of Government Accommodation at the Last Station of Posting

The facility of retention of Government accommodation at the last station of posting by the Central Government employees posted to the specified territories and whose families continue to stay at that station is available in terms of the orders contained in the erstwhile Ministry of Works & Housing O.M. No. 12035/24/77-Vol. VI dated February 12, 1984, as amended from time to time. This facility shall continue to be available to the eligible Central Government employees posted in the North-Eastern Region, Andaman & Nicobar Islands and Lakshadweep Islands. In partial modification of these orders, Licence Fee for the accommodation so retained will be recoverable at the applicable normal rates in cases where the accommodation is below the type to which the employee is entitled to and at one and a half times the applicable normal rates in cases where the entitled type of accommodation has been retained. The facility of retention of Government accommodation at the last station of posting will also be admissible for a period of three years beyond the normal permissible period for retention of Government accommodation prescribed in the Rules.

(x) House Rent Allowance for Employees In Occupation of Hired Private Accommodation

The orders contained in this Ministry's O.M. No. 11016/1/E.II(B)/84 dated March 29, 1984, and extended in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, shall continue to be applicable.

(xi) Retention of Telephone Facility at the Last Station of Posting

As provided in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988, Central Government employees who are eligible for residential telephones may be permitted to retain their residential telephone at their last station of posting, provided the rental and all other charges are paid by the concerned employees themselves.

(xii) Medical Facilities

Families and the eligible dependants of Central Government employees who stay behind at the previous stations of posting on the employees being posted to the specified territories shall continue to be eligible to avail of CGHS facilities at stations where such facilities are available. Detailed orders in this regard will be issued by the Ministry of Health & Family Welfare.

3. The President is also pleased to decide that these orders, in so far as they relate to the Central Government employees posted in the North-Eastern Region, shall also be applicable *mutatis mutandis* to the Civilian Central Government employees, including Officers of the All India Services, posted to Sikkim.

4. These orders will take effect from August 1, 1997.

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

6. Hindi version will follow.

N. Sunder Rajan

(N.SUNDER RAJAN)
Joint Secretary to the Government of India

To

All Ministries/Department of the Government of India [As per standard Distribution List]

Copy [with usual number of spare copies] forwarded to C&AG, UPSC, etc. [As per standard Endorsement List]

Copy also forwarded to Chief Secretary, Andaman & Nicobar Islands and Administrator, Lakshadweep.

*Attested
S. A. Anand*

6D/PR/Audit/RAC/EM

WOK
6/5/6

19 MAY 2003.

Resident Audit Cell,
RCA, Mumbai.

Sub : IRREGULAR PAYMENT OF SDA TO
INELIGIBLE EMPLOYEES

Reference your letter dtd. 17.4.2003 and objection
No. IV letter No. 127/B-6/CTA/CSD/99 dtd. 11.6.1999.

2. As desired, we have stopped the payment of SDA of
non-entitled employees from May onwards and arrears w.e.f.
6.10.2001 to April 2003 will recovere from ~~xxxxxx~~ them and
the same will be intimated in due course.

3. Therefore, you are requested to verify our records
and settle audit objection accordingly.

D.B. KADAM
A.M.O. (PAY ROLL)
for D.O.M. (F&A).

cc : The Manager
C.S.D. Depot
DIMAPUR/MASIMPUR/NARANGI/
~~xxxxxx~~ MISAMARI/PORT BLAIR ; for information.

cc : Concerned staff (Pay Roll Section); Copy of P.S. No.
is attached for necessary action.

Attested
J.J.
Deputy

RESIDENT AUDIT CELL, CSD (IIO), MUMBAI

PRELIMINARY SLIP NO. 04 Dated: 12/04/2003

Sub : Irregular payment of SDA to ineligible employees.

As per Government of India, Ministry of Finance, Department of Expenditure, New Delhi, O. M. No. 11(3)/95-E II(B) dated 12th January, 1996, Central Government civilian employees who have an all India transfer liability are entitled to grant of SDA on being posted to any station in the North Eastern Region from the outside the region and SDA would not be merely payable because of the clause in the appointment order relating to All India Transfer Liability. Thus SDA would not be admissible to employees locally recruited/directly recruited to NE region. Payment of SDA to such ineligible persons was objected to during the earlier audit of Pay Section in 1999. Reply to the above observation is still awaited.

