

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Original Application No. \_\_\_\_\_

Misc. Petition No. \_\_\_\_\_

Contempt Petition No. 30/05 in O.A 267/03

Review Application No. \_\_\_\_\_

Applicant(S): R. K. Bora

Respondant(S): U. O. R. Jais (S. Datta Jais)

Advocate for the Applicant(S): Adil Ahmed

Advocate for the Respondant(S): Adil Ahmed

Notes of the Registry

Date

Order of the Tribunal

This Contempt petition  
has been filed by the  
counsel for the petitioner  
praying up 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 Honble Tribunal.

6.10.2005

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

post on 21.11.2005. personal appe-  
arance of the alleged contemners is  
dispensed with for the time being.

*[Signature]*  
Member

*[Signature]*  
Vice-Chairman

bb

21.11.2005

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

*[Signature]*  
Vice-Chairman

bb

*[Signature]*  
5.10.05  
Section Officer

Pl. comply order dated

6.10.05. *[Signature]*  
7.10.05

06.01.2006

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.

Member

Vice-Chairman

mb

09.23.2006

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)

mb

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.

Vice-Chairman

bb

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

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  
biled.

my

7-3-06

① Service report awaited

② No W/s has been biled

my

17-3-06

① Service report awaited

② No Reply has been biled

my

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. Post on 10.5.06 for order.

Vice-Chairman

pg

7.4.06

An affidavit or Compliance report has been submitted by the alleged Contemner No. 2.

PS.

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. Therefore 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.

Vice-Chairman

A W/P message received from CNE(AF) Poona vide NO. T0222/0A/267/04/128 (E1 (Legal) dated 20.3.06 with a prayer for withdrawal the contempt petition.

mb

NS  
4/5/06

9-5-06

No affidavit filed.

my

12.5.06

Copy of the order has been sent to the office for filing the same to the L/Adm. for the parties.

NS

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

10 MAY 2005

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.

*Sarika Aggarwal*

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.

#### PRAYER

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



9

b

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.

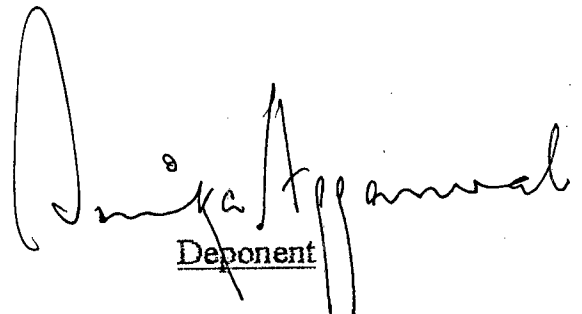
1. That I am the Respondent No.4 in the above case and I am fully acquainted with the facts and circumstances of the case and also authorized to swear this affidavit.

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.

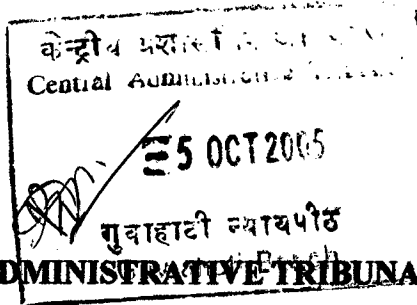
And I sign this affidavit/report on this 13<sup>th</sup> day of April, 2006 at Guwahati.

Identified by :

  
Advocate

  
Deponent

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



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH AT GUWAHATI.**

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

**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 09<sup>th</sup> 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.**

*Radhakanta 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/Contemners

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 Administrative 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 Saha*

3) That your Petitioner begs to state that the Respondents/Contemnners 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 4<sup>th</sup> 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 4<sup>th</sup> May 2005.

4) That your Petitioner begs to state that most surprisingly the Respondents/Contemnners 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/Contemnners 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 /Contemnners have shown disrespect, disregard and disobedience to this Hon'le Tribunal. The Respondents/Contemnners 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/Contemnners deserve punishment from this Hon'be Tribunal. It is a fit case where the Respondents/Contemnners 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.

*Rachhalekar*

3) That your Petitioner begs to state that the Respondents/Contaminers in the month of August paid the Special Duty Allowance to the Applicant for the month of May, June, July and August 2002 after verifying the correctness of the factual details stated by the Applicant in terms of court Order dated 30-05-2002 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 North William, Kolkata - 71 vide the letter No.131900V267W4RK2M3VnfrstFI (Legal) dated 4 May 2002 strongly recommended the case of the Applicant regarding payment of Special Duty Allowance.

ANNEXURE - 8 is the photocopy of letter No.131900V267W4RK2M3VnfrstFI (Legal) dated 4 May 2002.

4) That your Petitioner begs to state that most surprising, the Respondents/Contaminers particularly the Respondent/Contaminant No.4 suddenly stopped the payment of Special Duty Allowance to the Applicant from the month of September 2002 and also directed the concerned authority to recover the Special Duty Allowance from the Applicant which has been paid to the Applicant since May 2002 as per the governing policy adopted by this Hon'ble Tribunal in other similar cases. From this act of the Respondents/Contaminers it is evident and deliberately violated the Governing Principle adopted by this Hon'ble Tribunal in regard to the payment of Special Duty Allowance. The Respondents/Contaminers have shown disrespect, disregard and disobedience to this Hon'ble Tribunal. The Respondents/Contaminers deliberately with a motive behind have not complied the Hon'ble Tribunal's Judgment and Order dated 09-06-2002 passed in O.A.No.267 of 2002. Hence the Respondents/Contaminers deserve punishment from this Hon'ble Tribunal. It is a fit case where the Respondents/Contaminers 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.

