

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. /

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant(s): R. K. Barha

Respondent(s): U.O.I. Govt (S. Duttar Jans)

Advocate for the Applicant(s): Adil Ahmed

Advocate for the Respondent(s): Adv. Case. M. U. Ahmed

Notes of the Registry	Date	Order of the Tribunal
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This Contempt petition

6.10.2005

has been filed by the
counsel for the petitioner
pursuing U/s 17 of the
C.A.T. Act, 1985 praying
for punishment of the
contemners / respondent for
non-compliance of Judgment
and order dated 19.6.05
in O.A 267/03 passed
by this Hon'ble Tribunal.

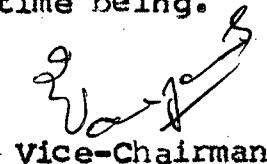
21.11.2005

Laid before the
Hon'ble Court for further
order.

Heard Mr. A. Ahmed, learned counsel
for the applicant. Issue notice to the
respondents.

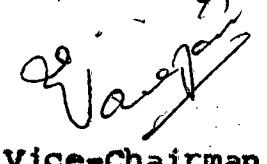
post on 21.11.2005. Personal appear-
ance of the alleged contemners is
dispensed with for the time being.


Member


Vice-Chairman

Mr. A. Ahmed, learned counsel for
the applicant is present. Mr. M. U. Ahmed,
learned Addl. C. G. S. C. ~~fax the xerox~~
submit that he has entered appear-
ance on behalf of the respondents and
that they required some more time to
file written statement. Post on 6.1.06.

bb


Vice-Chairman

Naresh
5.10.05
Section officer.

PAI

Pl. comply order dated

6.10.05. N.T.
7.10.05

06.01.2005 Mr. A. Ahmed, learned counsel for the applicant in C.P. is present. Ms. M.U.Ahmed, learned Addl. C.G.S.C. for the respondents submits that this can be posted for hearing and in the meantime, respondents will file affidavit. Post before the next Division Bench after four weeks.

Notice & order
sent to D/section
for issuing to
resp. Nos. 1 to 4
by regd. A/D post.

11/10/05 - D/NO 1481 to 1484
28/10 - DT 11/10/05.

Member

Vice-Chairman

m/s

18-11-05

Notice issued on 11-10-05.
S/R awaited.

5-1-06

① Service report are still awaited.

② No Reply has been filed.

20.03.2006 Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that the order of this Tribunal has already been complied with and he prays for 10 days time to file the order or affidavit, if necessary. Post on 20.3.2006.

-Vice-Chairman (J) Vice-Chairman (A)

m/s

20.3.2006

When the matter came up for orders Mr. M.U. Ahmed, learned Addl.C.G.S.C. submits that the speaking order has already been passed. Let that order be produced before this Tribunal in the next date i.e. on 6.4.2006.

7-3-06

① Service report awaited.
② No W/s has been filed.

17-3-06

bb

Vice-Chairman

① Service report awaited.
② No Reply has been filed.

2/2

4

5-4-2006

No affidavit has
been filed.

my

6.4.06 Learned counsel for the applicant
seeks time to ascertain whether the
matter has been complied with or not.
Please advise on 10.5.06 for order.

Post on 10.5.06 for order.

Vice-Chairman

pg

10.05.2006 When the matter came up for hearing Mr. A. Ahmed, learned counsel for the applicants submitted that payment has already been made. Therefor the contempt petition has become infructuous and does not stand. Recording the said submission, the C.P. is dismissed as infructuous. No order as to costs.

10

Vice-Chairman

A W/T message received
from CNE (AF) today on
vide NO. T 0222/0A/267/04/
128 (E1 (legal) dated 20.3.06
with a prayer for withdrawl
the contempt petition.

W3
4/5/06

9-5-06

No addaxit bilab.

33

12.5.06

Copy of the order
has been sent to the
D/Sec. for transmitting
the same to the L/Adm.
for the party's.

10
11
12

10 MAY 2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No.30/2005
In O.A. No. 267/2003.

IN THE MATTER OF:

Sri Radha Kanta Sinha

.....petitioner

- versus -

Smt. Sarika Aggarwal

... Alleged Contemner/
Respondent No. 4

IN THE MATTER OF:

An affidavit and/or Compliance
Report for and on behalf of the
Respondent No.4.