In the meanwhile, based on a recent appeal by the affected persons, GOI Vide F.No.11(5)/97-E II (B) dated 29th May 2002, waived the payment of SDA to ineligible persons upto 5/10/2001 and ordered that payment made to ineligible persons thereafter i.e. after 5/10/2001 would be recovered. These orders are also to be applied for regulating the claims of Island Special Duty Allowance. However, it was noticed during the pay bills / master card of CSD depot, Dimapur, that SDA were still being paid to locally/directly recruited employees. A list of few such cases noticed in respect of CSD Depot Dimapur are enumerated in the statement enclosed.

The reason for payment of SDA to the ineligible employees in contravention of the Govt. order needs clarification. A review of all such cases may be carried out in respect of other NE depots and Port Blair Depot and payment of SDA to ineligible employees stopped with immediate effect. Recovery of the SDA paid from 06/10/2001 to till date may also be effected and total amount of recovery, intimated to audit.

ASSTT. AUDIT OFFICER
DEFENCE SERVICES

Encl.: As above.

To,
The General Manager
C. S. D. (IIO),
MUMBAI

For necessary action & early reply please.

Attested
J. V. Advani

25

ORDER SHEET

ANNEXURE - E

Original Application No. 263 /2002

Misc Petition No. /

Contempt Petition No. /

Review Application No. /

Applicants. C P W D Engineering & Drawing Staff Association

-Vs-

Respondent(s) CPWD Board

Advocate for the Appellant(s) MR. ABDUL AHMED

Advocate for the Respondent(s) Mr. A. Deb Roy, Sr. C.G.S.C.

8.11.02

Heard Mr. A. Ahmed, learned counsel for the applicants and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents and also perused the written statement submitted by the respondents

The issue relates to recovery of Special Duty Allowance. In this application the applicants have assailed the order dated 17.7.2002 issued by the Deputy Director, Office of the Chief Engineer (NEZ), CPWD, Shillong. In view of the settled position the employees of the North Eastern Region are, not entitled the Special Duty Allowance, unless they fulfill the conditions stipulated in the orders issued by the Ministry concerned. The Office memorandum in question dated 17.7.2002 has clarified the said position. However, direction of the authority to recover the SDA paid already is seemingly unsustainable. The persons concerned were already paid SDA by the authority and it will not be appropriate to recover the same retrospectively. Accordingly, respondents are directed not to recover the amount paid already as SDA to the concerned applicants.

Subject to the observation made above, the application is disposed of. No order as to costs.

S/VICE CHAIRMAN

P.T.O.

*Attested
S. Debnath*

Case number	affidavit
Case number	affidavit
2 OCT 2003	
Guwahati Bench	

File No
C.W. 31/10/03
S.C. 455

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI

O.A. NO. 155 OF 2003

Shri R.C. Dey.

..... Applicant.
- Vs -

Union of India & Ors.

..... Respondents.

- And -

In the matter of :

Written Statement submitted by
the respondents.

The humble respondents beg to submit the para-wise
written statement as follows :

1. That with regard to para 4.1, of the application
the respondents beg to offer no comments.

2. That with regard to the statement made in para
4.2, of the application the respondents beg to state that CSD
employees are not Defence Civilian. They are simply Central
Government employees as per Govt. of India letter No. BOCCS/
00866/G/CAN/201/S/D (Mov) dated 9th March, 1981.

3. That with regard to para 4.3, of the applica-
tion the respondents beg to offer no comments.

-2-

4. That with regard to the statement made in para 4.4, of the application the respondents beg to state that the applicants in their application has tried to conceal the material fact. The office memorandum issued by Govt. of India for the North Eastern Region bearing no. 20014/3/83-IV dated 14.12.1983, states that the Central Govt. employees who have All India Transfer Liability will be paid Special Duty Allowance @ 25% of the basic pay subject to ceiling Rs. 400/- per month on posting to any station in the North Eastern Region.

