

(SEE RULE 42)

ORDER SHEET

Misc. Petition NO. _____

Contempt petition No. _____

Review Application No. 6/65 m.o.A 186/04 .

Applicants. Tasar Kant' pair

Respondents, 1002 Ans

Advocates for the Applicant, M. Chandra, G.N. Chakrabarty, S. Nath

Advocates of the Respondents. Addl. Cst. A.S. Chaudhary
22.6.2005 Heard Mr. D.L. Sarkar, learned

Notes of the Registry Dated _____ Counsel for the applicant.
Order of the _____ Issue notice to the respondents.

Notes of the Registry . . . Dated

counsel for the applicant.

Order of the Tribunal to the respondents.

Post on 25.7.2004.

passed by the Parliament of Great Britain

5 22 (3) (7) of EAT

A 1985 read with the following results:

AT (Procedure) Rules 1987

copying for review

2 Dec 1962

6.05 paired topics

erible Fribrod in

A 1306/04

laid before the

Article "Court for Justice"

1000

6-10-78

[illegible]

N. Section of Hall

Member

Vice-Chairman

2517-2005

Mr. M. Chanda, learned couns
for the applicant is present. Ms.
U. Das, learned Addl. C.G.S.C. for
the respondents seeks adjournment
post on 1.2.2005. No further
adjournment shall be granted.

Member

Vice-Chair

Letter of the Triton-1

1.8.05.

Heard learned counsel for the parties. Hearing concluded. Judgment reserved.

steps taken
on 28/6/05

28/6

Notice & order
sent to D/section
for issuing to
resp. Nos. 1 to 6,
by regd. A/D post.

Chas
29/6/05.

Member

Vice-Chairman

18.8.2005

Judgment delivered in open court, kept in separate sheets. The review application is disposed of in terms of the order passed in separate sheets.

Member

Vice-Chairman

22.7.05

notes issued by Regd. Post
on 1.7.05 R.P. recorded

mb

Chas

Memo No. 2298-304/WP. dated 27.2.07 received from
The Asstt. Registrar (T&E) of the Hon'ble Gauhati
High Court

The PUC may kindly be seen.

Shri Tulan Kanti Paul the applicant
in OA (G.C.) No. 105/87, OA 7/99, OA 136/04 and
RA No. 6/05 has filed WP(C) No. 2486 of 2006
before the Hon'ble Gauhati High Court against
the judgment and order dated 18.8.2005 passed
in RA No. 6/05 (OA 136/04) by this Tribunal.
As per order dated 19.5.2006 passed in WP(C)
the Registry of the Hon'ble High Court has directed
us to send the connected case records. But
due to non-receipt of connected case Nos of
this CAT, i.e. OA No. from the Hon'ble High
Court we could not send the relevant case
records to the Hon'ble High Court in time.
The above mentioned OA Nos has been collected
from the Hon'ble Gauhati High Court on 22.5.07.

So, we may perhaps send the connected
case records of G.C. No. 105/87 OA 7/99, OA
136/04 and RA No. 6/05 (Part 'A' file) to the
Hon'ble Gauhati High Court to place the
same before the ^{Hon'ble} Court which were called in
connection with WP(C) No. 2486 of 2006 through the
Special Messenger as early as possible.

MS
23/5

so(j)/co.

Cases mentioned ~~in~~ ^{at} 'A'
may be sent as called for by the
Hon'ble High Court and necessary entry
in the Record Register/Movement Register
may be made as records.

25/5/07
Hon'ble V.C.

bnf
24.5.07
co.

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

WPLS No. 2486 of 2006

Dr. Tushar Kanti Paul

Versus

Union of India & our
Respon

Respondent	Opposite Party
------------	----------------

Appellant Mr. M. Chanda
For _____

Petitioner Mr. S. Sultana
Mrs. S. K. Ghose

Respondent Mr. S. Chaudhry
For _____
Opposite Party

Asst. S. G.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports orders or proceedings with signature
1	2	3	4

Central Administrative Tribunal
 केन्द्रीय प्रशासनिक न्यायाधीश
 28 FEB 2007
 Guwahati Bench.
 गुवाहाटी न्यायाधीश

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	3	4
	WP(C) No.2486/2006.		
	BEFORE		
	THE HON'BLE MR JUSTICE D. BISWAS THE HON'BLE MR JUSTICE AMITAVA ROY		
	19.5.2006.		
	Heard Mr S. Choudhury, learned counsel for the writ petitioner.		
	Let the records be called for.		
	Issue rule.		
	Mr H. Rahman, learned ASG accepts notice on behalf of all the respondents.		
	As prayed for, the matter be listed along with WP(C) No.2125/2000 and other connected matters.		

Sd/- A. Roy
 Judge

Sd/- D. Biswas
 Judge

/W. P. Dtd. 27.2.07

Memo No. 2298-304.

Copy forwarded for information and necessary action to:

1. The Union of India through the Secretary to the Govt. of India, Department of Expenditure, Ministry of Personnel, New Delhi.
2. The Controller General of Accounts, Ministry of Finance, Department of Expenditure, Lok Nayak Bhawan, New Delhi.
3. The Controller of Accounts Ministry of Water Resources, Shastri Bhawan, New Delhi-110001.
4. The Chairman Central Water Commission, Govt. of India, Sewa Bhawan R.K. Puram, New Delhi-110066.
5. The Under Secretary, Estt. IV. Government of India Central Water Commission, 303, Sewa Bhawan RK, Puram New Delhi-110066.
6. The Executive Engineer, Govt. of India Central Water Commission Middle Brahmaputra Division, CWC, Complex, P. O. Gauhati University Guwahati-7810014.

By Spt. Manager

Central Administrative Tribunal, Gauhati Bench, Guwahati, Through Registrar, CAT, Guwahati, Rajgarh Road, Guwahati-781005.

They are directed to send the relevant case records to this Registry.

By Order

Asstt. Registrar (B) (J & E)

Sudh

Ms. K. Sarma
 NS
 28-2-07

26/2/07

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.6 of 2005

(In O.A.No.136 of 2005)

DATE OF DECISION : 18.08.2005

Shri Tushar Kanti Paul

APPLICANT(S)

Mr J.L. Sarkar, M. Chanda,
Mr G.N. Chakraborty and Mr S. Nath.

ADVOCATE(S) FOR
THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr A.K. Chaudhuri, Addl. C.G.S.C.
and Ms U. Das, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

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

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

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

Judgment delivered by Hon'ble Vice-Chairman.

.....

no
[Signature]

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No.6 of 2005
(In O.A.No.136 of 2005)

Date of Order: This the 18th day of August 2005.

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

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

Shri Tushar Kanti Paul
Assistant Accounts Officer,
Office of the Executive Engineer,
Central Water Commission,
Middle Brahmaputra Division,
CWC Complex, behind Adabari Bus Stand,
P.O.- Gauhati University,
Guwahati- 781014, Assam.

.....Review Petitioner

By Advocates Mr J.L. Sarkar, Mr M. Chanda,
Mr G.N. Chakraborty and Mr S. Nath.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Department of Expenditure,
Ministry of Personnel,
New Delhi.
2. The Controller General of Accounts,
Ministry of Finance,
Department of Expenditure,
Lok Nayak Bhawan, New Delhi.
3. The Controller of Accounts,
Ministry of Water Resources,
Shastri Bhawan,
New Delhi- 110001.
4. The Chairman,
Central Water Commission,
Government of India,
Sewa Bhawan,
R.K. Puram, New Delhi- 110066.

5. The Unver Secretary, Estt.IV
Government of India,
Central Water Commission,
303, Sewa Bhawan,
R.K. Puram, New Delhi-110066.

6. The Executive Engineer
Government of India,
Central Water Commission,
Middle Brahmaputra Division,
CWC Complex, behind Adabari Bus Stand.
P.O.- Gauhati University,
Guwahati- 781014, Assam.

.....Respondents

By Advocates Mr A.K. Chaudhuri, Addl. C.G.S.C. and
Ms U. Das, Addl. C.G.S.C.

.....

ORDER

SIVARAJAN. J. (V.C.)

This review application is filed by the applicant in O.A.No.136 of 2004 which was disposed of by order dated 9.6.2005.

2. It is the case of the applicant that the O.A. was heard on 24.3.2005; that the orders were reserved and thereafter by relying on judgment dated 31.5.2005 in O.A.No.170 of 199 and connected cases dismissed this application by order dated 9.6.2005; that on the facts of the applicant's case the said decision has no application and that at any rate the applicant did not get an opportunity to argue the position considered in the judgment dated 31.5.2005. According to the applicant there was violation of the principles of natural justice in that no opportunity was afforded to the applicant to make submission regarding the applicability of the judgment dated 31.5.2005 in O.A.No.170/1999 and connected cases. It is also the case of the applicant that the decision rendered by this Tribunal as per order dated 31.5.2005 in O.A.No.170/1999 and connected cases is against

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the decisions of this Tribunal relied on by the applicant in his argument note and that the case of the applicants are governed by the decision of this Tribunal rendered in the case of the applicant himself in the judgment dated 12.5.1989 in G.C.No.105 of 1987. It is the case of the applicant that this Tribunal had taken a view, in deciding the application, contrary to the decision in G.C.No.105/1987.


3. We have heard Mr J.L. Sarkar, learned counsel for the review petitioner and Ms U. Das, learned Addl. C.G.S.C. appearing on behalf of the respondents. Mr J.L. Sarkar, on behalf of the review petitioner, submitted that so far as the review petitioner is concerned, the issue regarding admissibility of Special (Duty) Allowance (SDA for short) was already decided by this Tribunal in G.C.No.105/1987 on 12.5.1989 in favour of the applicant and the said decision has become final. He submitted that the O.A. was heard on 24.3.2005; that the applicant was in the dark regarding the fate of the application till 9.6.2005 when the judgment was pronounced and that the applicant did not have an opportunity to see the judgment dated 31.5.2005 rendered in O.A.No.170/1999 and connected cases passed behind the back of the applicant. He submitted that there is a violation of the principles of natural justice. The counsel submitted that this occurred due to a mistake or an error apparent from the records. He further submitted that there is sufficient ground/cause for reviewing the judgment dated 9.6.2005 by applying the principles of Order 47 Rule 1 of the Code of Civil Procedure in the light of the various decisions of the Supreme Court. Counsel also pointed out that on 9.6.2005 itself this Tribunal had decided the case of a similarly situated person in O.A.No.248 of 2004 and had issued direction in favour of the applicant therein. Counsel submitted that this would amount to a discriminatory

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treatment. Counsel also submitted that this Tribunal had decided O.A. Nos. 29/2003 and 124/2003 in favour of similarly situated persons to which one of us (Administrative Member) was a party. Counsel, relying on various decisions of the Supreme Court, submitted that some mistake of facts and mistake of law had occurred in the judgment and therefore the matter has to be reopened and reconsidered.

4. Ms U. Das, learned Addl. C.G.S.C., submitted that the Tribunal had considered all the Government orders and the decisions of the Supreme Court in the common judgment dated 31.5.2005 in O.A.No.170/1999 and connected cases and the principles stated therein have been applied to the facts of the present case. The counsel submitted that there is no error apparent from the records; much less in circumstances for reviewing the judgment dated 9.6.2005 in O.A.No.136/2004.

5. We have considered the rival submissions. We find that with prior oral information to all the counsel appearing in SDA cases, the Tribunal had posted the cases involving SDA for hearing on 22.3.2005, 23.3.2005 and 24.3.2005. O.A.No.136/2004 was heard on 24.3.2005. O.A.No.170/1999 and ten other cases, which were heard on 22.3.2005 and 23.3.2005 and orders reserved, were disposed of by a common judgment dated 31.5.2005. Since some more additional facts and circumstances are involved in O.A.No.136/2004 and O.A.No.248/2004, these and some other cases were disposed of by separate orders on 9.6.2005 and on other dates. The submission of the counsel for the review petitioner that the present O.A. was heard on 24.3.2005 and the cases (O.A.No.170/1999 and connected cases) with respect to which common order dated 31.5.2005 was passed was



heard subsequently without notice or opportunity to the applicant is factually incorrect. The learned counsel for the applicant, Mr M. Chanda was aware of the fact that SDA matters were taken up first for hearing on 22.3.2005. In fact, the counsel had brought to our notice the Government orders which were applicable, occurring in Swamy's Compilation of FRSR, Part-I page 538 (Appendix-9), stating that he has also got cases relating to SDA, which were helpful to us in rendering the judgment dated 31.5.2005. If the counsel for the applicant wanted to argue the position with regard to the admissibility of SDA he had enough opportunity. The counsel instead had specially argued the matter with reference to the earlier orders rendered in the case of the applicant and he had relied on certain orders of this Tribunal on the admissibility of SDA. The contention of the counsel for the review petitioner that the applicant did not get an opportunity while deciding the question regarding admissibility of SDA, in the above circumstances, is absolutely without any bonafide and against facts.

6. In the instant case the order dated 9.6.2005 clearly shows that the case put forward by the applicant based on the order dated 12.5.2989 in G.C.No.105/1987 and as per order dated 2.1.2000 in O.A. No.7/1999 were considered. In para 4 we had observed that the said decisions were rendered with reference to the Government Orders as it obtained at that time; that subsequently the Supreme Court had spoken on the question of admissibility of SDA and the Government itself had issued various orders on the subject and the last being one issued on 29.5.2002. We had further observed that the decisions in the case of the applicant relied on by him were rendered with reference to the Government orders as it obtained then and that if the

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12

Government had modified the earlier Government orders revising the criteria for grant of SDA there cannot be any doubt that the modified criteria would govern prospectively in the matter of grant of SDA. It was further observed that for applying such modified criteria issued by the Government subsequently, the decision rendered in the matter prior to such Government orders will not in any way stand in the way of doing so. Thus, it can be seen that the case on hand was decided on the basis of subsequent Government orders. Though the earlier orders passed in the case of the applicant had become final and conclusive between the parties the said decision will hold good only so long the executive orders, based on which the said decision is rendered, stand without any modification. Though the applicant has relied on various decisions of this Tribunal regarding the admissibility of SDA none of these decisions had considered the matter with reference to the Government order dated 29.5.2002 modifying the earlier orders. In these circumstances we do not find any reason to review our order dated 9.6.2005 rendered in the case of the applicant.

7. The contention of the applicant that a differential treatment is meted out to another similarly situated person- the applicant in O.A.No.248/2004 it is to be noted that in that case the respondents in Misc. Petition No.69 of 2005 stated that they will consider the claim of the applicants for grant of SDA and pass fresh orders after considering the objections, if any, of the applicants. This is made in view of the pendency of a contempt petition in the case. The said application, in the above circumstances, was disposed of with directions, to consider the claim in the light of the governing principles stated in paras 52 and 53 of the common order in O.A.No.170/1999 and connected cases and also with reference to the

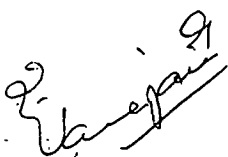
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orders in O.A.Nos.23(G) of 1990 and O.A.No.105 of 1987. There is absolutely no discrimination at all in doing so. The contention to the contrary is misconceived.

8. However, we find that the Tribunal, while admitting O.A.No.136 of 2005 had passed an interim order of stay of the orders dated 13.5.2004 and 18.5.2004 (Annexures- 6 & 7) which order continued till the disposal of the application. Based on the said order the applicant may be receiving SDA till the disposal of the O.A. We had in our order dated 9.6.2005 in O.A.No.136/2004 directed the respondents not to recover SDA paid to the applicant upto 18.5.2004, i.e. the date of Annexure-7 order. In view of the interim order dated 7.6.2004 passed in O.A.No.136/2004 and the fact that they were getting SDA based on the earlier order obtained from this Tribunal we in modification of the order dated 9.6.2005 passed in O.A.No.136/2004 direct the respondents not to recover any amount by way of excess payment of SDA from the applicant.

The Review Application stands allowed to the above extent.


(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE-CHAIRMAN

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14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Review application No. 6/2005

Arising out of O.A.No.136 of 2004.

Shri Tusar Kantli Paul.

-Vs-

Union of India & Ors.

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.		Application	1-45
2.		Affidavit	-46-
3.	1	Copy of interim order dated 07.06.2004.	-47-
4.	2	Copy of O.M dated 20.04.1987.	48-49
5.	3	Copy of O.M dated 12.01.1996.	50-51
6.	4	Copy of O.M dated 29.05.2002.	52-53
7.	5	Copy of judgment and order dated 05.10.2001.	-54-
8.	6	Copy of impugned judgment dated 09.06.2005.	55-59
9.	7	Copy of judgment and order dated 09.06.05 in O.A. No. 248/04.	60-63
10.	8	Copy of order of High Court dated 21.03.01.	64-65
11.	9	Copy of judgment dated 19.12.2000.	66-68
12.	10	Copy of judgment of Supreme Court dtd 15.11.02	69-77
13.	11	Copy of written statement in O.A. No. 7/99.	80-82
14.	12	Copy of judgment dated 02.11.2000.	83-85
15.	13	Copy of judgment dated 14.05.2004.	92-95
16.	14	Copy of judgment dated 27.10.98.	96-99
17.	15	Copy of judgment dated 17.02.99.	-100-
18.	16	Copy of judgment dated 26.07.99.	101-103
19.	17	Copy of judgment dated 27.02.2004.	104-105
20.	18	Copy of judgment dated 18.02.2004.	106-109
21.	19	Copy of judgment dated 10.08.2002.	-110-
22.	20	Copy of judgment dated 07.09.95.	111-115
23.	21	Copy of order dated 06.09.2000 passed by Full Bench.	

Filed by:

Date:

Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Review application No. 6 /2005

Arising out of O.A.No.136 of 2004.

In the matter of:

Tusar Kanti Paul.

-Vs-

Union of India and others.

-And-

In the matter of:-

An application under Section 22(3) (f) of the Administrative Tribunals Act, 1985 read with the CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES, 1987 framed under the Administrative Tribunals Act, 1985.

-And-

In the matter of:-

Original Application No. 136 of 2004 (Tusar Kanti Paul -Vs- Union of India and Others.)

Shri Tusar Kanti Paul.

Assistant Accounts Officer.

Office of the Executive Engineer,

Central water Commission.

Middle Brahmaputra Division,

CWC, Complex, behind Adabari Bus stand.

P.O- Gauhati University,

Filed by the Review Petitioner/
Applicant through:
Subrata Nath.
Advocate
21.06.05

Guwahati-781014, Assam.

---Applicant/Review
petitioner.

-Vs-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Dept. of Expenditure
Ministry of Finance, New Delhi.
2. The Controller General of Accounts
Ministry of Finance,
Dept. of Expenditure,
Lok Nayak Bhawan, New Delhi.
3. The Controller of Accounts,
Ministry of Water Resources,
Shastri Bhawan, New Delhi- 110001.
4. The Chairman,
Central Water Commission,
Govt. of India,
Sewa Bhawan,
R.K. Puram, New Delhi- 110066.
5. The Under Secretary, Esstt. IV.
Government of India,
Central Water Commission,
303, Sewa Bhawan,
R.K. Puram,
New Delhi- 110066.
6. The Executive Engineer,
Govt. of India,
Central water Commission,
Middle Brahmaputra Division,
CWC, Complex, behind Adabari Bus
stand.
P.O- Gauhati University,
Guwahati-781014, Assam.

--- Respondents.

The above named review petitioner

Most Respectfully Sheweth:-

1. That the applicant review petitioner seeks review to the order dated 09.06.2004⁵ passed in the original application no. 136/2004 dismissing the said application filed by the applicant/review petitioner under Section 19 of the Administrative Tribunals Act, 1985.
2. That the applicant/review petitioner being highly aggrieved with the ^{my} E.E's order of discontinuation of Special Duty Allowance issued on 03.09.2002 (Annexure-V of O.A) and impugned order dated 13.05.2004 (Annexure- VI of the O.A) and also against the order dated 18.05.2004, whereby recovery of S.D.A has been proposed w.e.f 6.10.2001 in violation of judgment and order dated 12.05.1989 passed in G.C no. 10/87 and also in violation of subsequent judgment and order dated 02.11.2000 passed in O.A No. 7/99 which were decided in favour of applicant/review petitioner declaring entitlement of S.D.A. The aforesaid original application which is registered as O.A No. 136/2004 was filed on 03.06.2004 before the Hon'ble Tribunal and Hon'ble Tribunal was pleased to admit the said original application on 7.6.2004, while admitting the said O.A. The Tribunal was pleased to stay the operation of the impugned order of discontinuation as well as order of proposing recovery of S.D.A passed by the respondents.

In view of the interim order passed by the learned Tribunal on 7.6.2004, the respondents continued to pay S.D.A to the review applicant, till filing of the review application.

(A Copy of the interim order dated 07.06.2004 is enclosed for the perusal of the Hon'ble Court as Annexure- 1.)

3. That your applicant/review applicant initially approached this Hon'ble Tribunal claiming for entitlement of S.D.A in his favour in terms of the

O.M dated 14.12.83, 01.12.88 issued by the Govt. of India, Ministry of Finance by filing G.C No. 105/87. The said original application was contested by the respondents U.O.I. However, the G.C. No. 105/87 was decided by the Learned Tribunal on 12.05.1989 directing the respondents to grant S.D.A to the present applicant, in G.C No. 105/87 the following contention or arguments advanced on behalf of the respondents, U.O.I regarding entitlement of S.D.A, in fact recorded in para 3 of the judgment and order dated 12.05.1989. The relevant judgment of para 3 are quoted below: -

"3. The application has been contested by the respondents. It is the main contention of the respondents that the applicants, merely on the mention in their appointment letters that they would have All India Transfer Liability, are not entitled to get Special (Duty) allowance. According to the respondents, All India transfer liability has got to be determined by applying the test of recruitment zone, promotion zone etc. as clarified by the Govt. of India, Ministry of Finance, Deptt. Of Expenditure by its O.M dated 20.04.1987. It is the version of the respondents that the fact whether a particular official is actually transferred outside the zone of recruitment would be the guiding factor for granting Special(Duty) allowance".

It is quite clear from the contention of the respondent that the respondents U.O.I relied upon the O.M dated 20.04.1987 issued by the Govt. of India, Ministry of Finance. The contention of O.M dated 20.04.1987 is exactly similar to the subsequent O.M dated 12.01.1996 issued by the Govt. of India, Dept. of Expenditure, Ministry of Finance. After the pronouncement of the judgment dated 20.09.1994 passed by the Hon'ble Supreme Court in Civil appeal no. 3251/1993 in the case of U.O.I and others -Vs- S. Vijay Kumar and others. Where the Hon'ble Supreme Court upheld the submission of the Govt. of India that Central Govt. civilian employees who have all India transfer liability are entitled to the

grant of S.D.A on being posted to any station in the N.E. Region from outside the region and S.D.A would not be payable merely because clause of the appointment order relating to all India transfer liability. The relevant portion of O.M dated 20.4.1987, 12.01.1996 and O.M dated 29.05.2002 are quoted below respectively for perusal of the Hon'ble Tribunal.