I, Smt. Sarika Aggarwal, daughter of Shri V.M. Aggarwal aged about 29 years working as ACDA I/C, Area Accounts Office, Ministry of Defence, Shillong-1 do hereby solemnly affirm and stated as follows:-

1. That I am the Respondent No. 4 in the instant Contempt Petition and have gone through the aforesaid contempt Petition filed by the Petitioner and have understood the contents thereof and I am well acquainted with the facts and circumstances of the case based on records.
2. At the outset I submit that I have the Highest regard for this Hon'ble Tribunal and there is no question of any willful disobedience of any order passed by the Hon'ble Tribunal. However, I tender unqualified

and unconditional apology for any delay or lapse in the compliance of the Order dated 9-6-05 in O.A.267/05 pronounced by this Tribunal.

3. That there is no any willful or deliberate and reckless disobedience of the aforesaid order by the respondents and showing any contempt to the order of this Tribunal does not arise.

4. That, with regard to the statement/allegation made in para 1 to 5 of the Contempt Petition are not based on rational foundation devoid of merit and the answering respondents do not admit anything except those are in record.

Discrepancy in the name and designation of Respondent No.4:

In the Contempt Petition, the name of respondent has been mentioned as "Shri Sarika Aggarwal" who does not exist in this office. Further, no officer with designation as "Area Accounts Officer" is functioning in this office. Smt. Sarika Aggarwal is functioning as Asstt. Controller of Defence Accounts In charge of Area Accounts Office, Shillong.

5. That with regard to the statement made in paragraph 3 of the Contempt Petition, the respondents most respectfully submit that the contention of the petitioner that the Contemners released the payment of Special Duty Allowance (SDA) to the applicant for the month of May, June, July and August 2005 after verifying the correctness of the factual details stated by the applicant in terms of Common Order dated 30.5.2005 of this Hon'ble Tribunal passed in O.A.No. 170 of 1999 and connected cases is not correct.

It is to be mentioned here that the date of Common Order is 31.5.2005 and not 30.5.05 (Page 2 of the annexure A reflects). Secondly, the payment of SDA for the month of May 2005 to August 2005 was admitted by Area Accounts Office, Shillong due to mistake committed by the staff concerned. The SDA for May 2005 was paid by Area Accounts Office, Shillong vide Cheque No. AR 883123 dated 19.5.05. Hence, it is evident that the common order dated 31.5.05 was not the basis for admitting the claim of SDA for May 2005 since cheque was issued on 19.5.05 prior to the date of common order issued by the Hon'ble Tribunal on 31.5.05.

6. That with regard to the statement made in paragraph 4 of the Contempt Petition, the respondents most respectfully submit that the Area Accounts Office, Shillong admitted the claim of SDA for the period from May 2005 to August 2005 due to mistake and oversight of the staff concerned. The Respondent No. 4 does not pass the pay bills of any unit whatsoever. The Pay bills are finally disposed at the level of Accounts Officer in charge of the particular section. No specific order either for admitting or disallowing the payment of SDA was passed by the Respondent No.4. It is pertinent to mention here that the pay bills of the Defence Civilians are prepared by the concerned units and Area Accounts Office, Shillong is auditing such pay bills and releasing the payment thereafter. The clerical error committed in May 2005 could not be detected upto August 2005 because the basic principle for pre-auditing the pay bill is based on verification of pay and allowances admitted in the pay bill of the last month only. Also, in this case, there was change of hand in passing

the pay bills of June and July 2005. The auditing error committed earlier from May 2005 to August 2005 was detected in the month of September 2005, no further SDA claim was admitted and the overpayment wrongly made to the applicant was recovered with effect from September 2005. Therefore, in doing so nothing is deliberate nor there is a motive not to comply with the Hon'ble Tribunal judgment & order dated 9.6.05 passed in O.A.No. 267 of 2003.