4. Respondent further submits that the Hon'ble Apex Court in its Judgement dated 5.10.2001 in C.A. No. 2000/2001 arising out of SLP No. 5455 of 99 filed by Telecom Department ruled that the criteria for payment of Special Duty Allowance should be as under :-

" The Special Duty Allowance shall be admissible to Central Govt. employees having All India Liability on posting to North Eastern Region (Including Sikkim) from out side the Region".

Consequent to the Hon'ble Supreme Court order, Govt. of India, Ministry of Finance, Department of Expenditure have issued O.M. No. F. No. 11(5)Y97-E-11(B) dated 29 May, 2002.

A copy of letter dated 29th May, 2002 is annexed herewith and marked as Annexure -1.

The opinion on the aforesaid O.M. was published at serial No. 130 of Swamy's News for the month of Sept' 2002 at

-3-

at page 75 & 76 .

Copy of letter is annexed herewith and marked as Annexure - 2.

5. That with regard to the statement made in para 4.6, of the application the respondents beg to state that the All India Transfer Liability in terms of their offer of appointment does not hold good as the orders quoted above specifically clarified that the application of rule for payment of Special Duty Allowance would apply only to those Civilian Employees who are posted to North-Eastern Region from outside N.E. Region.

6. That with regard to the statement made in para 4.7, of the application the respondents beg to state that the applicants cannot take the advantage of payment of SDA wrongly made earlier. The orders on the subject matter clearly stipulates that these orders are applicable only to the Central Government employees posted in the North-Eastern Region from the other Regions but are not applicable to those who are appointed in the North-Eastern Region, as stated in the above quoted order.

7. That with regard to the statement made in para 4.8, of the application the respondents beg to state that the respondents no.2 had paid the Special Duty Allowance to the applicants till May 2003 because certain clarifications were sought from the authorities and subsequently when audit authorities have also raised objection vide preliminary slip no.4 dated 17.4.2003 quoting Govt. of India, Min. of Finance, New Delhi O.M. No.

O.M. NO. 11(3)Y95-F.II(B) dated 12.1.1996 that the applicants are not eligible for payment of SDA merely on the ground that they have in their appointment order All India Liabilities of Transfers. The SDA would not be admissible to employees locally recruited/directly recruited in North-Eastern Region. In the meanwhile many Civilian Employees of the other department moved the Court of Law for stoppage of recovery of the arrears paid to them and subsequently the Govt. of India, vide F. No. 11(5)97-E.II(B) dated 29.5.2002 waived the payment of SDA to eligible person up to 5.10.2001 but ordered to recover that payment after 5.10.2001 and thus the orders were issued by respondent No.2 to recover the amount of SDA paid to ineligible employees w.e.f. 6.10.2001 to April' 2003.

8- That with regard to para 4.9, of the application the respondents beg to offer no comments.

9. That with regard to the statement made in para 4.10, of the application the respondents beg to state that the claim of the applicant to allow payment of Special Duty Allowance does not hold good. It is fact that the respondent No.2 had made the payment of SDA to applicants because the clarification sought from higher authorities was not received, besides it the audit Authorities who have raised the objection in writing that the payment of SDA to ineligible is wrong. The recovery of the arrears is a part of Policy issued by Govt. of India waiving of all the recoveries of wrong payment of SDA to ineligible employees

-5-

till 5.10.2002. But amount paid from 6,10.2001 to April' 2003 are to recovered.

10. That with regard to the statement made in para 4.11, of the application the respondents beg to state that the stand of the applicants to stop ~~now~~ recovery of SDA payment made to ineligible employees prior to 17.7.2002 have no link and bearing in this case.

The orders were passed by the Hon'ble CAT, Guwahati Bench on the original application no. 263/2002 where in the applicants were of CPWD Engineering and Drawing Staff Association, where as in this case all the applicants are administrative staff working under respondent no.2.

11. That with regard to the statement made in para 4.12, of the application the respondents beg to state that merely by recovering the amount wrongly paid to ineligible Civil Employees does not infringe any right of the applicants and thus cannot demand any protection from the Hon'ble CAT.