NO.20014/3/83-E.IV
GOVERNMENT OF INDIA
Ministry of Finance
Department of Expenditure

New Delhi, the 20th April, 1987.

OFFICE MEMORANDUM

Subject:- Allowances and facilities for civilian employees of the central Government serving in the states and Union territories of North-eastern Region and A & N. islands and Lakshadweep - improvement thereof.

The undersigned is directed to refer to para 1(iii) of Ministry of Finance, department of expenditure O.M No. 20014/3/83-E.IV dated 14th December 1983 as amended vide office memorandum of even number dated 29.10.1986 on the above subject, which is reproduced below:-

1(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% of basic pay ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/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."

2. Instances have been brought to the notice of this Ministry where special (duty) allowance has been allowed to Central Government employees

serving in Northeastern Region without the fulfillment of the condition of all India Transfer Liability. This is against the spirit of the orders on the subject. For the purpose of sanctioning special (duty) allowance, the all India transfer liability of the members of any service/cadre of incumbents of any posts/group of posts has to be determined by applying tests of recruitment zone, promotion zone etc. i.e whether recruitment to the service/cadre/posts has been made on all India zone of promotion based on common seniority for the service/cadre/ posts as a whole. Mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to anywhere in India does not make him eligible for the grant of special (duty) allowance.

3. Financial advisors of the administrative ministries/department are requested to review all such cases where special (duty) allowances has been sanctioned to the Central Government employees serving in the various offices including those of autonomous organizations located in the North East Region which are under Administrative control of their Ministries/Departments.

(A.N.SINHA)
DIRECTOR(EG)
TELE: 3011819

To,
Financial advisors of all Ministries/Departments.

12.01.1996

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

New Delhi, dated the 29th May, 2002

OFFICE MEMORANDUM

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

7
21

The undersigned is directed to refer to this Department's OM no. 20014/3/83-E.IV dated 14.12.1983 and 20.4.1987 read with OM No. 20014/16/86-E.IV/E.II (B) dated 1.12.88 and OM no. 11(3)/95-E.II.(B) dated 12.1.1996 on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted in NE Region vide OM dated 14.12.1983. Special Duty allowance (SDA) is one of the incentives granted to the Central Government employees having "All India Transfer liability". The necessary clarification for determining the All India Transfer Liability was issued vide OM dated 20.04.1987, laying down that the All India Transfer liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e. whether recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an All India Common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for grant of Special Duty Allowance.
3. Some employees working in NE region who were not eligible for grant of Special Duty allowance in accordance with the orders issued from time to time agitated the issue of payment of special Duty allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer for employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgment delivered on 20.09.94 (in civil appeal no. 3251 of 1993 in the case of UOI and Ors v/s Sh. S.Vijaya Kumar and ors) have upheld the submissions of the Government of India that Central Government civilian employees who have All India Transfer Liability are entitled

22

are entitled to the grant of Special duty allowance on being posted to any station in the North Eastern Region from outside the region and special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

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

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

"The special duty allowance shall be admissible to central Government employees having all India transfer liability on posting to North Eastern region (including sikkim) from outside the region."

All cases for grant of Special Duty allowance including those of all India service officers may be regulated strictly in accordance with the above mentioned criteria.

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

- 923
- (i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.2001, which is the date of judgment of Supreme Court, will be waived. However, recoveries if any, already made need not be refunded.
 - (ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5.10.2001 will be recovered.
7. These orders will be applicable *mutatis mutandis* for regulating the claims of Islands Special (Duty) Allowance, which is payable on the analogy of Special (Duty) Allowance to Central Government Civilian employees serving in the Andaman and Nicobar and Lakshadweep Groups of Islands.
8. In the application to employees of Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

(N.P.Singh)

Under Secretary to the Government of India.

All Ministries/Departments of the Government of India, etc.
Copy (with spare copies) to C &AG, UPSC etc. as per standard endorsement.

On a mere reading of all the O.M right from 20.04.1987 to 29.05.2002, the contention of all the clarificatory orders are exactly same as 12.1.1996 and there is nothing special in the O.M dated 29.05.2002 in fact the judgment of the Hon'ble Supreme Court passed in S. Vijay Kumar's case which is subsequently followed in civil appeal no. 7000/2001 which is evident from para 5 of the O.M dated 29.05.2002. It is stated as follows, the relevant portion of the para 5 is quoted below:-

It is quite clear from the above, that O.M dated 29.05.2002 of the judgment passed in Supreme Court in civil appeal no 7000/2001 have allowed the appeal of U.O.I. following the earlier the decision rendered by the Supreme Court in S. Vijay Kumar's case. The judgment of the Civil Appeal No. 7000/2001 is also quoted below for perusal of the Hon'ble Tribunal.

IN THE SUPREME COURT OF INDIA
CIVIL APPEALATE JURISDICTION
CIVIL APPEAL NO. 7000 OF 2001
(Arising out of S.I.P-(C) No. 5455 of 1999)

Union of India and another.Appellants.

-Versus-

National Union of Telecom Engineering
Employees union and others. Respondents.

ORDER

Leave granted.

It is stated on behalf of the respondents that this appeal of the Union of India is covered by the judgment of this Court in the case of Union of India and Ors. -Vs- S. Vijaykumar & Ors reported in 1994 (Supp.3) SCC 649 and followed in the case of Union of India & Ors Vs. Executive Officer's Association Group 'C' 1995 (Supp. 1) SCC, 757. Therefore, this appeal is to be allowed in favour of the Union of India. It is ordered accordingly.

It is, however, made clear that when this appeal came up for admission on 13.01.2000 the learned Solicitor General had given an undertaking that whatever amount has been paid to the respondents by way of special duty allowance will not, in any case or event be ^{recovered} recorded

from them. It is on this assurance the delay was condoned. It is made clear that the Union of India shall not be entitled to recover any amount paid, as special duty allowance inspite of the fact that this appeal has been allowed.

New Delhi

Sd/-
N. SANTOSH HEDGE

October 05, 2001

Sd/
P.G. BALAKRISHNAN

On a mere reading of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 7000/2001 it appears that the Hon'ble Supreme Court simply followed the earlier judgment passed in S. Vijay Kumar's case while allowing the Civil Appeal No. 7000/2001 preferred by the Union of India and thereafter the office memorandum dated 29.05.2002 was issued by the Govt. of India, Ministry of Finance reiterating the criteria laid down in O.M dated 20.04.1987 and 12.01.1996. Therefore contention of the learned Tribunal that as per the revised/changed criteria laid down in O.M dated 29.05.2002 was not there, while other two judgments i.e. judgment dated 12.05.1989 (in O.A. No. 105/87 and judgment in O.A. No. 7/99 were passed on 2.11.2000, therefore, error apparent on the face of the records. The whole contention of the Learned Tribunal is contrary to the records and on that score alone the judgment is liable to be reviewed.

(Copy of the O.M dated 20.04.1987, 12.01.1996, 29.05.2002 and judgment and order dated 5.10.2001 are enclosed herewith for perusal of Hon'ble Tribunal and marked as Annexure 2, 3, 4 and 5 respectively)

4. That your applicant/review applicant further beg to say that case was argued by the counsels of the parties way back on 24.3.2005 and after hearing the parties Hon'ble tribunal was pleased to reserve the judgment.

However, in the meanwhile this Hon'ble Tribunal in a bunch of cases including O.A. 170/99 decided the question of admissibility of FSC, however, in the said judgment this Hon'ble Tribunal also dealt with the question of admissibility of SDA although there were no pleading or prayer on the question of grant of SDA, moreover, there was no argument made by the Counsel of the parties regarding admissibility of SDA. The learned Tribunal of its own framed certain guidelines regarding entitlement of SDA relating to the resident of NE Region as well on the question of recovery of SDA made to the ineligible persons without considering the series of judgments pronounced by this learned Tribunal on the question of admissibility and question of recovery of SDA, therefore, the said judgment dated 31.05.2005 is a judgment per incuriam and it has no relevancy in the case of the present applicant.

It is surprised to note that the Learned Tribunal has relied on a judgment of this Hon'ble Tribunal which was delivered on 31.05.2005 in O.A No. 107/99 and connected cases behind the back of the applicant without providing any reasonable opportunity to the applicant. The applicant is not at all aware the principle which was laid down on 31.05.2005 in O.A No.170/99 on the question of admissibility of S.D.A. It is a settled principle of law that a subsequent judgment which was delivered after the order reserved by the learned tribunal in the instant case of the applicant cannot be relied on without providing any opportunity to the applicant and on that score alone the judgment and order dated 09.06.2005 passed in O.A no. 136/2004 is liable to be reviewed.

A Copy of the impugned judgment and order dated 9.6.2005 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 6.

5. That your review applicant carefully gone through the judgment and order dated 31.5.2005 passed in O.A No. 170/99 and connected cases and more

particularly the Para 52 and 53 which has been relied on by the learned tribunal while rejecting the claim for grant of S.D.A to the applicant but it appears that those para 52 and 53 has no relevancy at all with the contention raised by the review applicant in his original application. The relevant portion of para 52 and 53 is quoted below: -

" 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 NE Region if he is transferred 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 persons till 5.10.2001 will be waived."

It is quite clear from para 52 that the learned Tribunal dealt regarding the entitlement of S.D.A of a resident belonging to N.E Region who initially recruited in the N.E Region having all India transfer liability based on a clarification issued by the Cabinet Secretariat in order no. 20/12/99-E.A.I-1798 dated 2.5.2000 and in para 53 the learned tribunal

had dealt with the question of recovery based on O.M dated 29.5.2002 issued by the Govt. of India, Ministry of finance, but grounds raised by the review applicant regarding his entitlement for S.D.A are quite different and has no relevancy with the contention made in para 52 and 53 of the judgment and order dated 31.5.2005 passed in O.A. No 170/99.

6. That it is stated that in O.A. No. 248/2004 (Shri S.K. Das & Ors. -Vs- U.O.I & Ors.) also has been decided by the same Division Bench of learned Tribunal on 09.06.05, wherein among the applicants of O.A. No. 248/04 one Smti. T. Shongwan, Senior Accountant also belong to the same department of Govt. of India, department of expenditure, Ministry of Finance, like the present review applicant. The O.A. No, 136/2004 (T.K. Paul -Vs- U.O.I & Ors.) and the other O.A. No. 248/04 (Shri S.K. Das & Ors. -Vs- U.O.I & Ors.), where Smti. T. Shongwan also one of the applicant were heard together on 24.03.2005, points involved in both the Original Application are exactly same and similar. Be it stated that Smti. T. Shongwan and Shri T.K. Paul were applicants in O.A. No. 105/87 which were decided on 12.05.1989. However, subsequently Smti. T. Shongwan was transferred to the Pay and Accounts Office, Central Excise and Customs, Shillong and the review applicant was ultimately transferred to the office of the Executive Engineer, CWC, Guwahati. However, CGA are the controlling Authority of Smti. T. Shongwan as well as of the review applicant. But surprisingly in O.A. No. 248/2004 while disposing the case of those applicant by the leaned Tribunal also directed the respondents to take into consideration the dismissal of the Special Leave Pctition by the Hon'ble Supreme Court which was preferred by the respondents Union of India against the O.A. No. 23 (G)/1990. Therefore, it appears that learned Tribunal treated similar circumstanced employee in a different manner while the case of O.A. No. 248/04 has been disposed of with the further direction to consider the case of those applicants by the Respondents, whereas, in the instant case of the review applicant is similarly

circumstanced has been dismissed quoting the reference of para 52 and 53 of the judgment dated 31.05.05 and as a result the review applicant is meted out with a differential action in the hands of learned Tribunal and the judicial disciplinary does not call for such an action when the employees are similarly circumstanced and on that score alone the judgment and order dated 09.06.05 passed in O.A. No. 136/04 is liable to be reviewed.

(A copy of the judgment and order dated 09.06.05 in O.A. No. 248/04 is enclosed hereto for perusal of Hon'ble Tribunal and marked as Annexure- 7)

7. That it is stated that some of the applicants of O.A. No. 105/87 were also effected by way of discontinuation of SDA following an impugned order passed by the Controller of Accounts on 04.03.99 and also by the consequential order dated 15.03.99 whereby those applicants who were drawing SDA by virtue of the judgment and order dated 12.05.89 but the SDA was discontinued following the clarificatory orders subsequently issued on 12.01.1996 by the Govt. of India, Department of Expenditure, Ministry of Finance in such a compelling circumstances those applicants approached before this learned Tribunal through O.A. No. 107/99, the case was contested by the official respondents, however, the Division Bench of this learned Tribunal rendered its judgment dated 19.12.2000 in O.A. No. 107/99 wherein learned Tribunal held that in the absence of any challenge of the judgment passed by the learned Tribunal it has attained finality even assuming the same is wrong and on that ground alone the said Original Application was allowed. However, the respondents Union of India being dissatisfied with the judgment and order dated 19.12.2000 preferred writ petition before the Shillong Bench of the Hon'ble Gauhati High Court initially stay was granted by the Hon'ble High Court in W.P. (C) No. 34 (SH)/2001 but the Division Bench thereafter considering the

nature of the case vacated the stay order initially passed in W.P (C) No. 34 (SH)/2001 on 21.03.2001.

It is relevant to mention here that the contention of Union of India in the said writ petition that after the Vijay Kumar, judgment pronounced by the Hon'ble Supreme Court on the question of admissibility of SDA the Central Govt. employees having all India transfer liability but initially recruited in NER is not entitled to SDA and the SDA is admissible only on posting from outside the region to N.E Region. But the Hon'ble High Court considering all those aspects of the matter regarding grant of SDA vacated the stay order initially passed by the Hon'ble High Court. Therefore, it is evidently clear that those revised guidelines cannot help Union of India for denying the benefit of SDA to the applicants in O.A. No. 105/87. Be it stated that original Memorandum dated 14.12.1983 is still in force and the same was time to time simply extended, therefore, any clarificatory memorandum issued by the Govt. of India following the subsequent judgment of Hon'ble Supreme Court cannot take away the benefit of SDA from the review applicant or from the other applicants of O.A. No.105/87, the said writ petition before the Hon'ble High Court is still pending.

(Copy of the order of Hon'ble High Court passed on 21.03.01 and judgment dated 19.12.2000 passed in O.A. No. 107/99 are enclosed herewith for perusal of Hon'ble Tribunal and marked as Annexure-8 and 9 respectively).

8. That your review applicant further beg to say that this learned Tribunal in a similar fact and situation decided an Original Application No. 80/90 directing the respondents to grant Special Duty Allowance to the members of the Income Tax, Gazetted Services Association belonging to NE Region. The Respondents Union of India being aggrieved with the judgment and order dated as indicated above, preferred a writ petition before the Hon'ble High Court which is still pending before the Hon'ble

Gauhati High Court, during pendency of the writ petition when the matter came up before the Hon'ble High Court, the Hon'ble High Court expressed the view that until and unless the said Original Application is set aside by the Hon'ble Supreme Court there is a least possibility of interference by the Hon'ble High Court on hearing the same Union of India preferred a Special Leave Petition challenging the judgment and order dated 20.03.1993 in O.A. No. 15/92 in O.A. No. 80/90. The Hon'ble Supreme Court however dismissed the SLP on the ground of delay on 15.11.2002, in this connection it may be stated that the revised criteria laid down on 12.01.1996 or on 29.05.2002 therefore absolutely has no effect in the cases relating to payment of SDA where judgment has attained finality.

(A copy of the judgment of Hon'ble Supreme Court passed on 15.11.02 is enclosed herewith for perusal of the Learned Tribunal and marked as Annexure- 10).

9. That it is stated that decision of the learned Tribunal more particularly in para 4, 5 and 6 wherein it is held that the time when two decisions were rendered by the learned Tribunal i.e on 12.5.1989 and the other rendered on 2.11.2000 in G.C. No 105/87 and O.A No. 7/99, respectively the circular dated 29.5.2002 was not available at that point of time, the relevant portion of judgment dated 9.6.2005 in O.A.No 136 of 2005 of para 4 and para 5 are quoted below:-

"4. Subsequently the Supreme Court had spoken on the question of admissibility of SDA and the Government itself had issued various Government orders and the last being one issued on 29.5.2002. This Bench had considered the question of admissibility of SDA in a batch of cases O.A. No. 170/99 and connected cases and rendered judgment on 31.5.2005 after elaborately considering all the relevant

Government orders and the decisions of the Supreme Court. The legal position was summarized thus in para 52 and 53 of the said judgment.

"52. The position as it obtained on 5.10.2001 by virtue of the Supreme Court decisions and the Government orders can be summarized thus:

Special Duty Allowance is admissible to Central Government employees having All India 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 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 the All India Transfer Liability provided the promotions are also based on an All India Common Seniority.

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

"5. Here it must be noted that the office memorandum F.No. 11(5)97-E II(B) dated 29.5.2002 was also considered. It would appear from the averments in the written statement that the applicant was initially posted in the north eastern region and continued as such till date.

The applicant also belonging to this Region. The case of the applicant in such circumstances would not fall within the governing principle stated in para 52 of the common judgment extracted above. However, the payment of SDA made till 5.10.2001 cannot be recovered as noted in para 53 of the common judgment".

The Hon'ble Tribunal has passed the impugned judgment mainly relying on the subsequent judgment passed by the Hon'ble Supreme Court on the question of admissibility of S.D.A, and those Govt. orders referred above on the basis of subsequent judgment of Supreme Court were not available at the time when, two cases of the applicant were allowed. The above decision of the learned Tribunal is contrary to the records and error apparent on the face of the records. The respondents U.O.I has raised their objection regarding entitlement of S.D.A in case of review applicant by filing a detailed written statement in O.A. No. 7/99, where it was contended by the respondents U.O.I. That in view of the of the judicial pronouncement by the Apex Court in the Civil Appeal No. 3251/93 and 3034/94, the review applicant is not entitled to payment of S.D.A w.e.f 21.9.94 and it was also contended that in terms of clarificatory order dated 12.1.1996 issued by the Govt. of India, Ministry of Finance. The review applicant is no more entitled to ^{The grant} ~~argument~~ of S.D.A. the relevant portion of para 1 of the written statements in O.A No. 7/99 are quoted below:-

"Written statement

The humble respondents submit their written statement as follows:-

1. That with regard to the statements made in para 1,2 and 3 of the application the respondents beg to offer no comments save and except that the applicant is not eligible for the allowance under the extent G.I.orders M.O.F O.M 11(3). 95-E-II(B) dated 12.01.96) and the judicial pronouncement of the Apex Court in the Civil Appeal No. 3251 of 1993 and No. 3034 of 1995."

In view of such a factual position the impugned judgment dated 09.06.2005 passed in O.A. No. 136/2004 is contrary and erroneous on the terms of the order itself and as such the impugned judgment and order is liable to be reviewed. The contention of the learned tribunal that while judgment dated 2.11.2000 in O.A No. 7/99 was passed there was no Govt. order or Supreme Court judgment were available is totally wrong on the face of the order. Therefore, it is a fit case for review of the judgment order dated 9.6.2005.

(A Copy of the written statement of O.A. No. 7/99 is enclosed for perusal of the Learned Tribunal as Annexure-11).

10. That it stated that the Learned Tribunal while passing the impugned judgment and order dated 9.6.2005 in O.A. No. ^{136/04}~~7/99~~ did not take into consideration the other judgment of the coordinating bench passed recently on the question of admissibility of S.D.A in a similar facts situations where the learned Administrative member is also a party to those judgments and more particularly when O.M dated 29.5.2002 was very much argued before the Learned Tribunal which is evident from the written statement of O.A.no 124/2003 (Shri R.bhattacharjee-vs- U.O.I and Others) and in O.A No. 29/2003 (Shri D.Saikia -vs- U.O.I and Others) as stated that in O.Ano 124/2003 the O.M dated 29.5.2002 and O.M dated 2.5.2000 was annexed as annexure R-11 and R-9 in the written statement and a contention was raised to that effect in Para (i), (j), (k), (l) of para 3 but inspite of those argument the coordinating bench has allowed the original application of O.A. No 29 of 2003 and O.A. No. 124/2003 i.e. Annexure-8, judgment dated 14.5.2004 of O.A.

Therefore it appears the Learned Tribunal totally failed to take into notice the Judgment of the coordinating Bench where Hon'ble Administrative Member is also a party. It is pertinent to mention here that the O.M 2/5/2000 and O.M dated 29.5.2002 were also argued in the

similar cases as stated above. Therefore, on that score alone the impugned judgment dated 9.6.2005 passed in O.A. No. 136/2004 deserves to be reviewed.

The applicant urges to produce the written statement filed by the respondents U.O.I in O.A No. 124/2003 at the time of hearing of review application.

11. That it is stated that the Learned Tribunal while passing the impugned judgment dated 9.6.2005 totally failed to record the detailed arguments advanced by the learned counsel of the applicant and the judgment of the coordinating Benches as well as the Supreme Court on the issue of attaining finality in fact neither discussed nor recorded in the argument. The learned Tribunal ought to have ^{applied} ~~appointed~~ the ratio decidendi of the judgment of the Apex Court referred by the applicant at the time of hearing. But unfortunately not a single judgment of the Apex Court was discussed and since the learned Tribunal passed the judgment of the Apex Court on the same issue. Therefore, it is a fit case for review of the impugned judgment dated 9.6.2005.

The applicant again relying on following judgment of the coordinating division benches, full bench and the judgment of Hon'ble Supreme Court, the ratio of which are exactly same in the instant case of the review applicant.

<u>Sl.No.</u>	<u>Date of Judgment</u>	<u>O.A</u>	<u>Bench and name of party</u>
1.	02.11.2000	7/99	Div. Bench, C.A.T, Guwahati. T.K.Paul -vs- U.O.I and Others.
2.	14.5.2004	29/2003	Div. Bench, C.A.T, Guwahati. R.Bhattacharjee -vs- U.O.I and Ors.
3.	14.5.2004	124/2003	Div. Bench, C.A.T, Guwahati. D.Saikia -vs- U.O.I and Ors.

4. 27.10.1998 189/1996 -Do-
5. 26.7.1999 5/2000 Madras Bench in case of
T.K. Ramamurthy and others
-Vs-
U.O.I and Others.
Reported in Swamy's news May
issue.
6. 27.2.2004 ^{555/2002}
~~10/2004~~ Jaipur Bench in the case of
Sitaram Parekh and others.
-Vs-
U.O.I and others.
7. 6.9.2000 1732/98 Full Bench of C.A.T, Hyderabad.
P.Venkata Rao and Others.
-Vs-
Department of
Telecommunication New Delhi
and Others.
8. 18.11.1998 Civil appeal Reported in 1999(1), SCC-273
No. 1874/84. V.S. Charati
-Vs-
H.N.Jamadar.
9. 06.05.1999 Civil Appeal Reported in 1999(4), SCC- 434
No. 198/1995 Vallapally Plantation Pvt. Ltd.
-Vs-
State of Kerala.
10. 18.02.2004 O.A. 180 and S.Ramamurthy and sons.
189 to 190 of
2003 -Vs-
Union of India, Ministry of
Defence, New Delhi and Others.
11. 17.02.1999 O.A. No. 103 of E.S.I corporation employees
1996 union, N.E. Region
-Vs-
Union of India and Others.
12. 10.03.2002 WP© No. Union of India and others.
2004/2001 -Vs-
Shri Jasimuddin Ahmed and Ors.
13. 7.7.1995 Civil Appeal No. Union of India

37

8208-8213 arising
out of SLP Nos.
12450-55/92

-Vs-
Geological Survey of India
Employees Association
and others.