In the light of the above facts, it would be seen that the Respondent No.4 has no intention to disregard the Hon'ble Tribunal judgment dated 9.6.05 directing Respondent No.2 viz. Chief Engineer, Shillong to consider the case regarding payment of SDA within a period of two months. Accordingly, Chief Engineer, Shillong issued reasoned speaking order in implementation of Hon'ble CAT judgment vide their letter No.70222/OA/267/2004/69/E1(Legal) dated 29.9.05 addressed to the applicant. The payment of SDA could not be made by Area Accounts Office, Shillong since the office of Controller of Defence Accounts, Guwahati (CDA, Guwahati in short - under whose jurisdiction the Area Accounts Office, Shillong is functioning) observed that such speaking order is not vetted by Ministry of Defence (MoD in short) and unless the speaking order is vetted by MoD, the payment of Sda could not be released. Area Accounts Office, Shillong is only a sub office under the aegis of Office of CDA, Guwahati and is only admitting the claims relating to pay and allowances in accordance with instructions issued by higher audit authorities.

7. That , it is submitted that the responsibility of releasing payment of any amount rest with the employer of the concerned applicant and not with the CDA or its subordinate office, Shillong only who can pre-audit the claims preferred by the individual's employer/appointing authority/unit/office and pass on payment order if the claims fulfill the audit requirements as per Government orders issued from time to time.

In view of the above it is respectfully submitted that there is no any willful or deliberate and reckless disobedience of the aforesaid order passed by this Hon'ble Tribunal.

P R A Y E R

In the light of the submission made above, Your Lordship would be pleased to dismiss the Contempt Petition filed against the respondent.

AFFIDAVIT

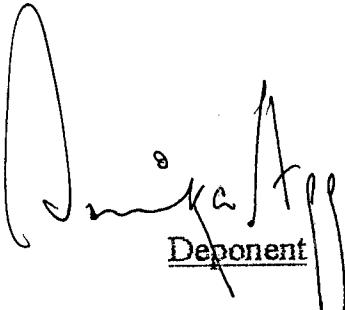
I, Smt Sarika Aggarwal daughter of Sri V.M. Aggarwal, aged about 29 years, working as Area Accounts Officer, Ministry of Defence, Shillong-1 do hereby solemnly affirm and state as follows.

1. That I am the Respondent No.4 in the above case and I am fully acquainted with the facts and circumstances of the case and also authorized to swear this affidavit.
2. That the statements made in paragraphs 1 to 7 of the affidavit are true to my knowledge, belief and information, based on the record and nothing has been suppressed thereof.

And I sign this affidavit/report on this 13th day of April, 2006 at Guwahati.

Identified by :


Advocate


Sarika Aggarwal
Deponent

Solemnly affirm and declare before me
who is identified by M.U.Ahmed,
Advocate on this 13th day of April,
2006 at Guwahati.

5 OCT 2005

गुवाहाटी न्यायपीठ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH AT GUWAHATI.

CONTEMPT PETITION NO. 30 OF 2005
IN O.A.NO.267 OF 2003

Filed by
Sri Radha Kanta Sinha
Assistant
through L.P.
(Adv. AMR 160)
Avv. K.

IN THE MATTER OF:

A Petition under Section 17 of the central
Administrative Tribunal Act, 1985 praying
for punishment of the Contemners/
Respondents for non-compliance of
judgment and order passed by the Hon'ble
Tribunal in O.A.No.267 of 2003 Dated 09th
June 2005.

-AND-

IN THE MATTER OF:

Sri Radha Kanta Sinha

...Applicant.

-VERSUS-

The Union of India & Others.

...Respondents.

-AND-

IN THE MATTER OF

Sri Radha Kanta Sinha,
MES No.265091
Presently working as Assistant
Commander Work Engineer B/R,
Office of the Commander Work Engineer
(Air Force), Borjhar, Guwahati - 15.

...Applicant

-VERSUS-

1. Shri Shekhar Dutta
Secretary to the Government of India,
Ministry of Defence,
101 South Block, New Delhi-1.

Radha Kanta Sinha

2. Brig. Balbir Singh
 Chief Engineer
 HQ Shillong Zone,
 Spread Eagle Falls
 Camp Shillong - 793001.

3. Shri Binoy Kumar
 Garrison Engineer
 Umroi, Umroi Military Station
 P.O. - Barapani, Shillong
 Meghalaya - 793103.

4. Shri Sarika Aggarwal
 Area Accounts Officer
 Ministry of Defence
 Biva Road, P.O. - Shillong
 Meghalaya -

... Respondents/Contemnors

The humble Petition of the above
 named Petitioner:

MOST RESPECTFULLY SHEWETH:

1) That your humble Petitioner had filed the Original Application No.267 of 2003 before the Hon'ble Central Adiministrative Tribunal, Guwahati Bench, Guwahati for seeking a direction from this Hon'ble Tribunal to the Respondents for payment of Special Duty Allowance to the Applicant.