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**

*Rachakarti Smt*

14

6

**-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 Contemnners/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/Contemnners 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.

*Radhe Kanti Jais*

b

5

**- AFFIDAVIT -**

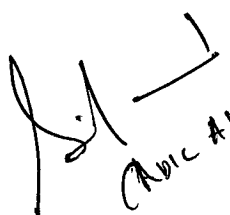
I, Shri Radha Kanta Sinha, aged about 59 years, son of Late Khrirod Bihari Sinha, MES No.265091, Presently working as Assistant Commander Work Engineer B/R, Office of the Commander Work Engineer (Air Force), Borjhar, Guwahati – 15. do hereby solemnly affirm and state as follows:

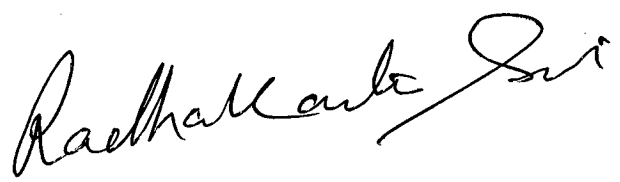
1) That I am the Applicant of O.A.No.267 of 2003 and also Petitioner of the instant petition and as such I am fully acquainted with the facts and circumstances of the case and I do hereby swear this Affidavit as follows:

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 4<sup>th</sup> day of Oct<sup>r</sup>, at Guwahati.

Identified by me:

  
(Adil Ahmed)  
Advocate

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

Sukumar Sarma  
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 267 of 2003

Date of decision: This the 9<sup>th</sup> 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, Bivar Road, P.O.-Shillong, Meghalaya.

.....Respondents

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

.....

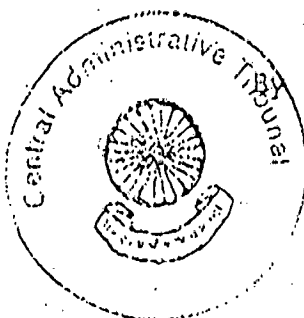
ORDER

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

*[Signature]*

*[Handwritten notes and signatures]*



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, Port 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 5.10.2001 will be waived."

*Pos*

*Amul*  
*il*  
*gute*

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 retransferred 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.

Verified by the Court. The application is accordingly disposed of. No order as to costs.

TRUE COPY

Sd/ JICE CHAIRMAN  
Sd/ MEMBER (A)

14.6.05  
Section Officer (I)  
C.A.T. OFFICE BANCH  
Gwahat

Attm C1  
R1  
Date

8/6/25/5/17/5/1 Legal. VO

ANNEXURE - B<sup>19</sup>

Tele : Mil 2449

Chief Engineer  
HQ Eastern Command  
Fort William  
Kolkata - 21

131900/267/04/RKS/ 12 /Engrs/E1 (Legal)

04 May 2005

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

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


1. Ref your letter No PAY/34/CONFEDL/OA-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 Expend OM No 11(V)/97 E-II(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 TC 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 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 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 cases, your office may take up the matter to Govt of India for amendment of existing rule position to avoid legal battle. Till such time these individuals may be allowed SDA as per existing Govt Order.

Contd...2/-

Heard  
filed  
Sd/-

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 case 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 at Hon'ble CAT.

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

Copy to :-

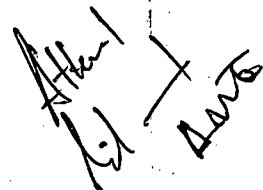
HQ Chief Engineer  
Shillong Zone  
SE Falls  
Shillong - 793011

HQ CE(AE)  
Shillong Zone  
Shillong

CWE Shillong

AAO Shillong Bivar Road  
Shillong-01

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



केन्द्रीय प्रशासनिक आयोग  
Central Administrative Tribunal

- 7 APR 2005

गुवाहाटी न्यायापीठ  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Contempt Petition No. 30/2005  
In O.A. No. 267/03

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.

1305

21  
N.U. - Shillong, 14/5/06

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 31<sup>st</sup> 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 5<sup>th</sup> October 2001 delivered in the appeal of Telecom Department. In pursuant to Ministry of Finance, Department of Expenditure OM dated 29<sup>th</sup> 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 4<sup>th</sup> June 2003 and amended vide 3<sup>rd</sup> 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 10<sup>th</sup> 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 31<sup>st</sup> 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."



24

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.

#### PRAYER

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

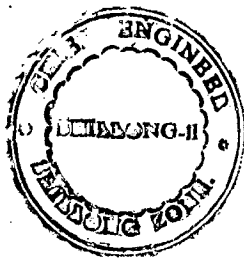
G. Srinivas  
Sr CGSC  
6.4.06

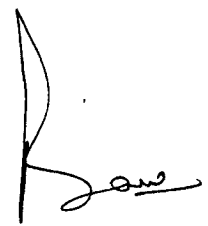
CP NO 30 OF 2005

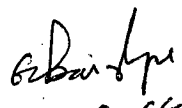
(Arising out of OA No. 267 of 2004)

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**

  
Sr. C.A.S.C.  
06.04.06