On a mere perusal of the above decisions it is evident that the law laid down by the Hon'ble Tribunal by its order dated 9.6.2005 in O.A. No. 136/2004, but the same are contrary to the ratio laid down by the above noted cases by the coordinating division benches of C.A.T, Full Bench of C.A.T and of Supreme Court as such the aforesaid judgment dated 9.6.2005 are liable to be reviewed.

Copies of the aforesaid judgments dated 2.11.2000, 14.5.03, 27.10.98, 17.2.99, 26.7.99, 27.2.04, 18.2.04, 10.3.02 and 7.9.95 are enclosed as Annexure- 12, 13, 14, 15, 16, 17, 18, 19 and 20 respectively.

12. That it is stated that the Judgment and order dated 31.05.2005 passed in O.A No. 170/99 on the question of admissibility of S.D.A to the civilian central Govt. employees serving in N.E. Region is per incurium and the question involved in the instant case has not been dealt in any manner by the Learned tribunal in the judgment dated 31.05.2005. It is pertinent to mention here that in the batch of cases including O.A. No. 170/99 in fact there was no pleading or prayer for grant of S.D.A and there was no pleading or prayer regarding grant of S.D.A and there was no occasions arises either on the part of the U.O.I or on the part of the applicants to make any submissions/arguments on the question of admissibility of S.D.A. Therefore the law laid down by the learned Tribunal on the question of admissibility as well as on the question of recovery of S.D.A is per incurium since the learned Tribunal did not take into consideration the large numbers of Judgments of the coordinating benches passed earlier, some of which are already confirmed by the Hon'ble High Court. In the impugned judgment and order dated 9.6.2005 passed in O.A. No. 136/04, the Learned Tribunal while rejecting the claim of the review applicant for further grant of S.D.A also given liberty to the Respondents

Union of India to make recovery w.e.f 19.05.2004. It is pertinent to mention here that the applicant has received S.D.A till May, 2005. In this connection it may further be stated that a coordinating bench of this Hon'ble Tribunal particularly in O.A. No. 266/03, 115/03 and also in O.A No. 405/05 dealt with the question of recovery of S.D.A, wherein the learned Tribunal considered the judgment of Apex Court in the case of Sri S. Vijay Kumar -Vs- U.O.I and also in Executive officers case as well as the decisions rendered in Civil Appeal No. 7000/01 i.e. in the case of national Union of Telecom Engineering Employees Union including the office memorandums dated 29.05.2002 issued by the Govt. of India, Ministry of Finance, wherein these learned Tribunal held that the respondents are not entitled to make any recovery even after 5.10.2001 onwards of the payment of S.D.A has already been made to any of the ineligible civilian employees, in view of the categorical order passed by the Hon'ble Supreme Court on the question of recovery. It is ought to be mention here that the O.M dated 29.05.2002 is an executive order issued by the Govt. of India after the judgment delivered by the Hon'ble Supreme Court in Civil Appeal No. 7000/01. Wherein the Hon'ble Supreme Court held that the payment already made to the ineligible persons the same cannot be recovered, whereas, the payment of S.D.A, is made to the review applicant following the interim order passed by the Hon'ble Tribunal. As such question of recovery as ordered by the learned Tribunal is contrary to the law laid down by the coordinating Division bench of this Hon'ble Tribunal in the judgment referred above.

Hence the judgment and order dated 9.6.2005 is liable to be reviewed by the Hon'ble Tribunal.

13. That it is stated that when a decision rendered by any court of law and the said ratio ran exactly counter to the other decisions of the coordinating bench then the said judgments is liable to be reviewed because the same may effect a large number of cases on the question involved in the said

decisions. It is pertinent to mention here that although an attempt is made by the learned Tribunal to distinguish the judgments rendered in 105/87 as well as in O.A. No. 7/99, but at the same time the learned Tribunal failed to consider other decisions exactly on the same issue rendered by coordinating Division Bench of this learned Tribunal, more particularly in O.A. No. 29/2003 (D. Saikia -Vs- U.O.I and Others) as well as in O.A. No. 124/2003 (R. Bhattacharjee -Vs- U.O.I and Others), which was a part of the record of the proceeding. Be it stated that the judgment of O.A. no. 29/2003 as well as in O.A. No. 124/03 are delivered by the coordinating division bench where the present, Hon'ble Member (Administrative) is also a party to the said judgment. It is pertinent to mention here that the O.M dated 29.5.2005 issued by the Govt. of India, Ministry of Finance was also argued by the respondents U.O.I, while judgment dated 14.05.2004 was delivered. But surprisingly no attempt is made to distinguish the aforesaid judgments by this learned Tribunal while passing this impugned judgment dated 9.6.2005.

The Hon'ble Supreme Court in the case of Commissioner of sales Tax, J & K and others -Vs- Pine Chemicals Ltd. And ors. reported in 1995(1) SCC, 58 has dealt with the occasion when a judgment could be reviewed. The relevant portion of the paragraph 10 is quoted below: -

"It is, however, interesting to notice that when the above two decisions were brought to the notice of the Bench, it referred to the ratio of the said decisions but neither followed it nor made any attempt to distinguish it but proceed to make it a basis for their decision notwithstanding the fact that the said ratio ran exactly counter to the one adopted by the Bench. The two decisions did not certainly support the interpretation adopted in the judgment under review. On the contrary, they, and particular the decision in *Indian Aluminum*, militated against the said interpretation. It is for this reason, coupled

40

with the fact that the interpretation placed in the judgments under review on Section 8(2-A) may affect a large number of cases all over the country, that we agreed to re examine the issue, which we would not have agreed to ordinarily".

The Hon'ble Supreme Court while dealt with the question of review the following views was expressed in the case of Lily Thomas - Vs- U.O.I and others, reported in 2000 (6), SCC, 224, the portion of the relevant paragraph are quoted below; -

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statue. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the court finds that the error pointed out in review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the court from rectifying the error. This Court in *S. Nagaraj V. State of Karnataka* held: (SCC pp.619-20, para 19).

" 19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law of courts and the statues lean strongly in favour of finality of decision legally carved out to correct

accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury V. Sukhraj Rai* the court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae V. Bijai Govind Singh* that an order made by the court was final and could not be altered.

... nevertheless, if by misprision in embodying the judgments, error have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

" 54. ----- 1. *Application for review of judgment-* (1) Any person considering himself aggrieved-

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.
- (b) By a decree or order from which no appeal is allowed, or
- (c) By a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order."

In the instant case of the review applicant in fact filed for reviewing the inconsistencies with a view for correction of the same. It is needless to mention here that the impugned judgment and order is contrary to the law laid down in the series of cases by the coordinating Division Bench as well as by the Full Bench and the judgment laid down by the Hon'ble Supreme Court in this regard, the learned Tribunal in the impugned judgment held that revised or changed principle has been laid down following the decision rendered by Hon'ble Supreme Court. Then also the revised criteria or changed policy is not applicable in the instant case of the review applicant and this is the law laid down by the various Division Benches of the CAT, Full Bench of CAT as well as by the Hon'ble Supreme Court.

In all the judgment the Division Bench as well as on the identical question of law the coordinating division bench of C.A.T, Full Bench of C.A.T as well as Hon'ble Supreme has held that when a decision of a Tribunal or high court is subsequently reversed by the Apex Court and in the absence of challenge the earlier judgment, the law laid down by the Hon'ble Supreme Court in the subsequent cases has no effect in the judgment which remain unchallenged in view of the fact that previous judgment has attained finality. Here it is ought to be mention here that revised guideline if any issued following the subsequent judgment of Hon'ble Supreme Court on the question of admissibility of S.D.A in the

following judgment of S. Vijoy kumar -Vs- U.O.I as well as the following decision rendered by the Hon'ble Supreme Court in civil appeal no. 7000 of 2001 in fact got no effect in the case of review applicant as held by the Learned Tribunal. The impugned judgment is in sharp contrast with the judgment of the coordinating Division Bench as well as full bench of the learned tribunal. The Full Bench of learned Tribunal contended in the case of P. Venkatarao and other -Vs- Director General of Telecommunication and others when a Division Bench of the Hyderabad Bench of this Tribunal has referred the following question to the full bench. The relevant portion of the said judgment is quoted below:-

" when an employee who had received certain benefits in view of filing an original application in the Tribunal and either no appeal is preferred or appeal preferred has been rejected by the Supreme Court, whether the benefits accrued to the applicant can be annulled by a later decision of the Supreme Court in a similar case".

The Full Bench answered the question in the negative. It was observed at paragraph 14 as under:

" aforesaid decision of the Supreme Court in the case of R. Swaminathan (supra) can apply only prospectively. The same cannot be made applicable to unsettle the settled issue which have become final between the parties. If parties are permitted to resile from settled issues which have become final between them, it would go against judicial discipline. Apart from principle of finality which attaches to every lis between the parties, parties are also governed by the principle of res judicata as enshrined in Section 11 of the Code of Civil Procedure. Though aforesaid provision may not strictly be applicable to the Tribunal, provision analogues to res judicata will certainly apply. In the circumstances, we have no hesitation in holding that it is not

open to the respondents to reopen settled issues and claim refund of the amount paid over to the applicants under the judgment of the Tribunal which have become final between the parties (emphasis supplied)."

In view of the Full Bench Decision (supra), which is binding on us, it has to be held that the respondents cannot take away the benefit accrued to the applicant pursuant to the decision of this Tribunal, dated 28.07.1993. It is an admitted position that the respondents had not challenged the decision of this Tribunal dated 28.07.1993 before the Supreme Court and the decision has attained finality between the parties. It is not open to the respondents to re-open the settled issue and make recovery of the amount paid to the applicant in view of the judgment of this Tribunal.

In view of the aforesaid law laid down by the Hon'ble full bench of this Tribunal, the view taken by this Hon'ble tribunal in the impugned judgment and order dated 9.6.2005 passed in O.A no. 136/2004, is totally wrong and contrary to the law laid down by this Hon'ble Full Bench of this Tribunal. Hence review of the impugned judgment dated 09.06.2005 is necessary for correction of the same. The learned Tribunal has proceeded on a wrong notion and the interpretation as well as the view taken in the judgment are inconsistent with the judgment referred in the preceding paragraph. More particularly in paragraph No. 10, wherein it is held that revised/changed policy if any laid down due to subsequent judgment of the Hon'ble Supreme Court but the same has got no effect when a previous judgment has already attained finality. By the O.M dated 29.5.2002 in fact reiterated a similar set of guidelines which were issued earlier in the O.M dated 12.01.1996 by the Govt. of India, Ministry of Finance. Therefore, the view of the learned tribunal i.e. revised changed policy has been adopted by the Govt. of India after the Apex Court judgment in Civil Appeal No. 7000/2001 is totally wrong but the

45

guideline of O.M dated 12.01.96 has been reiterated in the O.M dated 29.5.2002. Hence, the impugned judgment is liable to be reviewed. The impugned decision rendered by this Hon'ble Tribunal in judgment and order dated 9.6.2005 cannot run contrary to the decision of the other coordinating bench on the same subject matter. Moreover, the view is also contrary to the ratio laid down by the Hon'ble Full bench of the Tribunal in the case of V.S. Charathi -Vs- H.N. Jamandar reported in 1999(1) SCC, 273 as well as in the case of Vallapally Plantations Pvt. Ltd. -Vs- State of Kerala reported in 1994 (4) SCC, 434 also held that once a judgment has attained finality the same cannot be reopened following a decision of the Apex Court passed subsequently reversing the earlier judgment on a different case in the same subject matter. But the learned Tribunal wrongly interpreted the said law holding that Govt. is entitled to change the policy following the subsequent decision of the Apex court. But failed to appreciate the law laid down by the Apex Court itself that the said revised policy is not applicable when a judgment attained finality and the O.M dated 14.12.1983 is still in force which is the basic source for grant of S.D.A, the O.M dated 20.4.1987, 12.01.1996 and 29.05.2000 are the office memorandum issued by the Govt. of India which are clarificatory in nature as such those office memorandum absolutely has no effect in the case of the review applicant.

Moreover, review is also maintainable in view of the judgment rendered by the Hon'ble Supreme Court in the case of K.G. Derasari and another -Vs- U.O.I and others, reported in 2001 (10) SCC, 496, wherein it is held that review is permissible when a decision is rendered by the learned Tribunal without noticing a decision of the Hon'ble Supreme Court in this regard for the instant case, decision laid down by the Apex court in the case of V.S. Charathi as well as in the case of Vallapally plantations pvt. Ltd. has not been considered by the learned Tribunal. As such review application is maintainable. The

relevant portion of the law laid down in the case of K.G. Derasari and another -Vs- U.O.I and Others are quoted below:-

"7. Having considered the rival submissions at the Bar, we have no hesitation to come to the conclusion that the Tribunal was not entitled in a contempt proceeding, to consider the legality of its earlier order which has reached finality not being assailed or annulled by a competent forum. If the Tribunal has not looked into any previous decision of this Court which is the law of the land and by which it was bound, the remedy available to the aggrieved person was to file an application for review. Admittedly, no review application was filed before the Tribunal. In an application for contempt, the Tribunal was only concerned with the question whether the earlier decision has reached its finality and whether the same has been complied with or not. It would not be permissible for a Tribunal or court to examine the correctness of the earlier decision which has not been assailed, and reverse its earlier decision".

In view of the clear findings of the Apex Court and also in the view of the full bench judgment the law laid down in the impugned judgment of the Hon'ble Tribunal runs exactly contrary and as such in order to reconcile the inconsistency review of the impugned order passed on 9.6.2005 is absolutely necessary in order to maintain the judicial discipline and also in order to prevent miscarriage of justice.

The applicant urge to produce all the judgment referred above at the time of hearing of the review application.

A copy of the Judgment and order dated 06.09.2000 in O.A. No. 1732 of 1998 passed by the Full Bench (Hyderabad) of CAT is enclosed hereto for perusal of Hon'ble Tribunal as Annexure- 21.

47

14. That it is a fit case for the Hon'ble Tribunal to review the impugned judgment and order dated 9.6.2005 passed in O.A No. 136/2004, otherwise it will be a miscarriage of justice. In this connection it may be stated that out of the 12 applicants of O.A. No. 105/87, 4 applicants has already retired on superannuation and 1 has rendered resignation but all the 6 other applicants are now receiving payment of S.D.A. However, in the case of R. Bhattacharjee and Sri R.Dutta Choudhury, the respondents U.O.I preferred two writ petition against the judgment and order passed by the learned Tribunal through the writ petitions namely WP (C) No. 7027/04 (U.O.I and others -Vs- R.Bhattacharjee and others.) is pending before the Hon'ble Gauhati High Court and the other writ petition is pending before the Shillong bench of Gauhati High Court, which was registered as WP (C) No. 34 (SH)/2001. But in the case of W.P (C) No. 34 (SH)/2001 initially stay was granted by the Hon'ble High Court. But the same was vacated subsequently on 23.1.2001 considering the nature of the case. Even the Principal Bench while admitting W.P (C) No. 7027/2004 did not pass any stay order considering the nature of the case and as a result even Shri R. Bhattacharjee and R. Dutta Choudhury and ors. are getting S.D.A following the judgment and order dated 12.5.1989 passed in O.A. No. 105/87 as such review applicant cannot be discriminated by the learned tribunal because he is similarly situated like Shri R.Bhattacharjee, R. Dutta Choudhury, D.Saikia and others in the matter of grant of S.D.A since applicants is similarly situated like the persons referred above he cannot be meted out with differential treatment that too in the hands of judiciary. The O.M dated 29.05. 2002 considered by this Tribunal in O.A. No. 29/2003 and also 124/2003 but thereafter allowed both applications by the learned Tribunal.

The detailed particulars of the persons who are still in service and the applicants in O.A. No. 105/87 furnished hereunder:-

- (1) R. Dutta Choudhury.

- (2) R. Sonowal
- (3) R. Bhattacharjee.
- (4) Smti. Marry Blanca Kharshing.
- (5) Smti. T.Sonowal

All the above persons are still receiving S.D.A following the judgments subsequently passed by this learned Tribunal holding that once earlier judgment has attained finality the same cannot be reopened following a subsequent judgment of the Apex Court reversing the law laid down by the Tribunal in the judgment which attained finality. Hence it is a fit case for review of the judgment and order dated 09.06.2005.

15. That this application is made bonafide and for the ends of justice.

GROUND FOR REVIEW

1. For that the decisions rendered by the Learned Tribunal in the impugned judgment and order dated 9.6.2005 are exactly contrary to the decisions and ratio laid down by the coordinating division benches judgment rendered on 2.11.2000 in O.A. No. 7/99, 14.5.2004 in O.A. No. 29/2003, 14.5.2004 in O.A. No. 124/2003, 27.10.1998 in O.A. No. 189/1996, 26.7.1999 in O.A. No. 5/2000, 27.2.2004 in O.A. No. 10/2004, 6.9.2000 of full bench of CAT, Hyderabad in O.A. No. 1732/98, 18.11.1998 of Civil Appeal No. 1874/84, 6.5.1999 of Civil Appeal No. 198/1995, 18.2.2004 in O.A. No. 180 and 189 to 190 of 2003. And the interpretation adopted by the learned Tribunal in the impugned judgment of review in fact militated against the interpreting rendered by the coordinating division bench, Full bench of CAT as well as by the decision rendered by the Hon'ble Supreme Court in the judgment referred above.
2. For that the view taken by the learned Tribunal in the impugned judgment and order dated 9.6.2005 contending that while judgment passed on 12.5.1989 in O.A. No. 105/87 and also on 2.11.2000 passed in

O.A no 7/99 the changed/revised policy contained in the O.M dated 29.5.2002 issued by the Govt. of India following the decision of Civil appeal no. 7000/2001 was not available, the said view of the learned tribunal is not correct. Whereas in the O.M dated 29.5.2002 the guidelines laid down in the O.M dated 12.01.1996 after the judgment of S.Vijoy Kumar by the Hon'ble Supreme Court simply "reiterated". The O.M dated 12.1.1996 and 29.5.2002 has been considered by this learned Tribunal while passed judgment and order dated 2.11.2000 in O.A. No. 7/99 as well as Judgment in O.A No. 29/2003 and O.A No 124/2003 delivered on 14.5.2004 and even thereafter those applications were allowed by the learned Tribunal where facts and circumstances are exactly similar as such the view adopted by the learned Tribunal in the impugned judgment dated 9.6.2005 runs exactly counter to the decision rendered in the aforesaid judgments as well as the ratio laid down by the other coordinating benches of C.A.T, full bench of C.A.T and also by the Apex Court.

3. For that the view adopted by the learned Tribunal in the impugned judgments and order dated 9.6.2005 to the extent that the Govt. is at liberty to change or revised its policy regarding grant of a particular allowances and as such modified order passed on 29.05.2002 cannot be faulted which is contrary to the ratio laid down by the Hon'ble full bench of C.A.T in its judgment and order dated 6.9.2000 in O.A. No. 1732/98 in the case of P. Venkata Rao and others -Vs- Dept. of Telecommunication, N. Delhi and others..
4. For that the O.M dated 29.5.2002 is not modified order containing revised changed policy regarding the question of admissibility of S.D.A as held by the learned Tribunal in the impugned order dated 9.6.2005 rather the guidelines contained in O.M dated 12.1.96 earlier issued by the Govt. of India, Ministry of Finance is simply "Reiterated" as evident from

paragraph 5 of the aforesaid O.A, but the O.M dated 12.1.1996 has been argued by the respondents U.O.I in earlier O.A No. 7/99 preferred by the review applicant. As such the coordinating division bench has no jurisdiction to overrule the judgment laid down by the earlier division bench without referring the same to the full bench as held by the Hon'ble Supreme Court in the case of Gopalbandhu Biswal -vs- Krishna Chandra Mohanty and others reported in 1996 (4) SCC, 447.

5. For that even the modified or revised policy on the question of admissibility of SDA issued by the Govt. of India, Ministry of Finance following the O.M dated 12.1.1996, which was "reiterated" in O.M dated 29.5.2002, after the judgment of the Supreme Court in S. Vijoy Kumar's case, as well as in the civil appeal No. 7000/2001 cannot be made applicable as held by the all coordinating division benches of CAT, full bench of CAT as well as by the Hon'ble supreme Court in series of cases, number of judgments and order referred in paragraph 10 of the review application. As such decision of the learned Tribunal rendered in the impugned judgment dated 9.6.2005 in O.A. No. 136/04 exactly ran counter to the series of decision indicated above.
6. For that a decision of a coordinating division bench cannot run exactly counter as adopted by the learned tribunal in the impugned judgment and order dated 9.6.2005 on the contrary the decision in O.A. Nos. 7/99, 29/03, 124/03, 139/96, 5/2000, 10/04, O.A 180, 189 to 190 of 2003, 103/96 and the full bench decision rendered in O.A. No 1732/98 in fact militated against the said interpretation rendered in the impugned judgments.
7. For that O.M dated 29.5.2002 cannot be treated as a modified or revised policy for grant of S.D.A as held by the learned Tribunal in the impugned judgment and order dated 29.5.2002, but O.M dated 14.12.1983, clarificatory order dated 20.4.1987 and O.M dated 12.01.1996 simply "reiterated" in the O.M dated 29.5.2002. Hence, the view adopted by the

learned Tribunal that O.M dated 29.5.2002 was not available when judgment and order dated 12.5.1989 passed in O.A. No. 105/87 as well as judgment dated 2.11.2000 passed in O.A. No. 7/99 is factually not correct and as such error apparent is evident on the face of the impugned order dated 9.6.2005. Hence, review petition is maintainable for correction of the view adopted by the learned Tribunal which ran counter to the series of decision rendered by the coordinating division bench and full bench of C.A.T. on the same issue.

8. For that the coordinating division bench while passed the judgment and order dated 14.5.2005 in O.A. No. 29/03 and also in the O.A no. 124/03, the learned Member (Administration) while sitting on the division bench has considered the O.M dated 29.05.2002, which was argued by the respondents U.O.I but the Hon'ble division bench including the present learned Member (administration) rejected the contention of the U.O.I which were advanced on the pretext of issuance of the O.M dated 29.5.2002, the same would be evident from the record of the proceeding in the O.A. No. 29/03 as well as in the O.A. No. 124/03.
9. For that the full bench of the C.A.T, Hyderabad in the case of P. Venkata Rao -Vs- Director General, Department of Telecommunication in O.A. No 1732/98 decided on 6.9.2000 the following question has been referred to the full bench.

" When an employee who had received certain benefits in view of filing an original application in the Tribunal and either no appeal is preferred or appeal preferred has been rejected by the Supreme Court whether the benefits accrued to the applicant can be annulled by a later decision of the Supreme Court in a similar case".