2) That the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati on 09-06-2005 finally heard both the parties and directed the Respondent No.2 to consider the claim of the Applicant for grant of Special Duty Allowance in the light of the Governing Principle by this Tribunal in the common Order dated 31-05-2005 in O.A.No.170 of 1999 and connected cases after asserting the factual details and to take decision in the matter within a period of two months from the date of receipt of this Order. The decision so taken will be communicated to the Applicant immediately thereafter.

ANNEXURE - A is the photocopy of Judgment & Order dated 09-06-2005 passed in O.A.No.267 of 2003.

Radhakanta Sarker

3) That your Petitioner begs to state that the Respondents/Contemners in the month of August paid the Special Duty Allowance to the Applicant for the month of May, June, July and August 2005 after verifying the correctness of the factual detail stated by the Applicant in terms of common Order dated 30-05-2005 of this Hon'ble Tribunal passed in O.A.No.170 of 1999 and connected cases. It is also pertinent to mention here that the Chief Engineer Head Quarter Eastern Command Forth William, Kolkata - 21 vide his letter No.131900/267/04/RKS/13/Engrs/EI (Legal) dated 4th May 2005 strongly recommended the case of the Applicant regarding payment of Special Duty Allowance.

ANNEXURE - B is the photocopy of letter
No.131900/267/04/RKS/13/Engrs/EI (Legal)
dated 4th May 2005.

4) That your Petitioner begs to state that most surprisingly the Respondents/Contemners particularly the Respondent/Contemner No.4 suddenly stopped the payment of Special Duty Allowance to the Applicant from the month of September 2005 and also directed the concerned authority to recover the Special Duty Allowance from the Applicant which has been paid to the Applicant since May 2005 as per the governing policy adopted by this Hon'ble Tribunal in other similar cases. From this act of the Respondents/Contemners have willfully and deliberately violated the Governing Principle adopted by this Hon'ble Tribunal in regard to the payment of Special Duty Allowance. The Respondents /Contemners have shown disrespect, disregard and disobedience to this Hon'ble Tribunal. The Respondents/Contemners deliberately with a motive behind have not complied the Hon'ble Tribunal's Judgment and Order dated 09-06-2005 passed in O.A.No.267 of 2003. Hence the Respondents/Contemners deserve punishment from this Hon'ble Tribunal. It is a fit case where the Respondents/Contemners may be directed to appear before this Hon'ble Tribunal to explain as to why they have shown disrespect to this Hon'ble Tribunal.

5) That this Petition is filed bona fide to secure the ends of justice.

Rachalalalji

Top - zone - Postdoctoral - page - 10 - size - font - 10pt
Responsible/Officer in the month of April being the Society/Officer
Allottee of the Application for the month of May, June, July and August
2002 after analysing the consequence of the instant decision by the
Applicant in terms of continuing Order: Date 30-03-2002 of this Head, the
Lipsum based in O.A.No.130 of 1993 has communication case. It is also
communicated to the concerned Head Officer present
company Joint William Roberts - 31/05/2002
No.1313000262010RKS/13/16/2002 (Refer) dated 4/5/2002
showing communication to the case of the Applicant regarding payment of
Basic D.R.A Allowance.

AMENDMENT - 8 in the biography of letter
No.1313000262010RKS/13/16/2002
dated 4/5/2002

Top - zone - Postdoctoral - page - 10 - size - font - 10pt
Responsible/Officer in the month of April being the Society/Officer
Allottee of the Application for the month of September 2002 and also giving the
concerned authority to recover the Society/Officer D.R.A Allowance from the
Applicant which has been paid to the Applicant since May 2002 as per
the following order of this Head Officer in other similar
cases from this set of the Responsible/Officer based on the
differences in the concerned Post Doctoral scholar by this Head Officer
This letter is being to the biography of Society/Officer Allowance
Responsible/Officer has given a formal disclaimer that
discrepancy with a more certain price at comprising the Head of
Lipsum's payment and Order dated 09-06-2002 based in O.A.No.262
of 2003. Hence the Responsible/Officer deserves compensation from
this Head Officer. It is in this case before the Responsible/Officer
will be directed to submit or submit to the Head Officer Lipsum
and the same should be directed to the Head Officer Lipsum.