12. That with regard to the statement made in para 4.13, of the application the respondents beg to state that this Hon'ble Tribunal may be pleased to reject the application of the applicants, since the respondent no.2 have already implemented the Govt. of India order bearing F. No. 11(5)/97-B.II(B) dated 29.5.2002 and waived the payment of SDA made to ineligible employees upto 5.10.2001 and the recovery to ineligible employees is orders from 6.10.2001 to April 2003 which is according to the orders on the subject.

-6-

13. That with regard to the statement made in para 4.14, of the application the respondents beg to state that the applicants allegation of resorting to colourable exercise of power by the respondents in far from the trutu as no arbitrary decision is taken by the respondent no.2 for the recovery of arrears wrongly paid to ineligible applicants w.e.f. 6.10.2001 to April 2003.

14. That with regard to the statement made in para 4.15, of the application the respondents beg to state that the respondents have no malafide/illegal or any bad motive behind the orders as the recovery is just the implementation of the order.

15. That with regard to the statement made in para 4.16, of the application the respondents beg to state that the applicants charges on the respondent of having been highly illegal, improper, whimsical and also against the policy adopted by the Govt. of India are wrong as the action of recovery were suggested by the Govt. of India O.M. No. quoted above.

16. That with regard to the statement made in para 4.17, of the application the respondents beg to state that the Hon'ble Tribunal interference as sought by the applicants will not be desireable in this case as the applicant have already enjoyed the SDA payment wrongly made to them before 5.10.2001.

17. That with regard to the statement made in para 4.18, of the application the respondents beg to state that the intention of the applicants of filing the application in this Hon'ble Tribunal is not bonafide as no right is infringed.

-7-

18. That with regard to the statement made in para 5.1, of the application the respondents beg to state that the reasons narrated by the applicants do not hold good as the applicants have conceded the wrong payment made to them up to 5.10.2001 as per Govt. of India orders.

19. That with regard to the statement made in para 5.2, of the application the respondents beg to state that are already paying SDA to eligible employees posted in North-Eastern Region as per orders on the subject but the applicants are not entitled for the SDA because of the fact that they have wrongly enjoyed the payment of SDA made to them up to 5.10.2001 whereas the applicants were locally employed and they were not entitled for payment of SDA.

20. That with regard to the statement made in para 5.3, of the application the respondents beg to state that the office order no. 6D/PR/Audit/RAC/424 dated 19.5.2003 and preliminary slip no.4 dated 17.5.2003 as made Annexure 'C' and 'D' by the applicants in their original application were issued based on the orders passed by the Govt. of India on the subject and therefore are not contrary to any decision taken in this regard by the Hon'ble CAT, Guwahati Bench.

21. That with regard to the statement made in para 5.4, of the application the respondents beg to state that as stated above the applicants are eligible for payment of Special Duty Allowance.

22. That with regard to the statement made in para 6, of the application the respondents beg to state that as stated in para 5.4, they loose the right to approach in any court of law.

23. That with regard to para 7, of the application, the respondents beg to offer no comments.

24. That with regard to the statement made in para 8, of the application the respondents beg to state that the applicant have already lost their right to seek any relief from all the respondents as their application i.e. based on unreasonable demand and reserve to be rejected.

25. That with regard to the statement made in para 8.1, of the application the respondents beg to state that the office order no. 6D/RR/Audit/RAC/424 dated 19.5.2003 and preliminary slip no.4 dated 17.5.2003 are based on the Govt. of India orders issued on the subject. Hence the request to set aside these orders by the Hon'ble CAT are untenable.

26. That with regard to para 8.2, of the application the respondents beg to state that the application of the applicants in view of the position explained above is fit to be rejected by this Hon'ble CAT and hence needs no further order.

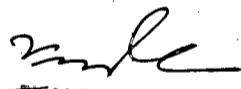
27. That with regard to para 8.3, the respondents beg to state that the request of the applicants towards the cost of application is baseless.

-9-

VERIFICATION

I, Sri Vinod Kumar, presently working as Regional Manager (East), being duly authorised and competent to sign this verification, do hereby solemnly affirm and state that the statement made in paragraphs 1, 2, 3, 5 to 27 are true to my knowledge and belief and those made in paragraphs 4 being matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 29th day of October, 2003.



VINOD KUMAR
Regional Manager (East)
Deponent.