The Full Bench answered the question in negative as such the ratio laid down by the Learned Full Bench of C.A.T ran contrary to the decision rendered by the impugned judgment and order dated 9.6.2005 and also exactly ran counter, to the decision rendered by the coordinating Division Bench of CAT.

10. For that the judgment and order dated 31.05.2005 passed in O.A. No. 170/99 has been relied on by the Hon'ble Tribunal in the impugned judgment and order dated 09.06.2005 behind the back of the applicant without providing any reasonable opportunity. Hence the impugned order is liable to be reviewed.
11. For that in the batch of cases decided by the learned Tribunal on 31.05.2005 including O.A. No. 170/99 neither there was any prayer for grant of S.D.A nor there was any pleading on the question of admissibility of S.D.A as such the facts and circumstances of the instant case has no relevancy at all with paragraph 52 and 53 of the judgment and order dated 31.05.2005 passed in O.A. No. 170/99.
12. For that the view adopted by the learned Tribunal in the impugned judgment and order dated 9.6.2005 in O.A. No. 136/04 are inconsistent with the views adopted by the coordinating bench of the learned Tribunal exactly on similar issue in the O.A. No. 7/99, 29/03, 124/03, 189/96, 103/96, as such review is liable to be made in order to reconcile the inconsistencies.
13. For that the question involved for adjudication in the instant case of the review applicant has no relevancy with the memorandum dated 2.5.2000 as indicated in para 52 of the judgment and order dated 31.5.2005 in the batch of cases including O.A. No. 170/99.

14. For that the judgment and order dated 31.5.2000 in the batch of cases including O.A. No. 170/99 cannot be said to be relevant since there were no pleading or prayers for grant of S.D.A and no argument advanced either by the U.O.I and others or by the applicants of those cases, rather those cases are absolutely meant for grant of field service concession. Hence the impugned order is liable to be reviewed.
15. For that the judgment and order dated 14.5.2004 passed in O.A. No. 29/03 and O.A. No. 124/03, where the present Hon'ble Member (Administrative) was also a party of the said judgment was a part of the record of the proceeding which was enclosed as Annexure- 8 in the O.A. No. 136/04, but the said judgment of the coordinating bench was not taken into consideration which runs exactly counter to the decision rendered by the impugned judgment dated 9.6.2005 in O.A. No. 136/04. Hence the impugned order is liable to be reviewed.
16. For that the O.M dated 29.5.2002 was a part of the record in O.A. No 124/03 which enclosed as Annexure-R-11 in the written statements filed by the Respondents U.O.I and argument has been advanced by the respondents Union of India on the basis of O.M. dated 29.05.2002 but those arguments were considered by this learned Tribunal and finally rejected in O.A. No. 29/2003 and O.A. No. 124/03 and interalia upheld the contention of the applicants of those O.A. and the Hon'ble Tribunal was pleased to declare that those applicants are entitled to the grant of S.D.A in view of the facts that the earlier judgments had attained finality.
17. For that the Full Bench of Hon'ble CAT, in the case of P. Venkat Rao & Ors. held that when an employee who had received certain benefits in view of filing an Original Application in the Tribunal and either no Appeal is preferred or Appeal preferred has been rejected by the Supreme Court in that event said applicants shall continue to receive

the said payment or benefits following a later decision of the Supreme Court in a similar matter, be it stated that O.M dated 12.01.1996 and O.M dated 29.05.2002 are clarificatory Office Memorandum following the later decisions of the Hon'ble Supreme Court in similar cases of S.D.A as such the same has got no affect at all in the instant case of the review applicant.

18. For that O.M dated 12.01.1996 which was reiterated in O.M dated 29.05.2002 after pronouncement of the judgment in Civil Appeal No. 7000 of 2001 in fact reiterated the decision rendered in Vijay Kumar's Case, which was very much considered by the learned Tribunal while passing the subsequent judgment in O.A. No. 7/1999 but the learned Tribunal failed to notice this aspect of the matter while passing the impugned judgment and order dated 9.06.2005 in O.A. No. 136/04 as such the same is liable to be reviewed/corrected in the light of the law laid down by the coordinating Benches of the CAT as well as the ratio laid down by the Hon'ble Full Bench of the CAT.
19. For that the review applicant as well as Shri Ramjyoti Bhattacharjee, applicant of O.A. No. 124/03 in fact both of them were the applicants of earlier O.A. No. 105/1987, similarly Shri R. Dutta Choudhury, Smti M.B Kharshing, Smti T. Shongwan were also applicants of O.A. 105/87 and those employees also approached this Hon'ble Tribunal by filing another application which was registered as O.A 107/99 when their payment of S.D.A discontinued on the same set of ground but the learned Tribunal allowed the said application by the judgment dated 19.12.2000 in similar manner as it was done in the O.A. 29/2003 as well as in O.A. No 124/2003, therefore the review applicant who is similarly situated cannot be discriminated on the question of admissibility of S.D.A but by the impugned judgment and order-dated 9.6.2005, the review applicant has been meted out with a differential treatment in the court of law as such the impugned order is liable to be reviewed.

20. For that judgment and order dated 12.5.1989 passed in O.A. No. 105/87 as well as the judgment and order dated 2.11.2000 passed in O.A. No. 7/99 by this learned Tribunal declaring the entitlement of S.D.A in favour of the review applicant, operates as res judicata against the respondents U.O.I as per ratio laid down by the Hon'ble supreme court in the case of Dhanvanthkumariba and Others -Vs- State of Gujrat reported in 2004 (8) SCC, 121, in view of such legal and factual position of law, the inconsistent view adopted by the learned Tribunal in the impugned judgment dated 9.6.2005 is liable to be reconciled by way of review.
21. For that this Hon'ble Tribunal in O.A. No 189/96 held as follows while allowing exactly similar case of S.D.A decided on 27.10.1998;-

" In view of the above circumstances the Annexure-3 O.M dated 12-1-1996 shall not have any effect so far the present applicants are concerned, unless the Supreme Court reviews the order dated 8-2-1991 passed by this Tribunal in O.A. No. 208/91. Therefore, we set aside the Annexure 5 order. The applicants shall continue to get the SDA".

Whereas in the instant case of the review applicant even no appeal was preferred challenging the validity of the judgment dated 12.5.1989 as well as 2.11.2000 passed in O.A. No. 105/87 and O.A. No. 7/99 respectively, as such the O.M dated 12.1.1996 and 29.5.2002 absolutely has no effect in the instant case of the review application.

22. For that the division bench of the learned Tribunal while allowing the exactly similar case of S.D.A in O.A. No 103/96 by the judgment and order dated 17.2.1999 held as follows; -

" No SLP was filed before the Hon'ble Supreme Court against the order. We are therefore of the view that the order dated 28-2-1990 in C.A. No. 130 (G) of 1989 has become final and unless it is set

aside it will continue to be operative insofar as it relates to the Union applicant and its members and consequently, the employees will continue to receive SDA in terms of the order. Accordingly, we are of the view that Annexure 3 order no. 43-A.28/15/86- Estt. dated June 12th, 1996 is not sustainable. Therefore it is hereby set aside."

In view of the above categorical findings/decision of the learned Tribunal, the impugned judgment and order dated 9.6.2005 is liable to be reviewed, to reconcile the inconsistencies.

23. For that this Hon'ble Tribunal in O.A. 29/2003 as well as in O.A. 124/2003 exactly on the similar facts and situations held as follows on the question of grant of SDA.

" 14. It is not disputed in these two cases that the judgment on the basis of which applicants have been paid SDA, department has gone to Hon'ble Supreme Court in an SLP and those SLPs have been dismissed. So it is not open for this Tribunal to review the order passed by the Tribunal particularly so when the SLP filed against the order of the Tribunal has already been dismissed by the Hon'ble Supreme Court. Thus, we find that the OA deserves to be allowed. We order that no recovery shall be affected from the applicant. If any amount had already been recovered that shall be refunded to the applicants and department shall continue to pay SDA to the applicants. Both the OAs are accordingly disposed of".

Whereas in the instant case of the review applicant in fact no SLP was preferred, as such the impugned judgment is liable to be reviewed in the light of the decision of the Full Bench referred above.

24. For that in the judgment and order dated 18.2.2004 in O.A. 8/2004, the learned Bangalore bench of CAT reported in Swamy's news August 2004 held as follows:-

"Held: It is not the case of the Respondents that any show-cause notice in specific was issued to the applicants prior to making recoveries from the applicants pay in December, 2002 or prior to it.

It is well settled law that unless and until the judgment is modified, set aside or quashed by the higher Courts, remains binding on the Courts/Tribunal which pronounced the order and judgments."

In the light of the decision referred above the impugned judgments and order dated 9.6.2005 in O.A. No 136/2004 is liable to reviewed.

25. For that the Division Bench of this learned Tribunal decided on 9.6.2005 itself, exactly a similar original application on the question of admissibility of SDA in O.A. No. 248 of 2004 along with M.P no. 69 of 2005 (S.K.Das and others -Vs- U.O.I and others), whereas in the said O.A the learned Tribunal disposed of the said O.A in a different manner, the relevant portion of the order is quoted hereunder:-

"5. In the above circumstances, accepting the submissions of the learned counsel for the respondents, we direct the respondents to treat the case projected by the applicants in this O.A as a representation and to consider the same in the light of the governing principles stated by us in paras 52 and 53 of the common order in O.A. No 170/1999 and connected cases extracted hereinabove as also with reference to the orders in O.A.23 (G)/1990 and O.A. No. 105/1987 and to pass a reasoned order thereon within a period of two months from the date of receipt of this order. If the applicants want an opportunity of being heard

by the respondents and if any such request is made in that behalf by the applicants within two weeks such an opportunity must also be granted before taking a final decision in the matter”.

Therefore, it appears that similarly situated persons have been treated differently on the question of admissibility of SDA by the same division bench of this learned Tribunal, moreover Smti T. Songwan one of the applicant of O.A.248/04, in fact was also the applicant of 105/87 like the review applicant.

As such impugned judgment and order dated 6.9.2005 in O.A. No. 136/2004 is liable to be reviewed.

That your review applicant has no other alternative but to approach this Tribunal for review of the impugned judgment and order dated 9.6.2005 passed in O.A. no 136/2004 in view of the inconsistencies.

It is a fit case for review in view of the inconsistencies in the impugned judgment and order dated 9.6.2005 passed by this learned Tribunal.

26. For that the order of recovery w.c.f 19.5.2004 passed by the learned Tribunal by the impugned order dated 9.6.2005 while rejecting the claim of SDA is also contrary to the decision rendered by this Tribunal in O.A no. 405 of 2002 decided on 13.8.2003, as well as the decision rendered by the Hon'ble Gauhati High Court in WP (c) No. 2004/2001 decided on 18.03.2002, and on that score also impugned judgment is liable to be reviewed.
27. That this review application is made bonafide and for the ends of justice.

Upon the premises aforesaid, it is humbly prayed that the Hon'ble Tribunal be pleased to consider this petition, admit the same and issue

notice to the opposite parties/respondents to show cause as to why the order dated 09.06.2005 passed in O.A. No. 136/2004 should not be reviewed as prayed for in this petition and cause or causes being shown and upon hearing the parties be pleased to review the order dated 9.6.2005 passed in, O.A. No. 136/2004 and further be pleased to set aside the same and grant the relief as prayed for in the Original application with regard to the grant of Special Duty Allowance to the applicant/review petitioner and/or pass such other order(s) as this Hon'ble Tribunal may deem fit and proper.

-AND-

During pendency of the Review Application the Hon'ble Tribunal be pleased to stay the impugned judgment and order dated 09.06.2005 passed in O.A. No. 136/2004 till disposal of the Review Application.

Act for this kindness the applicant/review petitioner shall ever pray.

AFFIDAVIT

I, Sri Tusar Kanti Paul, Son of late Amulya Chandra Paul, aged about 50 years, Resident of Loknath Apartmant, Lachit Lane, Bhangagarh, Guwahati-7, do hereby solemnly affirm and declare as follows:

1. That I am the petitioner in the instant review petition and as such conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made in paragraphs 1, 5, 10, 12, 13, 14, 15 and 15 in the accompanying petition are true to my knowledge and those made in paragraphs 2, 3, 4, 6, 7, 8, 9 and 11 are being matter of records and true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on 21st day of June, 2005.

Identified by:

Surajit Choudhury
Advocate

Tusar Kanti Paul
Deponent

The above named deponent solemnly affirmed and declared before Shri Subrata Nath, Advocate on the 21st day of June, 05, who is identified by Shri Surajit Choudhury, Advocate.

Subrata Nath
Advocate
21.06.05

47

ANNEXURE- 1
6

FORM No. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

136/04

CG.App./Misc.Petr./Cont.Petr./Rev.Appl.

In O.A.

Name of the Applicant(s)

T.K. Panj

Name of the Respondent(s)

h.c. I. Panj

Advocate for the Applicant

M. Chandra, G.N. Chakrabarti
S. Nath, S. Choudhury

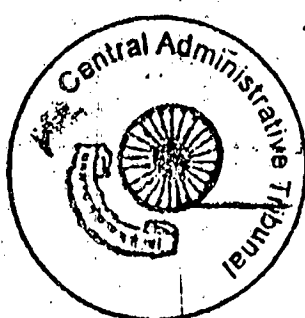
Counsel for the Railway/CGSC.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

7.6.2004



Heard Mr.M.Chanda, learned counsel for the applicant and also Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents. The O.A. is admitted. Issue notice to the parties, returnable by four weeks. In the meanwhile, operation of the order dated 13.5.2004 as well as order dated 18.5.2004 Annexure 6 & 7 respectively, is stayed till the returnable date. List on 12.7.2004 for order.

Sd/MEMBER(ADM)

Certified to be true Copy
প্রমাণিত কপি

W. Sanyal
26/6/04

Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

Attested
Advocate

248
- 7 -
ANNEXURE - 82
No. 20014/3/83-E. IV
Government of India
Ministry of Finance
Department of Expenditure

ANNEXURE 82

New Delhi, the 20th April, 1987.

OFFICE MEMORANDUM

Subject: Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region and A. & N. Islands and Lakshadweep - improvement thereof.

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

1(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% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North-Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/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".

2. Instances have been brought to the notice of this Ministry where special (Duty) Allowance has been allowed to Central Government employees serving in North East Region without the fulfilment of the condition of all India transfer liability. This is against the spirit of orders on the subject. For the purpose of sanctioning special (Duty) allowance, the all India transfer liability of the members of any Service/Cadre or incumbents of any posts/groups of posts has to be determined by applying tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all-India basis and whether promotion is also done on the basis of the all-India Zone or promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of special (Duty) allowance.

Contd..../-

Admitted
for
Admission

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

[Signature]
(A.N. SIMHA)
DIRECTOR (EG)
TELE: 3011819

To

Financial Advisers of all Ministries/Departments.

J.K.

No. 11(3)/75-E.II (B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 12th Jan 1996

OFFICE ORDER

Sub : Special Duty Allowances for civilian employees of the Central Government serving in the States and Union Territories of North Eastern Region-regarding.

The undersigned is directed to refer to this Department's O.M. No. 20014/3/83-EIV dated 14.12.1983 and 20.4.87 read with O.M. No. 20014/16/86 E.IV/E.II(B) dated 1.12.88 on the subject mentioned above.

2. The Government of India vide the above mentioned OM dated 14.12.83 granted certain incentives to the Central Government civilian employees posted to the N.E. region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have 'All India Transfer Liability.

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

4. Some employees working in the NE Region approached the Hon'ble Central Administrative Tribunal (CAT) (Guwahati Bench) praying for the grant of SDA to them even though they were not eligible for the grant of this allowance. The Hon'ble Tribunal had upheld the prayers of the petitioners as their appointment letters carried the clause of All India Transfer Liability and, accordingly, directed payment of SDA to them.

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions

- 51 -

65-21

were filed in the Hon'ble Supreme Court by some Ministries/Departments against the orders of the CAT.

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

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

- i. the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
- ii. the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94 but payments were made after this date i.e. 20.9.94) will be recovered.

8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.

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

10. Hindi version of this OM is enclosed.

Sd/- xxxxxx

(C. Balachandran)

Under Secy to the Govt. of India

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

ANNEXURE : RII

SwamysnewsS

17

July, 2002

108

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

Special Duty Allowance to civilian employees posted from outside the region only

The undersigned is directed to refer to this Department's O.M. No. 20014/3/83-E. IV, dated 14-12-1983 and 20-4-1987 read with O.M. No. 20014/16/86-E.IV/E. II (B), dated 1-12-1988 and O.M. No. 11 (3)/95-E.II (B), dated 12-1-1996 (Sl. Nos. 214 and 103 of Swamy's Annual, 1988 and 1996 respectively) on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted in N-E. region vide OM, dated 14-12-1983. Special Duty Allowance (SDA) is one of the incentives granted to the Central Government employees having "All India Transfer Liability". The necessary clarification for determining the All India Transfer Liability was issued vide OM, dated 20-4-1987, laying down that the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc., i.e., whether recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an All India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in N-E. region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UoI. The Hon'ble Supreme Court in judgment delivered on 20-9-1994 (in Civil Appeal No. 3251 of 1993, in the case of UoI and Others v. Sh. S. Vijaya Kumar and Others) have upheld the submissions of the Government of India that Central Government civilian employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North-Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

Sh. S. Advani

Amrinder Rtt

67

- 53 -

July, 2002

18

Swamysnews

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

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

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

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

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

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

(ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5-10-2001 will be recovered.

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

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

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7000 OF 2001

(Arising out of S.L.P.(C) No. 5435 of 1999)

Union of India & Anr. Appellants

- Versus -

National Union of Telecom Engineering
Employees Union & Ors.

... Respondents

O R D E R

Leave granted.

It is stated on behalf of the respondents that this appeal of the Union of India is covered by the judgment of this Court in the case of Union of India & Ors -vs- S. Willyamur & Ors reported in 1994 (Supp.3) SCC 649 and followed in the case of Union of India & Ors vs. Executive Officers' Association Group 'C' 1995 (Supp. 1) SCC, 757. Therefore, this appeal is to be allowed in favour of the Union of India. It is ordered accordingly.

It is, however, made clear that when this appeal came up for admission on 13.1.2000 the learned Solicitor General had given an undertaking that whatever amount has been paid to the respondents by way of special duty allowance will not, in any case or event, be recovered from them. It is on this assurance the delay was condoned. It is made clear that the Union of India shall not be entitled to recover any amount paid, as special duty allowances in spite of the fact that this appeal has been allowed.

SG/- 4 N. SANTOSH MEENA

SG/- K.G. BALAKRISHNAN

New Delhi
October 05, 2001

*Shri
for advocate*

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 136 of 2004.

Date of Order : This the 9th day of June, 2005.

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

Sri Tusar Kanti Paul,
Assistant Accounts Officer,
Office of the Executive Engineer,
Central Water Commission,
Middle Brahmaputra Division,
CWC Complex, Behind Adabari Bus Stand,
P.O. Gauhati University,
Guwahati-781014, Assam.

... Applicant

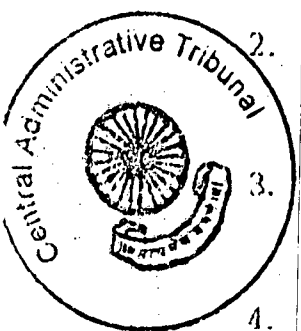
By Advocate Sri M. Chanda

- Versus-

1. Union of India,
represented by the Secretary to the
Government of India, Department of Expenditure,
Ministry of Finance, New Delhi.
2. The Controller General of Accounts,
Ministry of Finance, Department of Expenditure,
Lok Nayak Bhawan, New Delhi.
3. The Controller of Accounts,
Ministry of Water Resources,
Shastri Bhawan, New Delhi-110001.
4. The Chairman,
Central Water Commission,
Govt. of India,
Sewa Bhawan,
R.K.Puram, New Delhi - 110066.
5. The Under Secretary, Estt. IV
Government of India,
Central Water Commission,
303, Sewa Bhawan,
R.K.Puram,
New Delhi - 110066.
6. The Executive Engineer,
Government of India,
Central Water Commission,
Middle Brahmaputra Division,
CWC Complex, Behind Adabari Bus Stand,
P.O. Gauhati University,
Guwahati - 781014, Assam.

... Respondents

By Miss Usha Das, Addl. C.G.S.C



Shelfed for Advocate

ORDERSIVARAJAN L.(V.C.)

The applicant is working as Assistant Accounts Officer in the office of the Executive Engineer, Central Water Commission, Middle Brahmaputra Division at Guwahati. He has filed this application being aggrieved by orders dated 13.5.2004 and 18.5.2004 issued by the Under Secretary, Government of India and by the Executive Engineer who are respondents No.5 and 6 respectively. The applicant was getting Special Duty Allowance (SDA for short) pursuant to the orders passed by this Tribunal in the orders dated 12.5.1989 in G.C.No.105/1987 and as per order dated 2.11.2000 in O.A.7/1999. The payment of SDA was again discontinued as per the impugned proceedings dated 13.5.2004 followed by 18.5.2004 (Annexures 6 and 7 respectively). These two orders are impugned in this application. The applicant also seeks for a declaration that the payment of SDA in terms of various Government orders and also in terms of judgments and orders passed in G.C.105/87 and O.A.7/99 (inter parties).

The respondents have filed their written statement referring to various Government orders in the matter of grant of SDA and the decisions of the Supreme Court and of this Tribunal where it is stated that only those employees irrespective of their Grades in A, B, C & D, who fulfilled the criteria underlined in the concerned Government orders are entitled to get SDA. It is also stated that the amount paid to the ineligible employees upto 5.10.2001 would be waived and payment made thereafter would be recovered, as observed by the Supreme Court.

3. It is stated that the applicant is a local resident of the defined area of the North Eastern region, that the applicant was appointed initially in the North Eastern Region and he has continued to work in



[Signature]

the N.E. Region without any transfer to outside the said Region and hence the applicant is not entitled to grant of SDA and the amount so far paid is liable to be recovered. On the question of inter party judgment pleaded by the applicant it is stated that in view of the subsequent Government orders in implementation of the decision of the Supreme Court, the applicant is not entitled to grant of SDA after the said Government orders and that the principle of estoppel and the finality of judgment in such circumstances would not apply.

4. We have considered the rival submissions on the question of admissibility of SDA. There are a number of Government orders and also decisions of this Tribunal and of the Supreme Court on this issue. True that in the case of the applicant there are two decisions of this Tribunal, one rendered on 12.5.1989 and the other rendered on 2.11.2000 in G.C.105/87 and O.A.7/99 (Annexures 2 and 4 respectively). The said decisions, it must be noted, were rendered with reference to the Government orders as it obtained at that time. Subsequently the Supreme Court had spoken on the question of admissibility of SDA and the Government itself had issued various Government orders and the last being one issued on 29.5.2002. This Bench had considered the question of admissibility of SDA in a batch of cases O.A.No.170/99 and connected cases and rendered judgment on 31.5.2005 after elaborately considering all the relevant Government orders and the decisions of the Supreme Court. The legal position was summarized thus in para 52 and 53 of the said judgment.