Top - zone - Postdoctoral - page - 10 - size - font - 10pt

In the premises, it is, most humbly and respectfully prayed that your Lordships may be pleased to admit this petition and issued Contempt notice to the Respondents/Contemners to show cause as to why they should not be punished under Section 17 of the Central Administrative Tribunal Act, 1985 or pass such any other order or orders as this Hon'ble Tribunal may deem fit and proper.

Further, it is also prayed that in view of the deliberate disrespect and disobedience to this Hon'ble Tribunal's order dated 09-06-2005 passed in O.A.No. 267 of 2003, the Respondents/Contemners may be asked to appear in persons before this Hon'ble Tribunal to explain as to why they should not be punished under the contempt of Court proceeding.

And for this act of kindness your Petitioners as in duty bound shall ever pray.

...Draft Charge

Rakesh Kapoor
Solicitor

14

-DRAFT CHARGE-

The Petitioner aggrieved for non-compliance of Judgment and Order dated 09-06-05 passed by the Hon'ble Tribunal in O.A No.267 of 2003. The Contemners/Respondents have willfully and deliberately violated the Judgment and Order dated 09-06-05 by discontinuing the payment of Special Duty Allowance to the Applicant and also illegally recovering the said amount which has been paid to the Applicant after going through the Governing Principle of this Hon'ble Tribunal adopted in similar cases. Accordingly, the Respondents/Contemners are liable for Contempt of Court proceedings and severe punishment thereof as provided to appear in persons and reply the charges leveled against them before this Hon'ble Tribunal.

Radha Kant Jaiswal

b
- A F F I D A V I T -

I, Shri Radha Kanta Sinha, aged about 59 years, son of Late Khrirod Bihari Sinha, MES No.265091, Presently working as Assistant Commander Work Engineer B/R, Office of the Commander Work Engineer (Air Force), Borjhar, Guwahati - 15. do hereby solemnly affirm and state as follows:

1) That I am the Applicant of O.A.No.267 of 2003 and also Petitioner of the instant petition and as such I am fully acquainted with the facts and circumstances of the case and I do hereby swear this Affidavit as follows:

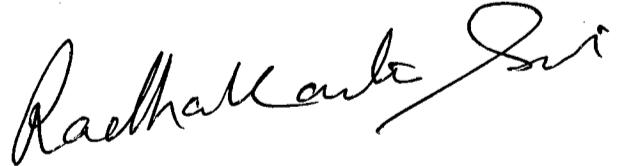
2) That the statements made in paragraphs 1, 4 of the Contempt Petition are true to my knowledge those made in paragraphs 2, 3 - of the petition being matters of records are true to my information which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I put my hand hereunto this Affidavit on this 4th day of Oct, at Guwahati.

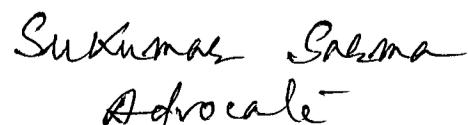
Identified by me:


(Mr. ADIL AHMED)

Advocate



Solemnly affirmed before me by the Deponent who is identified by Mr. Adil Ahmed, Advocate.


Sudhansu Salma
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 267 of 2003

Date of decision: This the 9th day of June 2009

The Hon'ble Justice Shri G. Sivarajan, Vice-Chairman

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

Shri Radha Kanta Sinha/

MES No.265091,

Assistant Engineer (Civil),

AGE B/R-1,

Office of the Garrison Engineer, Umroi,

Umroi Military Station,

Barapani, Shillong, Meghalaya.

.....Applicant

By Advocate Mr A. Ahmed.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Defence,
101 South Block, New Delhi.

2. The Chief Engineer,
HQ, Shillong Zone, Spread Eagle Falls Camp,
Shillong.

3. The Garrison Engineer,
Umroi, Umroi Military Station,
P.O. - Barapani, Shillong, Meghalaya.

4. The Area Accounts Officer,
Ministry of Defence, Bivur Road,
P.O.-Shillong, Meghalaya.Respondents
Advocate Mr A.K. Chaudhuri, Addl. C.G.S.C.

O R D E R

SIVARAJAN. J. (V.C.)

The applicant, an Assistant Engineer (Civil) under
the Ministry of Defence posted at Umroi (Meghalaya) under
the respondent No.3 has filed this application seeking for
direction to the respondents to pay Special (Duty)
Allowance (SDA for short). According to him he was
originally appointed in the North Eastern Region; he is
saddled with All India India Transfer liability and All
India common seniority in terms of his offer of
appointment which was accepted by him; he was transferred

9/6/

Adm
fil
file

from North Eastern Region to outside the region and from outside region he was retransferred to the North Eastern Region, i.e. he was transferred from the Office of the Garrison Engineer (I) (Navy) (Maint) Minnie Bay, Pos. Blair to the Office of the Garrison Engineer, Umroi, Barapani, Shillong on 25.1.2002. According to the applicant an employee hailing from North Eastern Region initially, but subsequently transferred out of North Eastern Region and reposted to North Eastern Region would be entitled to SDA. He, in support, relied on the decision of this Tribunal in O.A.No.56 of 2000 and O.A.No.301/2003, besides other cases.

2. We have heard Mr A. Ahmed, learned counsel for the applicant and Mr A.K. Chaudhuri, learned Addl. C.G.S.C. appearing for the respondents.

3. The question regarding the admissibility of SDA to Central Government Civilian employees was considered by this Bench in a batch of cases and in the judgment dated 31.05.2005 in O.A.No.170 of 1999 and connected cases, the governing principles regarding the grant of SDA was stated as follows:

"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 All India Common Seniority.

53. Further payment of SDA, if any made to ineligible person till 510.2001 will be waived."

Gpt

Attent
Ente

4. The applicant has stated that he is a resident of North Eastern Region and his original appointment which was in the North Eastern Region with All India Transferability and All India Common Seniority as part of the service conditions; that pursuant to this liability he had been transferred from North Eastern Region to Port Blair and from there he was transferred to the North Eastern Region and therefore, he is entitled to the grant of SDA.

5. Since this matter was taken up for orders at the admission stage itself the respondents did not get an opportunity to file their written statement.

6. In the circumstances it is necessary for the respondents to verify the correctness of the factual details stated by the applicant to decide as to whether the applicant would fall within the governing principles stated in the common order of this Tribunal mentioned above. Accordingly we direct the respondent No.2 to consider the claim of the applicant for grant of SDA in the light of the governing principles stated by this Tribunal in the common order dated 31.5.2005 in O.A.No.170 of 1999 and connected cases after ascertaining the factual details and to take a decision in the matter within a period of two months from the date of receipt of this order. The decision so taken will be communicated to the applicant immediately thereafter.

7. The applicant will produce this order before the respondent No.2 for compliance.

Verdict in the case of the application is accordingly disposed of. No
stated order as to costs.

16.6.05
Section Officer (J)
C.A.T. CIVIL 171 BENCH
Guwahati

BLUE COPY
FACSIMILE

SD/ JICE CHAIRMAN
SD/ MEMBER (A)

After
Date
Ans

81/62/5/6/19/2005

ANNEXURE - B

Tele : MIL 2449

Chief Engineer
HQ Frontier Command
Fort William
Kolkata - 11

131900/267/04/RCS/ 13 Engg/E1 (Legal)

04 May 2005

Office of the
CDA Gauhati
"Udayan Vihar" Narangi
Guwahati - 781171

OA NO. 267/2004 FILED BY SHRI R K SINHA
V/S UOI AND OTHERS AT CAT GUWAHATI

1. Ref. your letter No PAY/34/CONF/OL/267/04 dated 07 Apr 2005 and HQ CE Shillong Zone Shillong letter No 70222/OA-267/2004/16/E1(Legal) dated 15 Mar 2005.