"52. The position as it obtained on 5.10.2001 by virtue of the Supreme Court decisions and the Government orders can be summarized thus:

Special Duty Allowance is admissible to Central Government employees having All India



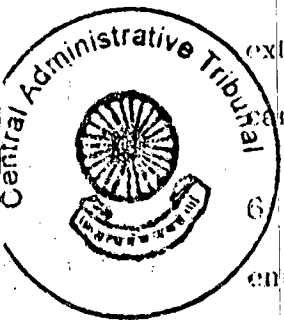
Ans

Transfer liability on posting to North-Eastern Region from outside the region. By virtue of the Cabinet clarification mentioned earlier, an employee belonging to North Eastern Region and subsequently posted to outside N.E. Region if he is retransferred to N.E. Region he will also be entitled to grant of SDA provided he is also having promotional avenues based on a common All India seniority and All India Transfer liability. This will be the position in the case of residents of North Eastern Region originally recruited from outside the region and later transferred to North Eastern Region by virtue of the All India Transfer Liability provided the promotions are also based on an All India Common Seniority.

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

5. Here it must be noted that the Office Memorandum F.No.11(5)97-E II (B) dated 29.5.2002 was also considered. It would appear from the averments in the written statement that the applicant was initially posted in the North Eastern Region and continued as such till date. The applicant also belongs to this Region. The case of the applicant in such circumstances would not fall within the governing principle stated in para 52 of the common judgment extracted above. However, the payment of SDA made till 5.10.2001 cannot be recovered as noted in para 53 of the common judgment.

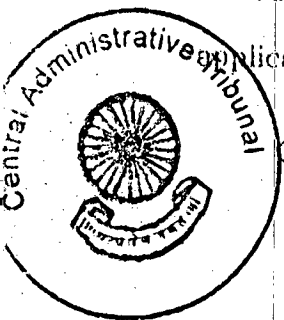
6. Now the contention of the applicant is that question of entitlement of SDA was considered by this Bench in the two decisions mentioned above and decided in their favour. As already noted that those decisions were rendered with reference to the Government orders as it obtained then. There cannot be any dispute that the question of grant of SDA is a matter of Government policy. If the Government modified the earlier Government orders revising the criteria for grant of SDA there cannot be any doubt that the modified criteria would govern prospectively in the matter of grant of SDA. For applying such modified criteria issued by the Government



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subsequently the decision rendered in the matter prior to such Government order will not in any way stand in the way of doing so. The decisions of this Tribunal admittedly are of the year 1989 and 2000. The Government order dated 29.5.2002 and the common judgment in O.A.170/1999 and connected cases decided on the basis of the said Government orders would govern the field. The decision of this Tribunal rendered on 23.5.2003 in a batch of O.As (O.A. 249, 316, 342 and 367 of 2002) were with reference to the Government order dated 29.5.2002 and declined to grant relief by way of grant of SDA to similarly situated persons. However, the said judgment directs the respondents not to recover the SDA already paid. The present case, as already noted, pursuant to the directions issued by this Tribunal in the earlier mentioned two O.As the applicant was being paid SDA till the date of the impugned orders i.e. 18.5.2004. In the circumstances while rejecting the claim for continued grant of SDA we direct the respondents not to recover SDA paid to the applicant upto 18.5.2004. In this view of the matter we are not elaborately discussing the various decisions cited at the bar, both by the counsel for the applicant and counsel for the respondents.

O.A. is disposed of as above. No order as to costs.



Certified to be true Copy
प्रमाणित प्रतिलिपि

[Signature]
13.6.05
Section Officer (J)
C.A.T. GUWAHATI BRANCH
Guwahati-781005

[Signature]
17/6

sd/- Vice-Chairman
sd/- Member (A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.248 of 2004

Misc. Petition No.69 of 2005

And

Contempt Petition No.8 of 2005 (In O.A.248/2004)

Date of decision: This the 9th day of June 2005

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

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

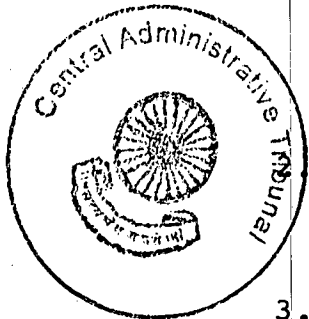
1. Shri Sandip Kr Das, Sr. Actt.
2. Shri Kalyan Brata Shome, Sr. Actt.
3. Smt Kalpana Banerjee, Sr. Actt.
4. Shri Kalaram Hajong, Sr. Actt.
5. Smt D. Wahlang Sr. Actt.
6. Shri Obisor Khongkham, Sr. Actt.
7. Smt Jessica Nongrum, DEO
8. Smt T. Shongwan, Sr. Actt.Applicants

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

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Finance.
Department of Expenditure,
New Delhi.
The Controller General of Accounts,
Department of Expenditure,
Ministry of Finance,
Lok Nayak Bhawan, New Delhi.
3. The Chief Controller of Accounts
Central Board of Excise and Customs,
A.G.C.B. Building, 1st Floor,
New Delhi.
4. The Dy. Controller of Accounts,
Office of the Dy. Controller of Accounts(IA),
Central Board of Excise and Customs,
M.S. Building (6th Floor), Customs House,
15/1, Strand Road, Kolkata.
5. The Pay and Accounts Officer,
Central Board of Excise and Customs,
Ministry of Finance,
M.G. Road, Shillong.?Respondents

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



Advocate
.....

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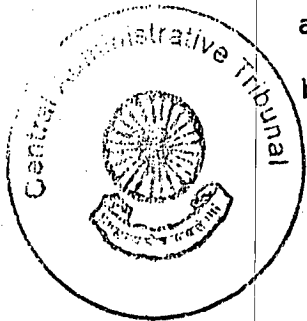
O R D E R

SIVARAJAN. J. (V.C.)

The applicants are working as Senior Accountant/ Data Entry Operator in the Office of the Pay and Accounts Officer, Customs and Central Excise, Shillong, Meghalaya. They have filed this application seeking for a declaration that they are entitled to payment of Special (Duty) Allowance (SDA for short) in terms of O.M.s dated 14.12.1983, 1.2.1998 and 22.12.1998 and also in terms of the Judgment and Order dated 28.6.1990 passed in O.A.No.23(G) of 1990 and in terms of Judgment and Order dated 12.5.1989 passed in O.A.No.105 of 1987 and also following the order of the Hon'ble Supreme Court passed on 20.12.1990 in SLP No.15447-51 of 1990 preferred by the Union of India. They have also sought for direction to the respondents to continue to pay SDA to the applicants in terms of the aforesaid orders with immediate effect with arrear monetary benefits also. They also sought to quash the order dated 19.10.2004 and also the letters dated 1.5.2004, 26.8.2004 and 15.10.2004 as void ab initio.

2. We have heard Mr M. Chanda, learned counsel for the applicants, and Mr A.K. Chaudhuri, learned Addl. C.G.S.C. appearing for the respondents. Mr Chanda has relied on the order passed in O.A.No.23 (G) of 1990 as affirmed by the Supreme Court and the order in O.A.No.105/1987 and submitted that the applicants are entitled to get SDA without break. Other decisions of this Tribunal are also relied on by the counsel.

3. The respondents have filed a Misc. Petition No.69 of 2005 in which it is stated that the respondents will consider the claim of the applicants for grant of SDA and pass a fresh order after considering the objections, if any, of the applicants. It is also stated that the present



application will be treated as a representation and a reasoned order will be passed. Mr A.K. Chaudhuri, learned counsel for the respondents, on the aforesaid basis submitted that the respondents may be afforded an opportunity to consider the claim of the applicants at the first instance and to pass a reasoned order.

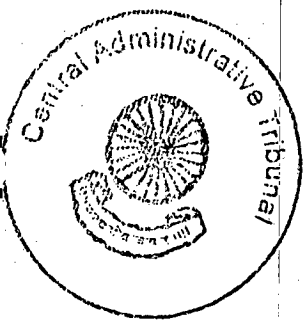
4. We had occasion to consider the question regarding the admissibility to SDA to Central Government Civilian employees working in the North Eastern Region in our common judgment and order dated 31.5.2005 in O.A.No.170 of 1999 and connected cases. After elaborate discussion of the decisions of this Tribunal and the decisions of the Supreme Court, we have summarised the position in paras 52 and 53 of the common order as follows:

"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.

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

5. In the above circumstances, accepting the submissions of the learned counsel for the respondents, we direct the respondents to treat the case projected by the applicants in this O.A. as a representation and to consider the same in the light of the governing principles stated by us in paras 52 and 53 of the common order in O.A.No.170/1999



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-63-

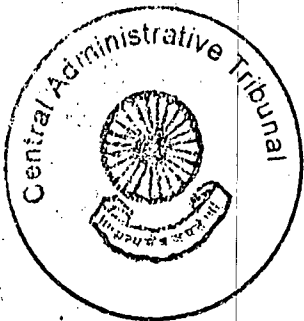
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and connected cases extracted hereinbove as also with reference to the orders in O.A.No.23(G)/1990 and O.A.No.105/1987 and to pass a reasoned order thereon within a period of two months from the date of receipt of this order. If the applicants want an opportunity of being heard by the respondents and if any such request is made in that behalf by the applicants within two weeks such an opportunity must also be granted before taking a final decision in the matter.

The O.A., the M.P. and the C.P. are disposed of as above..

Sd/ VICE CHAIRMAN
Sd/ MEMBER (A)



TRUE COPY
[Signature]

[Signature]
15.6.87
Section Officer (A)
C.A.T. GUWAHATI BRANCH
Guwahati-781005

[Signature]
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ANNEXURE-8

IN THE GAUHATI HIGH COURT
 (THE HIGH COURT OF ASSAM, NAGALAND,
 MEGHALAYA, MANIPUR AND TRIPURA)
 SHILLONG BENCH
 CIVIL APPELLATE SIDE

Appeal from W. P (C) No. 31 (8 of 2001) of 19

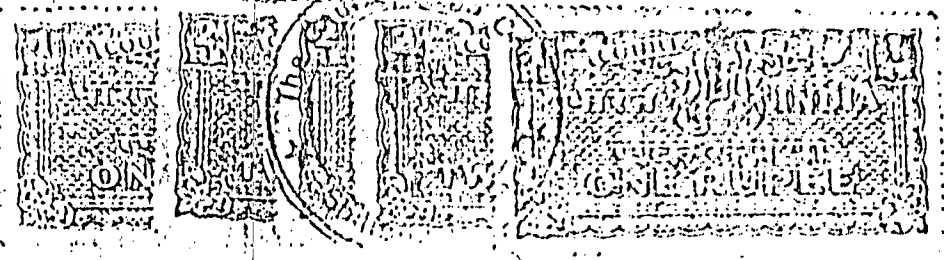
Civil Rule
 Union of India & Co.
 Versus
 State P. K. Choudhary

Appellant
 Petitioner
 Respondent
 Opposite-Party

For Appellant / Petitioner:

For Respondent / Opposite-Party:

Noting by Officer / Advocate	Serial No.	Date	Officer notes, remarks, orders or proceedings with signatures
	2	3	4



Office No.	Serial No.	Date	Office notes, reports, etc. or present with signature
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B E F O R E
THE HON'BLE MR JUSTICE HS SINGH
THE HON'BLE MR JUSTICE B LUNARE

21.3.01

Heard Mr SC Shyam, learned counsel for the petitioner.

Let a Rule Issue calling upon the respondent to show cause as to why an appropriate writ should not be issued as prayed for; or why such further and other orders should not be passed as this Court may deem fit and proper.

The Rule is made returnable within one month.

Petitioner is to take steps for service of notice upon the respondent within 48 hours.

Considering the nature of the case, we are not inclined to pass any interim stay order in this matter. Interim prayer for stay is rejected.

The earlier order passed by the learned Single Judge of this Court on 12.3.01 stands vacated.

21/3.2001 B. LUNARE

21/3.2001 B. LUNARE

Typed by
Read by
Learned by

21/3.2001
Asst. Registrar
Calcutta High Court
LS/Post Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 107 of 1999.

Date of decision : This the 19th day of December, 2000

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

Hon'ble Mr. M.P.Singh, Member (A).

1. Shri R. Dutta Chowdhury,
Junior Accounts Officer (Ad hoc)
Office of the Pay and Accounts Officer
Geological Survey of India,
North Eastern Region,
Shillong-793003.
2. Smt. M.B. Kharshiing,
Senior Accountant
Office of the Pay and Accounts Officer,
Geological Survey of India,
North Eastern Region,
Shillong-793003
3. Shri S. Sonowal,
Senior Accountant,
Office of the Pay and Accounts Officer,
Geological Survey of India,
North Eastern Region,
Shillong-793003.
4. Shri A. Bhattacharyya,
Junior Accounts Officer,
Office of the Pay and Accounts Officer,
Geological Survey of India,
North Eastern Region,
Shillong-793003
5. Shri G. Kachari,
Duftry,
Office of the Pay and Accounts Officer,
Geological Survey of India,
North Eastern Region,
Shillong-793003.
6. Shri R.P.Singh,
Peon,
Office of the Pay and Accounts Officer,
Geological Survey of India,
North Eastern Region,
Shillong-793003.
7. Shri M. Dkhar,
Peon,
Office of the Pay and Accounts Officer,
Geological Survey of India,
North Eastern Region,
Shillong-793003

...Applicants

By Advocates Mr. J.L.Sarkar, and Mr. M. Chanda.

-versus-

Contd..

87-

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-2-

1. Union of India,
Represented by the Secretary to
the Government of India,
Department of Expenditure,
Ministry of Finance, New Delhi.
2. Chief Controller of Accounts,
Ministry of Steel & Mines,
Udyog Bhawan, Room No. 296,
New Delhi-110011.
3. Controller of Accounts
Office of the Controller of Accounts
Central Accounts Office (Ministry of Mines),
Geological Survey of India, 16A
Brabourne Road, Calcutta-700001
4. Pay and Accounts Officer,
Geological Survey of India,
North Eastern Region,
Shillong-793003

...Respondents

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

.....

O R D E R (ORAL)

CHOWDHURY J.(V.C.).

The legitimacy of the direction issued by the Controller of Accounts vide letter No. Estt./1(55)/Admn/CAT/Shillong/1833 dated 4.3.1999 and the Office Order issued by the Pay and Accounts Officer under No. PAO/GSI/NER/ESTT/98 dated 15.3.99 (Annexures- 9 & 10 to the O.A.) are the subject matter of this application.

2. Apparently the matter in this application was already adjudicated upon between the parties. The Tribunal rendered its judgements on 12.5.1989 in O.A. Nos. 105 of 1987, O.A. No. 67 of 1990 on 31.7.1990 and O.A. No. 23(G) of 1990 on 28.6.1990 holding that the applicants were entitled to Special (Duty) Allowance. The orders of the Tribunal remained unchallenged therefore attained its finality. The respondents instead of complying with the Tribunal's order time to time issued orders contrary to the judgement rendered by this Tribunal. Needless to say even if a wrong judgement is rendered between the parties if not set aside

...Contd....

by a higher court the order cannot be disregarded to. The respondents are accordingly directed to give effect the orders of the Tribunal passed in O.A. Nos. 105/1987, 67 of 1990 and O.A. No. 23(G) of 1990. The impugned letter No. Estt./1(55)/Admn/CAT/Shillong/1833 dated 4.3.1999 and office order No. PAO/GSI/NER/Estt./98 dated 15.3.99 (Annexures - 9 & 10 to the O.A.) are set aside. We now direct the respondents to comply with the aforesaid judgements and orders of the Tribunal within two months from today and thereafter submit its compliance report.

3. The application is accordingly allowed. There shall, however, be no order as to costs.

Sd-
Vice Chairman
Sd-
Members (A)

H. S. Malhotra
16/02/04
C.A. 2. 17. 11. 1994
Gm. 17. 11. 95

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal(Civil)...CC 8590/2002

(From the judgement and order dated 26/03/1993 in TA 15/92
@ OA 80/90 of The HIGH COURT OF ORISSA AT CUTTACK)

UNION OF INDIA & ORS.

Petitioner (s)

VERSUS

INCOME TAX GAZETTED SERVICES ASSN. & ANR.
With I.A.1 (C/delay in filing SLP)
(With Office Report)

Respondent (s)

Date : 15/11/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGHFor Petitioner (s) Mr. Altaf Ahmed, ASG
Ms. Binu Tamta, Adv.
Mr. B.V. Balaram Das, Adv.

For Respondent (s)

UPON hearing counsel the Court made the following
O R D E R

There is delay of 3352 days in preferring this
Special Leave Petition which has not been satisfactorily
explained. The SLP is dismissed on the ground of delay.

Ganga Thakur
15/11
(Ganga Thakur)
P.S. to Registrar

Prem Prakash
15/11/02
(Prem Prakash)
Court Master

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GURUHATI BENCH

Filed by

(A. DESAI)

Sr. C. A. C.

C. A. T., Guruhati Bench

O.A. No. 7/92

Shri T.K. Paul

....Application

-VS-

Union of India & ors.

....Respondents

In the matter of :

Written statement submitted by the
respondents No. 1 to 5.

WRITTEN STATEMENT

The humble respondents submit their
written statements as follows :

1. That with regard to the statement made in para 1, 2 and 3 of the application the respondents beg to offer no comments save and except that the applicant is not eligible for the allowance under the extant G.I. orders (M.O.F. O.M. 11(3).95-F-II(B) dated 12.1.96) and the judicial pronouncement of the Apex Court in the civil appeal No. 3251 of 1993 and No. 3034 of 1995.

....2/-

Shri T.K. Paul
Advocate

2. That with regard to the statements made in para 4.1 and 4.2 of the application the respondents beg to offer no comment.

3. That with regard to the statements made in para 4.3 to 4.6 of the application the respondents beg to state that the special duty allowance granted under M.O.F. dept. of Expenditure, O.M. No. 20014/3/ Estt. IV dated 14.12.83 was not initially extended to the applicant as the competent authority ruled that such employees like the applicant were not entitled to the allowance. Details of all these incident are not gone into as they are already discussed in connection with many other similar cases filed in the same Administrative Tribunal. Thus briefly stated, the applicant and his other colleagues of Pay & Accounts Office, Geological Survey of India, Shillong being aggrieved approached the Hon'ble CAT, Guwahati Bench and the result was the judgment in the G.C. No. 105 of 1987 by the Hon'ble CAT. With effect from 18.5.95 as stated by the applicant he joined in the Pay & Accounts Office (NH) Ministry of Surface Transport Guwahati and was being paid the allowance till November '98. With the issue of GIM.F.O.M. No. II(3)-95-E-II(B) dated 12.1.96 the applicant became ineligible for the allowance and as per orders in the said O.M. dated 12.1.96 he was liable to repay the whole amount irregularly enjoyed by him w.e.f. 21.9.94, which he has not yet repaid. Other details in the paras are matter of records and this office has no comments.

4. That with regard to the statements made in para 4.7 of the application the respondent beg to state that the applicant is not eligible for the allowance under the extent G.I. orders and judicial pronouncement of the Apex Court already referred to above. The admissibility or otherwise of the allowance in case of the applicant has been considered on the basis of M.O.F.O.M. dated 12.1.96. The previous drawal on the basis of CAT, Guwahati Bench on G.C. 105 of 1997 have never been doubted nor intended to call in question. So citing of judgment in the G.C. 105/97 and its alleged violation which was attempted to project in the application is wholly misleading.

It is further stated that the purport and impact of the M.O.F. dated 12.1.96 were within clear knowledge of the applicant as would be evident from the fact that he himself had refused payment of SDA to the departmental officer of the Ministry of Surface Transport, posted in the N.E. region by citing the operative provision of the said O.M. dated 12.1.96. In the office letter No. PAO(G)/1/(25)/96/97/249 dated 30.5.96 signed and issued by the applicant in the official capacity as Jr. Accounts Officer, it is very clearly stated with citing G.I. M.F. O.M. dated 12.1.96 as well as civil appeal No. 3251 of 1993 and No. 3034 of 1995 that a central Govt. employee who is resident of this region is not entitled to the allowance. Relevant extract of this official letter No. PAO(G)/1(25)/96-97/249 dated 30.5.96 is quoted below :

73- AD 87

"Your contention of allowing SDA to Sri Pranab Sinha is not acceptable to us. SDA is not payable merely because of transfer of individual from outside the region. The point that the SDA is not payable to employees who are resident of this region can not be ignored. A careful study of civil appeal No. 3251 of 1993 as referred in para 6 of the Ministry of Finance O.M. No. 11(3)-95-E II(B) dated 12.1.96 will enable you to accept our view. The same view has been expressed by the Court in yet another case reported in Union of India and others vs. Executive Officer Association, Gr. C (Civil Appeal No. 3034 of 1995). We feel there can be no objection to disallow SDA in respect of Sri Pranab Sinha..."

A copy of this office letter is annexed hereto and marked as Annexure A.

The amount of SDA for Rs. 400/- has been disallowed for the salary bill for 5/96.

5. That the applicant passed the bill for May '96 in respect of Sri Pranab Sinha posted in Guwahati after disallowing SDA of Rs. 400/- Subsequently it reveals that his head office and the then Regional Pay & Accounts Officer (III) Guwahati also subscribed the same view and refused to pay SDA to Sri D. Chakravorty posted as Engineer Liaison officer at Shillong as would be evident from his official letter No. PAO(G)/1(25)/97/

98/998 dated 12.3.98.

That the fact is very clear now that the applicant was before hand well aware of advance and latest decision in the relevant civil appeals of the Apex Court as well as he had clear knowledge of the provision of M.O.F. O.M. dated 12.2.96 under which his own drawal of SDA was not admissible subsequent to issue of Finance Ministry's order contained in O.M. dated 12.1.96.

The applicant belonging to this region is always posted in this region since his first appointment. Thus it is crystal clear that he has no case. The present application is designed to unnecessary waste the valuable time of the Hon'ble Tribunal and also with an evil intention to mislead the tribunal to make believe as if he should be allowed to enjoy the allowance. That is why he has resorted to unnecessary litigation and caused harassment and wasteful expenditure to this office.

A copy of the office letter No. PAO(G)/1(25)/97-98/998 dated 12.3.98 is annexed hereto and marked as Annexure B.

6. That regarding the contention of payment of SDA to the staff of the applicant's erstwhile office i.e. Pay & Accounts Office, Ministry of Mines, Shillong the respondent states that when the respondent No. 3 i.e. the Regional Pay & Accounts Officer (NR) Ministry of Surface Transport, Guwahati took over charge as

as Pay & Accounts officer, Geological Survey of India, Shillong on 22.7.96 the actual staff strength of the office besides PAO were Asstt. Accounts Officer-1 Sr. & Acctt./Acctt.-10, L.D.C. -1 and Gr. D-3 totalling 15 nos. of which a half of them were drawing special duty allowance.