2. HQ CE Shillong Zone has brought out the facts in present case very clearly that the office is entitled for SDA as per Govt of India, Min of Fin, Dept of Exprdr OM No II(V)/97 E-11(B) dated 29 May 2002 and Army HQ E-in-C's Branch letter No 90237/7521/E1C (Legal- C) dated 04 Jun 2003.

3. Though, a SLP has been filed on Aug 2001 in the case of Sh PC Paul (OA No 237/2000) and order is yet to be delivered. If the order is passed in favor of UOI, then that will be applicable to Sh PC Paul only and department can not withhold the admissible SDA to other persons, just merely based on Supreme Court Order delivered on one individual unless Govt of India amends its present order as referred above.

4. Above referred Govt order and Army HQ letter have been issued after the filing of SLP in Aug 2001 in OA No 237/2000 and Army HQ instruction as quoted :-

"SDA is admissible to the Central Govt employee 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 resident 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".

5. Inspite of clear Govt order and Army HQ instruction, your office is not admitting SDA of Sh RK Sinha and many others officials. This has invited large Nos of CAT cases which this office feels avoidable.

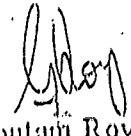
6. This office is in the opinion that instead of disallowing SDA for individual order, your office may take up the matter to Govt of India for amendment of existing rules position to avoid legal battle. Till such time these individuals may be allowed SDA on per existing Govt Order.

Contd... 2/-

After
filed
Ans

29
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7. This HQ is not in agreement with para 3 of your office letter dated 06 Apr 2005, when GE/CWE/CE has allowed the SDA to the individual official, how they can contest the cases in court. It is also fact that due to your stand on these issue a large number of CAT cases has been filed against UOI and UOI is bound to loose all these cases in light of present Govt. rule position. Further to satisfy your office, this office has no choice than to approach Hon'ble High Court, where also we may loose all cases in all probability. Further we have to knock the door of Hon'ble Supreme Court, from where justice may not be received even after 4 years as in the case of Sh SC Paul Vs UOI (OA No 237/2000).

8. Paramount duty of this organization is to render engineering services to the defence establishment with meager no of officials. This organization is not posted with such personnel to defend large No of avoidable CAT cases which need a lot of dedicated man hours and expenditure. Considering the facts you may please allow the SDA as per Govt of India OM dated 29 May 2002 or else defend the cases at your end of Hon'ble CAT.


(Goutam Roy)
SE
Dir (Legal)
for Chief Engineer

Copy to :-

HQ Chief Engineer
Shillong Zone
SE Falls
Shillong - 793011

HQ CE(AIF)
Shillong Zone
Shillong

For your information & necessary action on similarly placed
CAT cases.

CWE Shillong

AAO Shillong Bivar Road
Shillong-01

*After
1st
Ans*

- 7 APR 2005

ग.प.हाटी नाम्पौड
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No. 30/2005
In O.A. No. 267/05

IN THE MATTER OF:

Sri R.K. Sinha

.... Petitioner
- Versus -

Brig. Balbir Singh

...Alleged Contemner/
Respondent No.2.

IN THE MATTER OF:

An affidavit and/or Compliance
Report for and on behalf of the
Respondent No. 2.

I, Sri Balbir Singh aged about 49 years working as Chief
Engineer, H.Q., C.E., Shillong Zone, Shillong-11 do hereby solemnly
affirm and state as follows :-

1. That I am the Respondent No. 2 in the instant Contempt
Petition and have gone through the aforesaid Contempt Petition filed by
the petitioner and have understood the contents thereof and I am well
acquainted with the facts and circumstances of the case based on
records.
2. At the outset I submit that I have the Highest regard for this
Hon'ble Tribunal and there is no question of any willful disobedience of
any Order passed by the Hon'ble Tribunal. However, I tender unqualified
and unconditional apology for any delay or lapse in the compliance of the
Order dated 9.6.05 in O.A.No.267/05 pronounced by this Tribunal.

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N.U. - 2005-6/5/05
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3. That there is no any willful or deliberate and reckless disobedience of the aforesaid order by the respondents and showing any contempt to the order of this Tribunal does not arise.

4. That, with regard to the statement/allegation made in para 1 to 5 of the Contempt Petition are not based on rational foundation devoid of merit and the answering respondents do not admit anything except those are in record.