As half of the total staff had already been drawing the allowance and there was stout opposition from them against reopening the issue the respondents No. 3 was apprehensive of virulent repurcussion in the office. However, the Hon'ble CAT may call for the relevant records from that office and delib rate on the admissibility or otherwise of the allowance to the concerned staff of PAO. Geological Survey of India, Shillong and pronounce judgment as deemed fit and proper.

That on the other hand when the respondent No. 3 i.e. RPAO(NH) Ministry of Surface Transport Guwahati took over charge on 7.12.98 (AN) (effectively started functioning from 8.12.98) it came to light that the total strength of this office consists of PAO -1, AMO-1 Sr. Acctt./Acctt-6, LDC-1 and Gr. D-2 total-11 of which only the applicant was drawing SDA and none else. There is absolutely nothing in the concerned file of this office that subsequent to issue of O.M. dated 12.1.96 what other authority the applicant may have possession to continue to enjoy the allowance. In fact, on enquiry it is ascertained that subsequent to issue

of OM dated 12.1.96 the question of SDA to the applicant has not been subject to re-examination in the office. This speaks of dubious intention of the applicant to keep the matter shrouded in mystery and he illegally drew the allowance clearly knowing that he was not entitled to it.

7. That with regard to the statement made in para 4.8, 4.9 and 4.10 of the application the respondent beg to state that the RPOA (NH), MOST, Guwahati has acted in an official capacity as per provision of extant G.I. order/authority and temporarily withheld payment of SDA to the applicant after a thorough discussion of the subject with the applicant. The matter was simultaneously referred to the higher competent authority for an appropriate decision as per this office letter No. PAO(G)/NH/1(25)/98-99/888 dated 30.12.98 addressed to Deputy Controller of Accounts (Admn) Ministry of Surface Transport, New Delhi with a copy endorsed to the applicant.

That it is not true that the applicant was not taken into confidence. In fact the issue was discussed with the applicant in the Pay & Accounts Officer's room in an one to one situation. In course of discussion it was pointed out to the applicant that as per M.O.M. dated 12.1.96 the drawal of SDA in this case was in violation of the M.O.F. order mentioned in the said OM dated 12.1.96 and is therefore irregular. The applicant was also further given option to furnish

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details of authority under which the SDA drawn by him so as to enable the Pay & Accounts Officer to obtain an appropriate decision on the matter. But he declined to accept the option and further added that the Pay & Accounts Officer might take a decision on non payment of the allowance in which case the applicant should be duly intimated. Accordingly the allowance was temporarily held up from 12/98 and the case was reported to Head Quarter.

A copy of the office letter mentioned above is annexed hereto and marked as Annexure C.

8. That with regard to the statements made in para 5 of the application the respondent beg to state that the applicant has no ground for relief as he has no cause of action to agitate before the Hon'ble CAT. The applicant is well aware of the relevant provisions of the extent of G.I. orders and judicial pronouncement that he has nothing in his favour to plead for and yet filing this case is out of frustration than with any genuine intention of seeking justice. His plea deserve to be summarily rejected with cost.

9. That with regard to the statements made in para 6 of the application the respondents beg to state that there was no need to file this case as he fully know that he is no longer entitled to the allowance subsequent to issue of G.I. orders dated 12.1.96. Beside as already mentioned above his allowance was temporarily held up from 12/98 and the matter was

...9/-

reported to the Head Quarter under intimation to the applicant. So the applicant should have waited for an appropriate decision of the Head Quarter, instead of taxing the valuable time of the Tribunal.

10. That with regard to the statements made in para 7 of the application the respondents beg to offer no comments.

11. That with regard to the statements made in para 8 and 9 the respondents beg to state that the applicant has no case and hence no relief called for. In fact the Head Quarter has already intimated the decision against the applicant under letter No. CCA/SPT/Adm/Guwahati/98-99/0470 dated 29.1.99 and requested this office to recover the amount from the applicant.

A copy of the letter mentioned above is annexed hereto and marked as Annexure D.

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VERIFICATION

I, Shri Pannalal Dey, working as Pay & Accounts Officer in the office of the Regional Pay & Accounts Officer (NH), MOST, Guwahati do hereby solemnly declare that the statements made in this written statement are true to my knowledge, belief and information and nothing has been suppressed.

Pannalal Dey
Declarant.

Original Application No.7 of 1999

Date of decision: This the 2nd day of November 2000

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

Shri Tushar Kanti Paul,
Assistant Accounts Officer,
Regional Pay and Accounts Officer(NH),
Ministry of Surface and Transport,
Government of India,
Guwahati.

.....Applicant

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

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Department of Expenditure, Ministry of Finance, New Delhi.
2. The Chief Controller of Accounts, Ministry of Surface and Transport, I.D.A. Building Jamnagar, Shahjahan Road, New Delhi.
3. The Regional Pay and Accounts Officer (NH), Ministry of Surface Transport, Guwahati.
4. Shri Panna Lal Dey, Regional Pay and Accounts Officer (NH), Guwahati.
5. The Pay and Accounts Officer, Geological Survey of India, North Eastern Region, Shillong.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The legitimacy of the direction issued by the Regional Pay and Accounts Officer(NH) vide letter No.PAO(G)NH 1(25)98-99 dated 30/31.12.1998 is the subject matter of this application.

Advocate

2. The applicant alongwith ten others earlier presented an application before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 against the present respondents. The ten applicants in aforementioned application alongwith the present applicant sought for a direction for grant of Sepcial (Duty) Allowance (SDA for short) which was granted to all Central Government employees serving in the North Eastern Region carrying an All India Transfer liability. The Tribunal after considering the rival contentions, and the O.M. No.20014/3/Estt.-IV dated 14.12.1983 by its Judgment and Order dated 12.5.1989 in G.C.No.105 of 1987 allowed the application and directed the respondents to grant SDA as per the O.M. dated 14.12.1983 issued by the Government of India, Ministry of Finance, Department of Expenditure, including arrears. The said Judgment and Order dated 12.5.1989 of the Tribunal was accepted by the respondents and the respondents never challenged the aforesaid Judgment of the Tribunal in any higher Court. The respondents accordingly paid SDA to the applicants of the aforesaid O.A. till recelpt of the Impugned order dated 30/31.12.1998 by the respondents. According to the respondents though the applicant is subject to All India Transfer liability he is not entitled to the benefit of SDA, moreso in view of the subsequent judgments pronounced by the Apex Court in Civil Appeal No.3251 of 1993 and No.3034 of 1995.

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

order dated 23.7.1992. Mr Ali further submitted that the Judgment and Order of the Tribunal dated 8.2.1991 in O.A.No.208/91 has not yet been set aside and in the circumstances the directions given by the Regional Pay and Accounts Officer are contrary to the decisions of this Tribunal and therefore, not binding.

4. Considering all the aspects of the matter, I am of the view that since the Tribunal has already passed an order, ^{which has attained finality} the question of challenging the wisdom of that order by the Administration is not permissible. In the circumstances the impugned communication dated 30/31.12.1998 is not binding and operative and the same is hereby set aside.

The application is allowed. No order as to costs.

Sd/VICE CHAIRMAN

nkm

Certified to be true copy
अभावित्र प्रतिलिपि

27/8/02
Dection Officer (A)

साधुभाषा अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण
Central Bench, Guwahati
पुस्तकालय न्यायधीन, गुवाहाटी

CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI BENCH

On 06/29 of 2003 and On 12/4/2003

New Delhi, This The 14/4 day of May, 2004

HON'BLE MR. KULDIP SINGH, MEMBER/JUDGE
HON'BLE MR. P. V. PRASAD, MEMBER/JUDGEOA No. 29/2003

Shri Dayamoy Saikia
 Senior Accountant
 Office of the Pay and Accounts Officer,
 Doordarshan, Guwahati. Applicant.

By Advocates: Shri M. Chanda.

Versus

1. The Union of India
 Represented by the Secretary to the
 Government of India,
 Department of Expenditure,
 Ministry of Finance,
 New Delhi.
2. The Controller General of Accounts
 Ministry of Finance,
 Department of Expenditure,
 Lok Nayak Bhawan,
 New Delhi.
3. The Chief Controller of Accounts,
 Principal Accounts Office,
 H-Block, Tropical Building,
 Connaught Circus,
 New Delhi-110 001.
4. The Senior Accounts Officer (Admin)
 Principal Accounts Office,
 Ministry of Information and Broadcasting,
 H-Block, Tropical Building,
 Connaught Circus,
 New Delhi 110 001.
5. Pay and Accounts Officer,
 Doordarshan,
 Guwahati. Respondents

By Advocate: Sh. A.K. Choudhry, Learned Additional
 Central Government Standing Counsel.

OA 124/2003

Shri Ramjyoti Bhattacharjee
 Assistant Accounts Officer,
 Office of the Executive Engineer,
 North Eastern Investigation Division,
 Rongpur Part-I, P.O. Silchar,
 District-Cachar, Assam. Applicant

By Advocates: S/Shri M. Chanda, G.N. Chakraborty and S.
 Nath.



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Versus

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

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

O R D E R

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

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

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



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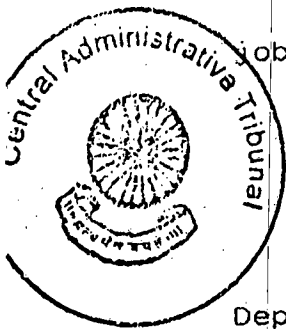
respondents to continue to pay SDA to the applicant vide order dated 12.5.82 and order dated 2.11.2000 passed in OA-7/99.

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

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

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

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others vs. Union of India and others. The same was contested by the respondents, however, it was allowed on 12.5.89 in favour of the applicants. Pursuant to the judgment given by the Tribunal the respondents implemented the judgment and started paying SDA. Applicant thereafter was transferred from one office to another office under the Central Govt. and still working as Assistant Accounts Officer. However, Resp. No.4, the Executive Engineer of Central Water Commission under whom the applicant is now presently working issued an order dated 26.8.2002 for recovery of SDA paid to the applicants in 20 instalments commencing from 1.8.2002 which stated that the said order of recovery is illegal.

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

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

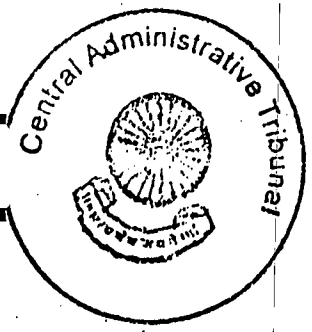
7. The same are the facts of OA-29/2003 and in his case when earlier OA was allowed for grant of SDA, department has gone in a SLP before the Hon'ble Supreme Court but the SLP was dismissed in limine.

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8. Respondents are contesting the OA. Respondents admit that the Govt. of India, Ministry of Finance, New Delhi vide office memorandum dated 14.12.85 brought out a scheme extending facilities of SDA to the Central Govt. employees serving in North Eastern Region. It is further stated that after some time some departments sought clarification about the applicability of the said OM. Then Govt. of India issued another OM dated 20.4.87 wherein it was mentioned that the instances have been brought to the notice of the Govt. of India that SDA has been allowed to Central Govt. employees serving in the North East Region without fulfillment of the condition of all India transfer liability which is against the spirit of the orders on the subject. For the purpose of sanctioning SDA, the all India transfer liability of the members of any service/cadre or incumbents of any posts/group of posts has to be determined by applying the tests of the recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all India basis and whether promotion is also done on the basis of the all India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of SDA.



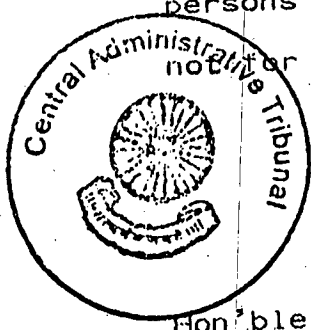
9. Another OM was issued on 1.12.88 but in the meanwhile several cases were filed in the Court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court.

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Hon'ble Supreme Court in Union of India and others vs. Vijoy Kumar and others upheld the Tribunal's judgment that only those employees who were posted on transfer from outside to the North East Region were entitled to grant of SDA on fulfilling the critterria as in OM dated 20.4.87. Such SDA was not available to the local resident of the North East Region. Thus, it is submitted that incentives granted by the said OM are meant for the persons posted from outside to North Eastern Region and not for local residents of the said defined region.



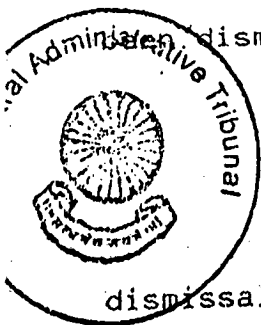
10. It is further stated that similarly Hon'ble Supreme Court in another judgment dated 7.9.95 in case of Union of India and others vs. Geological Survey of India employees' Association and others held that the Group C and D employees who belong to the North East Region and whose transfer liability is restricted to their region only, they do not have all India transfer liability and consequently, they are not entitled to grant of SDA. On the same lines there is another judgment of Hon'ble Supreme Court Sadhan Kumar Goswami and others vs. Union of India and others where Hon'ble Supreme Court again put reliance on the earlier decision as in S.Vijoy Kumar case held that the criteria required for the grant of SDA is same for both group A and B officers as in the case of Group C and D and there is no distinction.

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11. We have heard the learned counsel for the parties and gone through the record. There is no dispute to the fact that office memorandum was issued granting certain facilities to the Central Govt employees serving in the North Eastern Region and as regards the facilities of SDA is concerned, the same was allowed to certain employees and to these applicants it was allowed after they had gone to the Tribunal by filing an OA. Against the judgments given by the Tribunal the department had also filed an SLP before Hon'ble Supreme Court. Though various other SLPs were decided in favour of Government but in the case of the applicant SLP has been dismissed in limine.

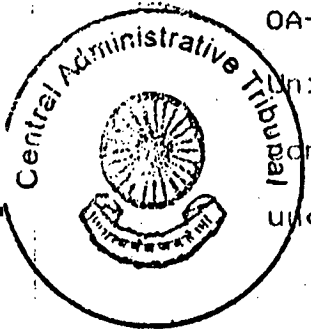


12. Now the question arises that after the dismissal of the SLP filed against the applicants, can the Govt. resort to recover the amount of SDA paid to the applicants. Learned counsel appearing for the respondents submitted that since the law as laid down in Vijoy Kumar's case by the Supreme Court of India it has been categorically held that the criteria for grant of SDA is just not the condition mentioned in the appointment letter that the employee has an all India transfer liability but it has to be examined in the light of the judgment in Vijoy Kumar's case and it is to be seen that employee is a resident of North Eastern Region and his transfer liability remains within the zone then he cannot be given the facility of SDA. So based on the judgment of Vijoy Kumar's case the respondents have

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discontinued paying the SDA to the applicants and had also started recovery proceedings for the amount already paid to the applicants under SDA.

13. But on the contrary counsel appearing for the applicant submitted that once the criteria has been fixed and the matter had gone up to the Hon'ble Supreme Court the department cannot recover the amount paid to the applicants nor the department can discontinue to make the payment to particular employees as the department has lost their case upto the Supreme Court. On this issue counsel for applicant has also referred to a judgment in OA-189/1996 titled as Sh. K.C.Sharma and others vs. Union of India and others. The Court upholding the contention of the applicants in the said case observed as under:-



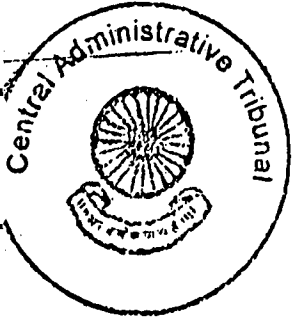
"(I)it is now to be seen whether the applicants are entitled to get the SDA. This Tribunal cannot pass any order reviewing order passed earlier by this Tribunal as the Supreme Court had dismissed the SLP against the said order of the Tribunal. Therefore, we agree with the submissions of Mr. Sarkar that the applicants are entitled to get the SDA on the basis of the judgment passed by this Tribunal in OA-208/91. In view of the above circumstances the Annexure 3 OM dated 12.1.96 shall not have any effect so far the present applicants are concerned, unless the Supreme Court reviews the order dated 8.2.91 passed by this Tribunal in OA No.208/91. Therefore, we set aside the Annexure 5 order. The applicants shall continue to get the SDA."

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105

14. It is not disputed in these two cases that, the judgment on the basis of which applicants have been paid SDA, department has gone to Hon'ble Supreme Court in an SLP and those SLPs have been dismissed. So it is not open for this Tribunal to review the order passed by the Tribunal particularly so when the SLP filed against the order of the Tribunal has already been dismissed by the Hon'ble Supreme Court. Thus, we find that the OA deserves to be allowed. We order that no recovery shall be effected from the applicants. If any amount had already been recovered that shall be refunded to the applicants and department shall continue to pay SDA to the applicants. Both the OAs are accordingly disposed of.



Sd/MEMBER(J)

Sd/MEMBER(A)

Certified to be true Copy
प्रमाणित प्रतिलिपि

(Signature)
Section Officer (A) 17/5/04
C.A.T. GUWAHATI BANCH
Guwahati-781005

17/5/04

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

106

Original Application No.189 of 1996.

Date of Order: This the 27th Day of October 1998.

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

HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Shri K.C.Sharma & Others.

(All the applicants are working under the Deputy Assistant Director General(MS), Govt. Medical Store Depot, P.O. Gopinath Nagar, Guwahati-16 in different capacities as Group B, C & D categories). ... Applicant.

By Advocate Mr.J.L.Sarkar, Mr.M.Chanda

-Vs-

1. Union of India ,
(Through Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110011.
2. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.
3. The Deputy Assistant Director General(MS)
Govt. Medical Store Depot, A.K.Azad Road,
P.O.Gopinath Nagar,
Guwahati-781016. ... Respondents.

By Advocate Mr.S.Ali, Sr.C.G.S.C.

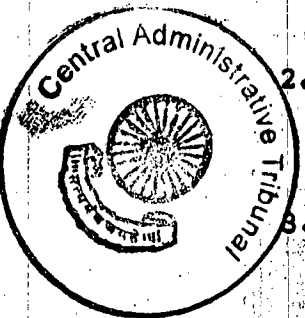
O R D E R

BARUAH, J. (VC):

In this application the applicants have challenged the impugned Annexure-5 letter dated 27-8-96, issued by the Deputy Assistant Director General, Ministry of Health & Family Welfare stopping the Special Duty Allowance on the basis of Annexure-3, office Memorandum dated.12-1-1996 issued by the Under Secretary, Government of India, Ministry of Finance, Department of Expenditure. They also seek certain directions. Facts are :-

The applicants are Group 'C' and 'D' employees of the Government Medical Store Depot at Guwahati in various capacities. The applicants used to receive Special Duty Allowance(SDA) pursuant to the judgment dated 8-2-91 passed by this Tribunal in O.A.No.208 of 1991. The respondents

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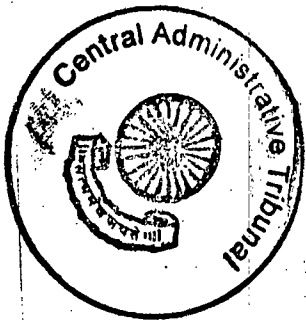
in the said O.A. being aggrieved by and dissatisfied with the order of this Tribunal, approached the Supreme Court by filing SLP No.9381/92(Annexure 2 to the application. When the SLP was moved similar matters regarding SDA were pending before the Supreme Court. The Supreme Court after noticing the Special Leave Petition and passed the following order :-

"There is a delay of 347 days in filing this SLP for which there is no cogent explanation.

Learned counsel for the petitioners submitted that the point involved for decision on merits in this S.L.P is important and is also involved in some other pending SLPs, one of which is SLP(C)No.13710/87. In our opinion this cannot be a ground for condonation of the inordinate delay for which no cogent explanation has been offered by the petitioners.

I.A.No.1 for condonation of delay is rejected. Consequent the SLP is dismissed as time barred."

The aforesaid order dated 23-7-92 of the Supreme Court was passed after this Tribunal's order dated 8-2-91 in O.A.No.208/91. The applicants have been getting SDA on the basis of the order of this Tribunal. Meanwhile, the Supreme Court in its judgment delivered on 20-9-94 (in Civil Appeal No.3251 of 1993) held that the Central Government Civilian Employees who have All India transfer liability are entitled to receive of SDA, on being posted in any station in the N.E. Region from outside the Region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The Apex Court further held that benefit of this allowance is available only to the officers transferred from outside the NE Region to this Region. This would not be violative of the provisions contained in the Article 14 of the constitution as well as the equal pay doctrine.



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108

After the disposal of the aforesaid application by the Supreme Court, Annexure 3 order was issued by the Under Secretary, Government of India, Ministry of Finance, directing the departments concerned to stop payment of SDA on the ground that the local employees were not entitled to get SDA. Pursuant to the said Annexure 3 O.M. dated. 12-1-1996, Annexure 5 order was issued. Hence the present application. In due course the respondent have entered appearance and have filed written statement. This Tribunal issued notice to the respondents to show cause as to why the present application should not be admitted. After the reply was filed, the application had been admitted. The respondents urged that the reply to the show cause might be treated as written statement. In the said reply the respondents have refuted the claim of the applicants. The respondents have submitted that in view of the order passed by the Supreme Court the applicants cannot claim any SDA.

We heard learned counsel for both sides. Mr.J.L. Sarkar learned counsel for the applicants submitted before us that in so far as the present case was concerned after dismissal of the SLP by Supreme Court as barred by limitation, the Tribunal's order dated 8-2-91 passed in O.A. No.208/91 became final. Mr.J.L.Sarkar further submitted that the Supreme Court has not passed any order nullifying the order passed by this Tribunal till now. This Tribunal had no authority to alter the same. Mr.Sarkar further submitted that the Supreme Court passed the order dated 23-7-92 in other cases stating that local candidates would

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would not be entitled to get the SDA. But that would not affect the present case which reached its finality.

On the rival contention of the parties it is now to be seen whether the applicants are entitled to get the SDA. This Tribunal cannot pass any order reviewing order passed earlier by this Tribunal as the Supreme Court had dismissed the SLP against the said order of the Tribunal. Therefore, we agree with the submissions of Mr. Sarkar that the applicants are entitled to get the SDA on the basis of the judgment passed by this Tribunal in O.A.208/91. In view of the above circumstances the Annexure 3 O.M. dated 12-1-96 shall not have any effect so far the present applicants are concerned, unless the Supreme Court reviews the order dated 8-2-91 passed by this Tribunal in O.A.No.208/91. Therefore, we set aside the Annexure 5 order. The applicants shall continue to get the SDA.

Application is accordingly disposed of. No order

Sd/ VICE-CHAIRMAN
Sd/ MEMBER (A)

Section Officer (I)
C.A.T. GUWAHATI Bench
Guwahati-781005
31/3/04

- 96 -

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.103 of 1996

Date of order: This the 17th day of February 1999.

HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN
HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

1. Employees State Insurance Corporation
Employees' Union, N.E.Region,
Guwahati-21, represented by its
General Secretary.
2. Shri Nagen Chandra Sarma,
Upper Division Clerk,
Employees State Insurance Corporation
N.E. Region, Guwahati-21. ... Applicants

By Advocate Mr. B.K.Sharma, Mr.S.Sarma

-Vs-

1. Union of India represented by
 - (a) Secretary to the Govt. of India
Ministry of Labour,
Shram Shakti Bhawan,
New Delhi.
 - (b) Secretary to the Govt. of India
Ministry of Finance,
Department of Expenditure,
Government of India,
New Delhi.
2. The Director General, Employees State
Insurance Corporation,
Kokla Road,
New Delhi.
3. The Regional Director,
Employees State Insurance Corporation,
N.E.Region, Lamunimaidan,
Guwahati-21. ... Respondents.

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

O R D E R.

SANGLYINE, MEMBER(A):

This Original Application has been submitted
by the Employees State Insurance Corporation Employees'
Union, North Eastern Region alongwith one of the affected
persons. Permission under Rule 4(5)(b) of the Central
Administrative Tribunal Procedure Rules, 1987 was

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Shri Nagen Chandra Sarma
Advocate

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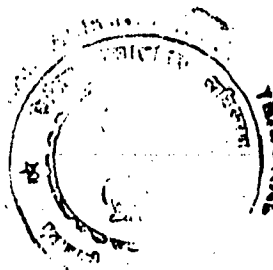
granted to the applicants to join in the single application as prayed for.

Members of the Union applicant No.1 as well as applicant No.2 are employees of the Employees' State Insurance Corporation, Northeastern Region, Guwahati. They were drawing Special(Duty) Allowance (SDA for short). The respondent No.3, the Regional Director, Employees' State Insurance Corporation, N.E. Region, Guwahati issued the Office Memorandum No.43-A-28/15/86-Extt. dated 12-6-1996 intimating that payment of SDA to the employees of the Corporation who are not eligible for the SDA was being stopped with immediate effect and the amount of SDA paid to such persons after 20-9-94 was to be recovered. Hence this application.

The respondents have contested the application and filed written statement.

In this application the applicants have prayed for setting aside of the aforesaid Office Memorandum dated 12-6-96, Annexure 3, and the Office Memorandum No.11/3/95-E. II(B) dated 12-1-96, Annexure 2, and also for a direction on the respondents not to make recovery of the amount of SDA already paid to the applicants. The contention of the applicants is that the above mentioned office Memoranda are not applicable to the case of the applicants in view of the fact that the applicants are entitled to SDA by virtue of the order of this Tribunal dated 28-2-1990 passed in O.A.No.130(G) of 1989 against which no appeal had been preferred before the Hon'ble Supreme Court by the respondents. Further, the respondents have not identified who are the ineligible persons and therefore, they cannot

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arbitrarily order any recovery of the amount paid from the employees. At any rate, the amounts of SDA paid so far cannot be recovered from the employees without affording them an opportunity of being heard. The respondents, on the otherhand, submitted that it is true that there was no appeal against the order dated 28-2-90 in O.A.No.130(G) of 1989 and the employees were being paid the SDA but the order of the Tribunal ceased to have any operation after the judgment dated 20-90-94 of the Supreme Court delivered in respect of Civil Appeal No.3251/93 pertaining to admissibility of SDA and that the applicants are not entitled to SDA after the Office Memorandum dated 12-1-1996 and dated 12-6-96 were issued. Therefore, the office Memorandum dated 12-6-96 cannot be assailed.

"We have heard counsel of both sides. The learned counsel for the applicant had relied on our order dated 27-10-1998 in O.A.No.189 of 1996 in support of the contention of the applicants that the above office Memoranda have no application in the case of the applicants as they have been receiving the SDA on the strength of the order of the Tribunal dated 28-2-90, which has become final against which there was no appeal. In the order dated 27-10-98 we had held :

"On the rival contention of the parties it is now to be seen whether the applicants are entitled to get the SDA. This Tribunal cannot pass any order reviewing order passed earlier by this Tribunal as the Supreme Court had dismissed the SLP against the said order of the Tribunal. Therefore, we agree with the submission of Mr. Parkar that the applicants are entitled to get the SDA on the basis of the judgment passed by this Tribunal in O.A.No.208/91 and in the Annexure 3 O.M. dated 12-1-96 shall not have any effect so far the present applicants are concerned, unless the Supreme Court reviews the order dated 8-2-91 passed by this Tribunal in O.A.No.208/91. Therefore, we set aside the Annexure 5 order. The applicants shall continue to get the SDA."

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O.A.No.130(G) of 1989 was filed by the Employees' State Insurance Corporation Employees Union, N.E. Region, Guwahati and it was disposed by this Tribunal by order dated 28-2-1990 allowing the application. No SLP was filed before the Hon'ble Supreme Court against the order.

We are therefore of the view that the order dated 28-2-1990 in C.A.No.130(G) of 1989 has become final and unless it is set aside it will continue to be operative insofar as it relates to the Union applicant and its members and consequently, the employees will continue to receive SDA in terms of the order. Accordingly, we are of the view that Annexure 3 order No.43-A.28/15/86-Estt. dated June 12th, 1996 is not sustainable. Therefore it is hereby set aside.

Application is allowed. No costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMIN)

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11/3/99

Section Officer (A),
मुख्य अधिकारी (आचार्य) शाखा
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench, Guwahati-6
गुवाहाटी बेंच, गुवाहाटी-6

11/7/99

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Case-Law Section

Tribunal Judgments

69

Whenever a writ of mandamus is issued and the order has become final, it cannot be said that the decision can be reversed by a subsequent judgment of the Supreme Court

Held: In all these cases, a common point of law has arisen for consideration. As such, they have been taken up together for disposal. The official respondents have issued a general circular on 13-2-1998, to all Heads of Administrative units about the judgment of the Supreme Court in *Union of India and another v. R. Swaminathan and others* [1997 SCC (L&S) 1852] reversing the view taken by the various Tribunals with regard to the stepping up of pay.

We are unable to accept the point that subsequent judgment of the Supreme Court will apply retrospectively to the case which had become final either by not taken as SLP or taking up as SLP and getting dismissed *in limine* on the ground of delay. It is true that the judgment of the Supreme Court is binding on the Tribunal under Article 14 of the Constitution of India. But, on the facts and circumstances of this case, it cannot be said that cases decided long before the judgment of the Supreme Court and which had been given a *quietus* can be reopened now and proceedings can be started in those cases. To our understanding the last paragraph in *R. Swaminathan's case (supra)* clearly shows that all the orders of the Tribunals which are the subject matter of the appeal are set aside, because that judgment which covers the orders of the various Tribunals and the Supreme Court rendered a consolidated view and as such the Supreme Court observed as follows in the last paragraph: "The appeals are, therefore, allowed and the impugned orders of different Benches of the Central Administrative Tribunals, which have held contrary are set aside. There will, however, be no order as to costs".

The Supreme Court has held in *Madan Mohan Pathak and another v. Union of India and others (LIC case)* [1978 (2) SCC 50] that whenever a writ of mandamus is issued and the order has become final so far as the applicants are concerned, it cannot be said that the decision can be reversed by a subsequent judgment of the Supreme Court. The Supreme Court has taken a view in the case of *Vallapally Promotions Pvt. Ltd. v. State of Kerala* [AIR 1999 SC 1796] that it is well settled that even an order which may not be strictly legal became final and is binding between the parties if they are not challenged before the Superior Courts. In our view, the Supreme Court in *Swaminathan's case (supra)* might have indicated that the judgment

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May, 2000

will apply even retrospectively. That has not been done. As such, we do not think, the argument of the learned Counsel can be accepted.

As such when the orders of this Tribunal have become final so far as these applicants are concerned, the Government cannot refix the salary of the applicants since the orders are in their favour and the issue cannot be re-opened now because of *R. Swaminathan's case (supra)*. On this simple ground, the impugned orders in these applications are set aside. Accordingly, the OAs are allowed. No costs.

[*T.K. Ramamurthy and others v. Union of India and others*, 5/2000 Swamysnews 52, (Madras), date of judgment 26-7-1999.]

O.A. No. 366 of 1999

70

The principle and spirit behind the sealed cover procedure is that a person under a cloud cannot be rewarded with a promotion

Facts: The applicant is working as an Examiner in the Department of Customs at Mumbai. Due to certain alleged misconduct and irregularity he was placed under suspension on 20-9-1995. He was due for promotion to the next post of Appraiser. Two DPCs were held on 30-10-1995 and 20-6-1996, but the applicant was not promoted and some of his juniors came to be promoted and the finding regarding the applicant was kept in a sealed cover. The applicants' suspension was revoked on 8-10-1996. Then, third DPC was held on 25-6-1997 when again the applicant was not considered for promotion. A departmental chargesheet was issued on 8-7-1997. The applicant's case is that as soon as the suspension was revoked on 8-10-1996 the applicant's case for promotion should have been considered by opening the sealed cover kept in the first two DPCs. Then, further case of the applicant is that atleast on 25-6-1997 when the third DPC was held applicant should have been considered for promotion since he was not under suspension on that day and there was no departmental chargesheet issued against him on that date. It is also the case of the applicant that there should have been periodical review of the case of the applicant regarding his promotion or alternatively he should have been considered atleast for *ad hoc* promotion. Hence, in the circumstances, it is stated that keeping the recommendation of the DPC in a sealed cover was unjustified and uncalled for.

The stand of the administration is that since the applicant was involved in a serious scam of financial irregularities and loss of money to the Government, he was kept under suspension and, therefore, he could not be considered for promotion. But since the applicant was under a cloud he could not be promoted at any stage and the procedure adopted by the administration is perfectly justified and valid. The applicant is not entitled to any relief prayed for.

is fully allowed. The Respondents are directed to consider the case of the Applicant for promotion to the post of HS, Gr. II from the date when his junior Shri Bhupendra Singh Respondent No. 4, was promoted, i.e., from 16-10-1981 and in case found fit he shall be entitled to all the consequential benefits. However, the Applicant shall be entitled to actual arrears of difference only from the date of filing of this O.A., i.e., from 6-10-2002. No costs.

[Nem Singh v. Union of India and others, 10/2004, Swamysnews 68, (Jodhpur), date of judgment 1-2004.]

O.A. No. 273 of 2002 and M.A. No. 127 of 2002

87

When certain benefits have been extended to employees on the basis of the order of Tribunal and the same has attained finality, the effect of the said order cannot be nullified pursuant to a subsequent judgment of the Supreme Court laying down a contrary principle of law.

Facts: A question of seminal significance is involved in these cases which causes a sensation in the mind of the Court. The basic question involved in these cases is that, when certain benefits have been extended to the employees, i.e., litigants on the basis of a judgment of a Court of law and the same has attained finality, can the effect of the said judgment be nullified in pursuance with a subsequent judgment of the Supreme Court laying down a contrary principle of law? The indubitable facts of these cases are that, all the Applicants filed their individual OAs for stepping up of their pay at par with one Shri M.P. Tyagi, who was junior to them in the same cadre and was getting more pay than the Applicants. The OAs came to be allowed in their favour and they were allowed the benefit of stepping up of the pay at par with their next junior Shri M.P. Tyagi. Number of other similarly situated persons also enjoyed similar benefits. No special Appeal was preferred against the judgment passed in the OA filed by the Applicants. In some cases, Review Applications were filed after the judgment in *Union of India v. R. Swaminathan's case* (C.A. No. 8658 of 1996 decided on 12-9-1997), and the same came to be rejected.

Subsequently, the Supreme Court in the case of *Union of India v. R. Swaminathan*, Civil Appeal No. 8658/96, decided on 12-9-1997, wherein their Lordship held that the pay of an employee can be stepped up only if junior and senior officials belong to the same cadre and the posts to which they had been promoted is in the same cadre, and the anomaly became due to direct application of FR 22 (c), which is now FR 22 I (a) (i), and if the higher pay was received by the junior on account of local officiating promotion, that does not entitle a senior to get his pay stepped up to make it at par with the pay of his junior.

*Admitted
Mr. [illegible]*

Thereafter, in pursuance of the judgment of the Supreme Court, Applicant Nos. 1 to 3 have been issued notice *vide* letter, dated 6-9-1999 and also the order of their refixation indicating that the recovery has been made from the DCRG. As regards other Applicants, orders have been passed for making the recovery as well as refixing their pay by withdrawing the benefit of the stepping up of pay granted to them in pursuance with the judgment of this Bench of the Tribunal. The cut-off date for the recovery has been fixed as 12-9-1997, i.e., the judgment of the Apex Court in *R. Swaminathan's case (supra)*.

Held: The learned Counsel for the Applicants has submitted that this Bench of the Tribunal has already adjudicated upon the identical matter in the case of *Ved Prakash v. Union of India and others* O.A. No. 54 of 2002, decided on 22-10-2002 and he has submitted that this judgment squarely covers on all fours, the controversy involved in the instant case.

We have considered the rival submission made on behalf of both the parties. As far as facts of the case are concerned, they are not in dispute. It is admitted position of both the sides that all the Applicants enjoyed the benefit of stepping up of the pay at par with Shri M.P. Tyagi as per the orders passed in their respective cases by this Bench of the Tribunal, against which no appeal was preferred. It is also true that the stepping up of pay was allowed on account of higher pay which was admissible to Shri M.P. Tyagi due to his *ad hoc* officiation on promotional post. To cut short the controversy, we would like to refer certain significant paras. of the judgment in *Ved Prakash's case (supra)*. Paras. 7 to 12 are extracted as under:

7. The question for consideration is, whether on the basis of the Apex Court's judgment in the case of *Swaminathan*, the benefit of stepping up of pay given to the Applicant *vide* order, dated 25-7-1994, can be taken back?

8. The answer to this question finds place in a Full Bench decision of this Tribunal in the case of *P. Venkata Rao and another v. The Director-General, Department of Telecommunications and others* [2002 (1) ATJ 215]. A Division Bench of the Hyderabad Bench of this Tribunal had referred the following question to the Full Bench:

"When an employee who had received certain benefits in view of filing an original application in the Tribunal and either no appeal is preferred or appeal preferred has been rejected by the Supreme Court, whether the benefits accrued to the Applicant can be annulled by a later decision of the Supreme Court in a similar case"

The Full Bench answered the question in the negative. It was observed at Para. 14 of the report as under:

115

102

Aforesaid decision of the Supreme Court in the case of *R. Swaminathan (supra)* can apply only prospectively. The same cannot be made applicable to unsettle the settled issues which have become final between the parties. If parties are permitted to resile from settled issues which have become final between them, it would go against judicial discipline. Apart from principle of finality which attaches to every *lis* between the parties, parties are also governed by the principle of *res judicata* as enshrined in Section 11 of the Code of Civil Procedure. Though aforesaid provision may not strictly be applicable to the Tribunal, provision analogous to *res judicata* will certainly apply. In the circumstances, we have no hesitation in holding that it is not open to the Respondents to re-open settled issues and claim refund of the amount paid over to the Applicants under the judgment of the Tribunal which have become final between the parties (emphasis supplied).

In view of the Full Bench decision (*supra*), which is binding on us, it has to be held that the Respondents cannot take away the benefit accrued to the Applicant pursuant to the decision of this Tribunal, dated 28-7-1993. It is an admitted position that the Respondents had not challenged the decision of this Tribunal, dated 28-7-1993 before the Supreme Court and the decision had attained finality between the parties. It is not open to the Respondents to re-open the settled issue and make recovery of the amount paid to the Applicant in view of the judgment of this Tribunal.

In view of the clear decision of the Full Bench of this Tribunal cited *supra*, it is not necessary for us to consider the matter in greater detail.

Consequently, we find merit in this OA and it is allowed. The recovery made is not sustainable in law. The Respondents are directed to refund the amount of Rs. 24,423 to the Applicant within a period of one month from the date of communication of this order. The Respondents are further directed to extend the pensionary benefits to the Applicant treating Rs. 7,100 as the last pay drawn by him, within the aforesaid period. The remaining amount of the retiral benefits pursuant to this order be paid to the Applicant within one month. If the payment as aforesaid is not made within one month of the communication of this order, the Respondents shall be liable to pay interest at the rate of 10% per annum on the amount from the date of payment of the various items of retiral benefit to the date of payment of the amount under this order.

The applicant shall get cost Rs. 2,000 from the respondents.

As far as the question of law is concerned, the aforesaid judgment is based on a judgment of the Full Bench of the Tribunal and we are bound to follow it in every respect.

We hasten to add that as per the statement of law, the doctrine of *res judicata* very much applies to the writ petitions under Article 226 and also the OAs filed before this Tribunal by implication since the Tribunal is also exercising the power under Article 226 of the Constitution of India. The principle of *res judicata* has been lucidly explained by the Hon'ble Supreme Court in the case of *Ashok Kumar Srivastav v. National Insurance Co., Ltd. & others*, [AIR 1998 SC 2046]. Paras. 11 & 12 are relevant which are extracted as under:

It is well neigh settled that a decision on an issue raised in a Writ Petition under Article 226 or Article 32 of the Constitution would also operate as *res judicata* between the same parties in subsequent judicial proceedings. The only exception is that, the rule of *res judicata* would not operate to the detriment of impairment of a fundamental right. A Constitution Bench of this Court has considered the applicability of rule of *res judicata* in writ proceedings under Article 32 of the Constitution in *Daryao v. State of U.P.* [(1962) I SCR 574; (AIR 1961 SC 1457)] and it was held that the basis on which the rule rests is founded on consideration of public policy and it is in the interest of public at large that a finality should attach to the binding decision pronounced by a Court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over in the same kind of litigation.

This was reiterated by another Constitution Bench of this Court in *Amalgamated Coalfields Ltd. v. Janapada Sabha, Chhindwara*, [1963 Suppl. (1) SCR 172; AIR 1964 SC 1013]. The following is the ratio: Therefore, there can be no doubt that the general principle of *res judicata* applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasize that the application of the doctrine of *res judicata* to the petitions filed under Article 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India.

Keeping in view the aforesaid preposition of law and applying the same to the facts of the present case, we are of the considered opinion that the impugned orders in these OAs are hit by doctrine of *res judicata* and the action of the Respondents is not sustainable in law and therefore, the OAs have force.

The upshot of the aforesaid discussion is that all the OAs have ample substance and merit acceptance. The same stand allowed. The impugned notices / orders (Ann. A/1 & Ann. A/1A in O.A. Nos. 565, 566 & 567 of 2002) and the impugned orders at Ann. A/1 in rest of the OAs are hereby quashed. The Respondents are directed to refund the amount already recovered from the Applicants. The Applicants shall also be entitled to a cost, to be paid to them by the Respondents, which is quantified as Rs. 2,000 in each case. This order shall be complied with

within a period of three months from the date of receipt of a copy of this order.

[*Sitaram Pareek and others v. Union of India and others*, 10/2004, Swamysnews 70; (Jaipur), date of judgment 27-2-2004.]

O.A. No. 565 of 2002 and others.

88

1. Whenever a request for conducting an inquiry is received from the delinquent employee, the same should receive proper consideration in the hands of the Disciplinary Authorities.
2. When an employee submitted only a representation requesting for holding a detailed inquiry before he could submit his final reply to the charge-sheet, it could not be taken as his statement of defence.
3. Penalty of withholding of two increments for a period of three years without cumulative effect is absurd and neither it has been provided under the rules nor could have been feasible.
4. Once the initial order itself is void *ab initio*, the same cannot be legalized by passing a legal order.

Facts: The Applicant while holding the post of Sr. TOA (P) at CTX Banswara was issued with a chargesheet for minor penalty under Rule 16 of CCS (CCA) Rules, 1965 (for brevity the Rules) vide memo, dated 13-4-1999, alleging violation of Rule 3 (1) (i), (ii), (iii) of CCS (Conduct) Rules, 1964. He requested to make available a copy of documents mentioned in his representation, dated 17-4-1999. He was allowed the inspection of the same and thereafter he submitted an exhaustive and self-explanatory representation on 10-5-1999 whereby he requested for holding a detailed oral inquiry into the allegation for the reasons adduced therein and would submit his final reply. The Disciplinary Authority abruptly inflicted the penalty of withholding two increments for a period of three years without cumulative effect, vide memo, dated 11-5-1999. He preferred an appeal as well as a revision petition, but both came to be rejected. The revision petition was first rejected by GMID, Sirohi and also by the CGMT, Rajasthan Circle, Jaipur.

Held: It is evident from the aforesaid decision that whenever a request for conducting an inquiry is received from the delinquent employee, the same should receive proper consideration in the hands of the Disciplinary Authorities. They should apply their mind to the request made by the delinquent employee and taking into account all other materials before them, they have to come to a definite conclusion

regarding the necessity or otherwise of an inquiry. In the case in hand, it is the admitted fact that the Applicant did make specific request for holding such inquiry and the Disciplinary Authority has not considered the same inasmuch as there is not even a whisper in the penalty order regarding the same, least to say any cogent reason for not holding it. In absence of such decision, the inescapable conclusion would be that the very penalty order cannot be sustained and is liable to be set aside on this ground alone.

There is yet another recent decision of a Co-ordinate Bench of the Tribunal in case of *M. Ravi Kumar v. Union of India and others* [2003 (1) SLJ CAT 377], wherein a similar view was taken and the penalty order was quashed on the same ground.

Looking at the matter from another angle, the Applicant submitted only a representation requesting for holding a detailed inquiry before he could submit his final reply, but the said representation was taken as his statement of defence. Thus he was not given any opportunity to defend his case and we find force in this contention of the learned Counsel for the Applicant and the same has our concurrence. We are also supported in our view from a very recent verdict of Delhi High Court in case of *Manjit Singh v. Punjab and Sind Bank and others* [2004 (1) SLJ CAT 68] wherein a request was made for making available certain copies of documents for submitting reply to charge-sheet but the same was treated as reply to charge-sheet and penalty was imposed. However, the same was quashed holding that the same could not be treated as reply to show-cause notice. On this count also, the penalty order cannot be sustained.

Though not argued on behalf of any of the parties, we cannot lose sight of the term the very penalty is clothed. The penalty was withholding of two increments for a period of three years without cumulative effect but one gets only one increment during a year. It is next to impossible to implement such penalty since increment can be withheld when one gets it and by no stretch of imagination two increments can be withheld in a year since one does not get them at all. Penalty is as such is absurd and neither it has been provided under the rules nor could have been feasible. It is difficult to understand as to what mind the disciplinary and other authorities have applied. Such penalty cannot be sustained in law. It may be mystery for us to imagine as to how the Respondents might have given effect to the penalty order in question.

Now advertent to the orders passed by the Appellate and Revising Authorities, once the initial order itself is void *ab initio*, the same cannot be legalized by passing a legal order. See: *Baradakanta Mishra v. High Court of Orissa and another* [AIR 1976 SC 1899]. The same cannot stand in the eye of law. In any case, these authorities have also

1. Unless and until the judgment is modified, set aside or quashed by the Higher Courts, it remains binding on the Courts/Tribunals which pronounced the Order and Judgment.
2. The action of the employer in effecting recoveries from the pay of the employees without issuing a show-cause notice is illegal and violative of Principles of Natural Justice.