5. That the answering respondent most respectfully submits that in the Judgment dated 9.6.05 the Hon'ble Central Administrative Tribunal Guwahati Bench directed that :

"The Respondent No.2 i.e. HQ, Chief Engineer, Shillong Zone to consider the claim of the applicant for grant of SDA in the light of governing principles stated by this Tribunal in the common order dated 31st May 2005 in OA No. 170 of 1999 and connected cases after ascertaining the factual details and to take a decision in the matter within a period of two months."

6. That the answering respondent most respectfully submits that grant of Special Duty Allowance in respect of Central Government employees on their posting/re-posting to NE Region from outside region is governed by the existing policy of instructions formulated by Ministry of Finance, Department of Expenditure in pursuant to Hon'ble Supreme Court Judgment order dated 5th October 2001 delivered in the appeal of Telecom Department. In pursuant to Ministry of Finance, Department of Expenditure OM dated 29th May 2002, AHQ Engineer-in-Chief's Branch has drawn up a list of categories of staff in MES who are found to have fulfilled the criteria of all India Transfer liability and all India common seniority list for the purpose of SDA on their posting/re-posting to NE Region irrespective of fact whether they are initially recruited in NE Region or outside region.

7. In the light of the above policy of Engineer-in-Chief's Branch letter No. 90237/7521/EI(Legal) dated 4th June 2003 and amended vide 3rd October 2003 order. According to that, payment of Special Duty Allowances is applicable in applicant's case as applicant's come under the categories which are decided by Engineer-in-Chief's Branch.

8. That the answering respondent most respectfully submits that in compliance with the orders of Central Administrative Tribunal, Guwahati Bench applicant's case has been examined keeping in view the orders contained in the Ministry of Finance, Department of Expenditure NO 11(5)/97-E.II(B) dated 29.5.2002 circulated vide Ministry of Defence ID No.4(6)/2002/D(Civ.I) dated 10th October 2002.

9. That the answering respondent most respectfully submits that in the case of payment of Special Duty Allowance, Hon'ble C.A.T Guwahati Bench delivered judgment and order dated 31st May 2005 in OA No.170/ 1999 that "Special Duty Allowances is admissible to Central Government employees having All India Transfer Liability on posting to North Eastern Region from outside Region. By virtue of the Cabinet Secretariat clarification mentioned earlier, if an employee belonging to North Eastern Region and subsequently posted to outside NE Region, is retransferred to NE Region 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 all India Common Seniority."

10. That the answering respondent most respectfully submits that in view of the above, applicant is entitled for grant of Special Duty Allowance as per the all different orders, rule and policy as referred to above and accordingly a speaking and reasoned order dated 28.9.2005 was passed by the Chief Engineer in this regard.

The order dated 28.9.2005 is annexed herewith and marked as Annexure-'A' which is self explanatory.

In view of the above it is respectfully submitted that there is no any willful or deliberate and reckless disobedience of the aforesaid order passed by this Hon'ble Tribunal.

P R A Y E R

In the light of the submission made above, Your Lordship would be pleased to dismiss the Contempt Petition filed against the respondent.

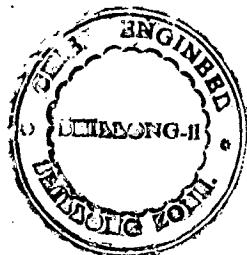
6/9/06
S. C. G. SC
6.1.06

CP NO 30 OF 2005

(Arising out of OA No. 267 of 2004)

I, Brig Balbir Singh aged about 49 years at present posted as Chief Engineer, Headquarter Chief Engineer, Shillong Zone, Shillong-11 do hereby solemnly affirm and state as follows :-

- (a) That I am the respondent No 2 in the instant contempt proceedings, I am well acquainted with the facts and circumstances of the case in my official capacity, I am competent to swear this affidavit.
- (b) That I have read and understood the contents of this show cause reply.
- (c) That the statements made in para 1 to 10 are true to the best of my knowledge as derived from the records of the case and rest are by way of submission to the Hon'ble Tribunal.
- (d) That I have not suppressed any material facts pertaining to the instant case.




Deponent


S. C. G. S. C.

06.04.06