Facts: The Applicant in O.A. Nos. 180 of 2003 and 189 of 2003 were appointed as Washermen while Applicant in O.A. No. 190 of 2003 was appointed as Barber in May, 1983. The pay scale attached to the said posts were Rs. 775-1,025, which was revised to Rs. 800-1,450 in terms of communication, dated 12-4-1993. The Applicants were declared surplus and remustered and consequently posted as Cooks *vide* order, dated 2-7-1998. The pay scale of Rs. 800-1,150 was revised to 2,610-3,540 on implementation of 5 CPC recommendation with effect from 1-1-1996. Since, the Applicant had rendered more than 12 years of service in the said post of Washermen and Barber respectively in terms of OM, dated 9-8-1999 they were granted first financial upgradation in the pay scale of Rs. 2,650-4,000. Later *vide* communication, dated 28-3-2001, the pay scale of civilian cooks in Messes, Inspection Bungalows, etc., outside the Canteen was revised to Rs. 3,050-4,590 with effect from 1-1-1996. As the pay scale of Rs. 3,050-4,590 was denied to the Applicant, they earlier approached this Tribunal by filing O.A. Nos. 531, 586-687 of 2001, which was disposed of *vide* order, dated 17-9-2001 with direction to the Government to implement the order, dated 28-3-2001 including payment of arrears of pay within a period of four months which time was further extended on filing M.A. No. 29 of 2002 seeking further extension of time. It is the case of the Applicants that they submitted representation, dated 18-7-2002 when arrears consequent to revision of pay scale was paid to their colleagues and not to them. It is stated that third Respondent, i.e., Commandant, MEG and Centre, Headquarters, Bangalore, did not approve the benefits of first financial upgradation under ACP scheme citing the reason that the revised pay scale effected from the date of reclassification is to be treated as upgradations of pay scale based on the DoP&T OM, dated 10-2-2000. They submitted further representation with prayer to pursue the matter with Army Headquarters *vide* representation, dated 17-12-2002. Despite lapse of sufficient time since the Applicants were not being granted the said pay scale of Rs. 3,050-4,590 and on the other hand the Respondents effected recoveries of alleged overpayment made to them, they filed the present applications. It is stated that similarly situated officials also approached this Tribunal in O.A. Nos. 52 and 83 to 85 of 2003. It is contended by the Applicants that they are entitled to

104

48

11/8/04

Advocate

the pay scale of Rs. 3,050-4,590 and consequential ACP with corresponding revised pay scale. Action of the third Respondent in effecting recovery as reflected in the pay slips issued for the month of December, 2002 is illegal and in gross violation of the principles of natural justice.

Held: It is not the case of the Respondents that any show-cause notice in specific was issued to the Applicants prior to making recoveries from the applicants pay in December, 2002 or prior to it.

It is well settled law that unless and until the judgment is modified, set aside or quashed by the higher Courts, remains binding on the Courts/Tribunals which pronounced the order and judgment. It is an admitted fact that the Applicants have now been placed in the pay scale of Rs. 3,050-4,590 in terms of Government of India letter, dated 28-3-2001. It is further admitted fact that no specific show-cause notice was issued to any of the Applicants which action of the Respondents is in utter violation of the principles of natural justice. Grant of revised pay scale of Rs. 3,050-4,590 with effect from 1-6-1998 on Applicants' remustering and posting as Cooks is better than the first financial upgradation granted to them in the pay scale of Rs. 2,640-4,000. We are of the considered view that the Applicants are entitled to the said revised pay scale of Rs. 3,050-4,590 on their being remustered as Cooks with effect from 1-6-1998 and the amount/scale granted to them in terms of first financial upgradation is liable to be adjusted. Since the judgment and order passed by this Tribunal in O.A. Nos. 52 and 64-65 of 2003 has not been modified, reversed or set aside by any higher Court till date, we are bound by the said order and judgment of this Tribunal.

In the light of the discussion made hereinabove and following the judgment and order, dated 15-7-2003, passed in O.A. Nos. 52, 83-85 of 2003, passed by this Tribunal in *A. Kumar and others v. Union of India and others* the present O.As are allowed. The Applicants are entitled to the pay scale of Rs. 3,050-4,590 on their being remustered as Cooks with effect from 1-6-1998 as admitted in reply Para. 4.7. Accordingly, the Respondent's actions in effecting recoveries on granting first financial upgradation from 9-8-1999 is declared to be illegal and violative of principles of natural justice and the amounts recovered from each of the Applicants is directed to be refunded. The Applicants would be entitled to all consequential benefits including refund of the alleged excess amount on account of grant of ACP within a period of three months. Respondent No. 3, shall carry out the aforesaid directions within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

[S. Ramamurthy and others v. Union of India, Ministry of Defence, New Delhi and others, 8/2004, Swamysnews 93, (Bangalore), date of judgment 18-2-2004.]

O.A. Nos. 180 and 189 to 190 of 2003

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Application for Date fixed for making the requisite number of stamps and tolls.	Date of delivery of the requisite stamp and tolls.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
11/1/11	11/1/11	11/1/11	11/1/11

120

-106-

ANNEXURE - 19

IN THE GARO, KHASI & Jaintia HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from (W.P.C.) No. 2574 of 2001

Appellant
Petitioner

Union of India & Ors

Versus

Shree Jasiruddeen Ahmed & Ors

Respondent
Opposite Party

Mr. P. N. Chaudhury

Appellant
For
Petitioner

Respondent
For
Opposite Party

Noting by Officer of
Arrests

Noted Date
No

Other notes, reports, orders or proceedings
with reference

Attest
[Signature]

Attested
for
[Signature]

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AND

IN THE MATTER OF:

1. Union of India
Through Secretary,
Ministry of Information Technology,
Electronics Building, 6, C.O.D. Complex,
New Delhi - 110003
2. National Informatics Centre (NIC)
Through The Director General, NIC
Ministry of Information Technology
A-Block, C.O.D. Complex
New Delhi - 110003
3. The Technical Director &
State Informatics Officer
National Informatics Centre
Assam State Unit
F-Block, Assam Secretariat
Guwahati - 781006

Petitioners
Respondents

VERSUS

1. Sri Tasiruddin Ahmed
Scientist-C
Employee Code No. 2364
2. Sri Dinesh Kumar Bhuiyan
Scientist-C
Employee Code No. 2349
3. Sri Dipanta Barman
Senior Systems Analyst
Employee Code No. 1692

Handwritten signatures and marks at the bottom of the page.

24-108-

122

W.P.(C) No.2004/2001

PRESENT -

THE HON'BLE MR JUSTICE JN SARMA
THE HON'BLE MR JUSTICE WANGARI

10-03-2002

There is no merit in this writ application and the same shall stand dismissed in view of paragraph 11 of the judgment of Central Administrative Tribunal in OA No.140/99. That paragraph is quoted below :-

"In view of the criteria laid down by the Hon'ble Supreme Court in the aforesaid judgments, the applicants are not entitled to the payment of S.D.A., as they are resident of North-eastern Region and they have been locally recruited and they do not have all India Transfer Liability. As regards the recovery of the amount already paid to them by way of S.D.A., the Hon'ble Supreme Court in the aforesaid judgments has specifically directed that whatever amount has been paid to the employees, would not be recovered from them. The judgment of the Supreme Court was passed on 20.9.1994 but the respondents on their own had continued to make the payment of S.D.A. only on 12.1.1990. The order passed on 12.1.1990 can have only prospective effect and, therefore, the recovery of the SDA already paid to the applicants would have to be waived."

Attest
J.S. [Signature] Assistant

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By this order only the temporary injunction
prohibited and that aspect of the matter has
already been clinched by the Apex Court.

COPIES TO BE MADE COPY
Date
Superintendent (Copying Section)
Gauhati High Court
Authorized 12/5/76, Secy, LIA

Attested
[Signature]
Adm-6

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8208 - 8213

(Arising out of SLP Nos. 12450 - 55/92)

Union of India & Others

- Appellants

- versus -

Geological Survey of India
Employees' Association & Others

- Respondents

ORDER

Delay condoned

Leave granted

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

Heard learned counsel for the parties. It appears to me that although the employees of the Geological Survey of India were initially appointed with an All India Transfer liability, subsequently Government of India framed a policy that Class C and D employees should not be transferred outside the Region in which they are employed. Hence, All India Transfer liability no longer continues in respect of Group C and D employees. In that view of the matter, the Special Duty Allowance payable to the Central Government employees having All India Transfer liability is not to be paid to such Group C and Group D employees of Geological Survey of India who are residents of the region in which they are posted. We may also indicate that such question has been considered by this Court in Union of India & others Vs. S. Vijay Kumar & others (1994) (3) SCC 649.

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

New Delhi

September 7, 1995.

Sd/- G. N. Ray,

Sd/- J. U. Majumdar

the department could not fill up the post by a regular candidate. As already observed the respondent authorities issued three notifications and in the third notification they attempted to adopt the procedure of offering the post to the next meritorious candidate. In the first instance they offered the post to one Suryanarayana who declined the offer. Next they offered the post of Kum. MVS Lakshmi Kumari, who by then got appointment in another Branch Post Office. Thus they attempted to provide appointment to the respondent no.6 who according to them was the next meritorious candidate. A direction to the respondents to issue fresh notification in all such contingencies will not be in interest of smooth running of the department. As observed it will only benefit the provisional candidate to continue on the post and to claim regularisation on the post on account of the subsequent instructions given by the department. A provisional candidate is not selected to the post after undergoing the prescribed selection process. A provisional candidate is to be continued only till a regular candidate is posted. In fact by instructions given by the the DG P&T in its letter dt. 30.12.99 it is made clear that:

"As far as possible, provisional appointments should be avoided. Provisional appointments should not be made to fill the vacancies caused by the retirement of ED Agents. In such cases, the Appointing authority should take action well in time before the retirement of the incumbent ED Agent, to select a suitable successor."

From the above it is clear that the intention of the department is to avoid provisional appointment as far as possible and the appointing authorities have been called upon to take advance action well before the retirement vacancy arises.

20. The EDA Rules do not prohibit the preparation of a panel.

21. Considering all these facts and circumstances we feel that the department should prepare a panel even for selection to the post of ED Agents under the P&T EDA (Conduct and Service) Rules, 1964. The size of the panel shall not be disproportionate to the number of posts. The validity period of the panel shall be one year. CPMG may give suitable instructions in this behalf basing upon the observations made by the Patna Bench of this Tribunal cited above on the point noted at P 3(b) above.

22. With our views on the points referred above we direct that this matter be posted before a division bench for final disposal.

CENTRAL ADMINISTRATIVE TRIBUNAL
(FULL BENCH HYDERABAD)

O.A. No.1732 of 1998

Decided on 06.09.2000

P. Venkata Rao and anr.

Versus

The Director General, Department of Telecommunications,
New Delhi & Ors.

Applicants

Respondents

In cases referred to the Full Bench for disposal, the following Bench was constituted:
For the Applicants: Mr. N.R. Devaraj & Mr. K. Venkateshwara Rao, Advocates.
For the Respondents: Mr. B. Narasimha Sharma, Advocate.

PRESENT
The Hon'ble Mr. Justice Ashok Agrawal, Chairman
The Hon'ble Mr. Justice D.H. Nasir, Vice Chairman
The Hon'ble Mr. V.K. Majotra, Member (Admin.)

(A) Constitution of India, Articles 14 and 16-- Fundamental Rules--Rules 22-1(a)(i) and 27--Pay--Stepping up of pay of Senior to the level of Junior was allowed by the Tribunal--SLP against the order of Tribunal filed--Dismissed on the technical ground of laches--Order of Tribunal attained finality between the parties and the pay of the Senior employees were stepped up--Later Supreme Court in another decision (R. Swaminathan Case) denying stepping up of pay of Senior employees to the level of their Juniors who were getting more pay due to local ad hoc officiation under exigencies of service--On the basis of decision of Supreme Court in R. Swaminathan's case respondents issued impugned order refixing the pay and recovery of pay of those Senior employees who were given the benefit of stepping up of pay by the Tribunal--Held decision of Supreme Court will not annul the issues which have been finally settled and decided prior to the rendering of the judgment in the case of R. Swaminathan's case--The Decision in R. Swaminathan's case has only prospective effect--On facts also similarly situated persons were given relief by other Benches of the Tribunal and orders of the Tribunal were complied with--Denial of benefits to present applicants is violative of Articles 14 and 16 of the Constitution.

(B) Fundamental Rules, Rules 22 and 27--Stepping up of--When an employee who had received certain benefits in view of filing an O.A. in the Tribunal and either no appeal is preferred or appeal preferred has been rejected by the Supreme Court--Whether the benefits accrued to him can be annulled by a later decision of the Supreme Court in a similar case--Held no.

ORDER

Ashok Agrawal, Chairman:--By an order passed by a Division Bench of this Tribunal (coram Justice D.H. Nasir, Vice Chairman and Shri R. Rangarajan, Member (A)) on 5.11.1999 the following question has been referred to the present Full Bench:

"When an employee who had received certain benefits in view of filing an original application in the Tribunal and either no appeal is preferred or appeal preferred has been rejected by the Supreme Court whether the benefits accrued to the applicant can be annulled by a later decision of the Supreme Court in a similar case."

2. Applicants are working as Senior Accounts Officers in the Andhra Pradesh Telecom Circle. They had earlier filed OAs being OA.No.1019/1993 and OA No.1328/1998 before the Bombay Bench of

this Tribunal with a prayer for stepping up of their pay in the cadre of Accounts Officer at par with the pay of their juniors. Aforesaid claim was made on the basis of FR 27. By an order passed on 19.7.1994 aforesaid OAs were allowed and prayer for stepping up of the pay was granted. Pursuant to the aforesaid orders, pay of the applicants was stepped up at par with their juniors. Aforesaid order was impugned by the respondents by approaching the Supreme Court. However, their SLPs were dismissed though on the technical ground of laches. Aforesaid order of the Bombay Bench of the Tribunal thus attained finality between the parties and the applicants' pay was stepped up at par with the pay of their juniors. They accordingly started receiving pay at the enhanced scale.

3. The Supreme Court in a later judgement delivered on 12.9.1997 in Civil Appeal No.8658/1996, Union of India and anr. vs. R. Swaminathan and others, (1997) SCC 690 gave a ruling that the senior Government employees are not entitled to have their pay stepped up under FR 22-1(a)(i) at par with their juniors who are getting more pay due to local ad hoc officiation under exigencies of service. Based on the aforesaid judgement of the Supreme Court, the respondents issued their impugned order dated 13.2.1998 at Annexure A1 holding that the aforesaid judgment of the Supreme Court in R. Swaminathan's case (supra) is applicable to all the employees including those who had succeeded before the Central Administrative Tribunal as the decision of the Supreme Court has become final. The order further directed that those officials who have been given stepping up of pay at par with their juniors due to Central Administrative Tribunal decision in their favour, their pay may be refixed after offering an opportunity of hearing by notice from 12.9.1997 at normal stage e.g. on 1.9.1993, if the pay of a senior Shri 'A' has been stepped up at par with his junior Shri 'B' from Rs.2395/- to Rs.2975/- in the pay scale of Rs.2375-75-3200-100-3500/- due to judgment of the Tribunal in his favour, the pay of Shri 'A' (senior) may be refixed at Rs.2675/- as on 12.9.1997 instead of Rs.2975/-. The over payment made from 12.9.1997 onwards may be recovered from the officials.

4. When proceedings for recovery based on the aforesaid order were sought to be taken, applicants have preferred the present OA.

5. It may not be out of place at this stage to mention that persons who are similarly placed as the applicants in the present OA and who have also been granted the aforesaid relief of stepping up of pay in terms of the orders passed by the Tribunal had filed OAs both before the Ernakulam Bench as also before the Madras Bench of the Tribunal seeking to impugn the very same order which is impugned in the present OA. Ernakulam Bench in OA No. 451/1998 by its judgment and order passed on 22.7.1998 has allowed the OA and has restrained the respondents from making recoveries based on the aforesaid impugned order at Annexure A1. As far as the order of the Ernakulam Bench in the aforesaid case is concerned, it has inter alia observed as under:-

Further, it is well settled that a principle laid down in a later decision of the Hon'ble Supreme Court though is the law of the land will not affect the rights accrued to the litigants whose cases have become final by not being subject to appeal or the appeals having been dismissed by the Supreme Court.

Similarly the Madras Bench of the Tribunal in the case of **T.K.Ramamurthy and ors. vs. Union of India and ors., 1999 (3) ATJ 658** has allowed the OA inter alia observing as under:-

"7. We have considered carefully the various points raised by the learned Sr. Standing Counsel for the respondents. We are unable to accept the point that subsequent judgment of the Supreme Court will apply retrospectively to the cases which have become final either by not taken as SLP or taking up as SLP and got dismissed in limine on the ground of delay. It is true that the judgment of the Supreme Court is binding on the Tribunal under Article 141 of the Constitution of India. But on the facts and circumstances of this case it cannot be said that cases decided long before the judgment of the Supreme Court and which had been given a quietus can be reopened now and proceedings can start in those cases. To our understanding, the last paragraph in R.Swaminathan's case clearly shows that all the orders of the Tribunals which are the subject matter of the appeal are set aside, because that judgment which covers the orders of the various Tribunals and the Supreme Court rendered a consolidated view and as such the Supreme Court observed as follows in the last paragraph.

"14. The appeals are, therefore, allowed and the impugned orders of different Benches of the Central Administrative Tribunal which have held to the contrary are set aside. There will, however, be no order as to costs."

The Supreme Court has held in Madan Mohan Pathak and Another vs. Union of India and Others (LIC case) (1978 (2) SCC 50) whenever a writ of mandamus is issued and the order has become final so far as the applicants are concerned it cannot be said that the decision can be reversed by a subsequent judgment of the Supreme Court. The Supreme Court has taken a view in the case of Vallapally Plantations Pvt. Ltd. vs. State of Kerala (AIR 1999 SC 1976) that it is well settled that even order which may not be strictly legal become final and are binding between the parties if they are not challenged before the Supreme Court. In our views, the Supreme Court might have indicated that the judgment will apply even retrospectively. That has not been done. As such, we do not think, the argument of the Learned Sr. Standing Counsel can be accepted.

"8. As such when the orders of this Tribunal have become final so far as these applicants are concerned the Government cannot re-fix the salary of the applicants since the orders are in their favour and the issue cannot be reopened now because of R.Swaminathan's case. On this simple ground, the impugned orders in

these applications are set aside. Accordingly, the OAs are allowed. No costs. *Shri N.R. Devaraj* the learned counsel appearing in support of the present OA apart from placing reliance on the aforesaid decisions of the Ernakulam Bench and the Madras Bench of the Tribunal has also placed reliance on a decision of the Supreme Court in the case of Vallapally Plantations Pvt. Ltd. v. State of Kerala, AIR 1999 SC 1796 wherein it has inter alia been observed as follows:

6. Aforesaid applicants before the Ernakulam Bench and the Madras bench of the Tribunal who are similarly placed as the applicants in the present OA have thus been granted the reliefs which have been claimed by the applicants in the present OA.

7. *Shri N.R. Devaraj* the learned counsel appearing in support of the present OA apart from placing reliance on the aforesaid decisions of the Ernakulam Bench and the Madras Bench of the Tribunal has also placed reliance on a decision of the Supreme Court in the case of Vallapally Plantations Pvt. Ltd. v. State of Kerala, AIR 1999 SC 1796 wherein it has inter alia been observed as follows:

"23. Considering the question regarding applicability of Section 85(9) to the case in hand in the conspectus of statutory provisions we are of the view that answer to the question is in the negative. The provision in Section 85(9), as we see it, is intended to enable the Board to set aside its order under sub-section (5) or sub-section (7), as the case may be. The power vested in the Board under the provision is in wide terms; and therefore, the necessity for circumspection in exercise of the power. The provision is intended to empower the Board to correct errors in its orders and not to upset judgment/order/decreed of competent courts which are binding on the parties. To hold otherwise will amount to vesting powers to reopen any proceeding disposed of by a competent Court at any point of time (there is no period of limitation provided in the section) which may result in unsettling positions settled between the parties. On a fair reading of the provision it is to be held that the power to set aside its order and reopen a proceeding should be exercised by the Board in a fair and reasonable manner. In a case where the dispute on being determined by the Taluk Land Board was carried in revision to the High Court by the person affected or by the Government and the revisional order passed by the High Court was not challenged before superior Court and thus attained finality, to vest the power in the Taluk Land Board to ignore such an order and reopening the proceeding will not only result in unsettling settled positions between the parties but also go against judicial discipline.

"24. No doubt in the present case the order that was sought to be set aside was of the Board. But the said order was passed in pursuance to the directions of the High Court in the revision petition. In other words in substance and in effect, in passing the order the Board was only complying with the direction of the High Court. To vest jurisdiction in the Board to set aside such an order will be permitting the Board to interfere with the decision of the High Court which has attained finality inter parties.

"25. A somewhat similar question arose before this Court in the case of *Authorised Officer (Land Reforms) v. M.M. Krishnamurthy Chetty*, (1998) 7 JT (SC) 503. In that case 4.81 standard acres of

land belonging to the respondent were declared surplus. Ultimately the matter came to the High Court. The learned Judge of the High Court set aside the order and remanded the case for fresh consideration in the light of the judgment of the High Court in the case of *Naganath Aiyer v. Authorised Officer* (1970) 84 Mad LW 69. While the matter was pending before the authorised officer the Supreme Court reversed the aforesaid judgment in the case of *Authorised Officer vs. S. Naganatha*, AIR 1979 SC 1487. The authorised officer decided the proceeding in the light of the judgment of the Supreme Court. The land holder went in revision before the High Court challenging the order of the Authorised Officer. A stand was taken before the High Court that the order of remand passed by the High Court directing the authorised officer to decide the dispute in respect of the ceiling area in the light of the judgment of the High Court was not challenged by the Authorised Officer before the Supreme Court and as such it had become final. In other words the Authorised Officer was bound by the order of remand passed by the High Court and it was not open to the Authorised Officer to consider the dispute in respect of the ceiling area in the light of the judgment of the Supreme Court. The High Court accepted this contention and allowed the civil revision filed by the land holder, the respondent. This Court confirming the order of the High Court observed as follows:

"The order passed by the High Court directing the Authorised Officer to examine the dispute in the light of the judgment of the High Court in the case of *Naganatha Aiyer vs. Authorised Officer* became final although the judgment on which the grievance had to be examined itself was reversed later by this Court. We find no fault with the reasoning of the High Court. It is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior Courts. In the result the appeal fails and it is dismissed."

"26. On giving our anxious consideration to the entire matter we have not hesitation to hold that on the facts and in the circumstances of the case the Taluk Land Board rightly held that it had no power to reopen to proceeding in exercise of the powers vested in Section 85(9) and the High Court was in error in interfering with the said order of the Taluk Land Board."

Based on the aforesaid judgment *Shri Devaraj* has contended that the respondents are not at all justified in reopening settled issues between the parties by seeking to claim refund based on the decision of *R. Swaminathan* (supra).

8. *Shri Devaraj* has next placed reliance on the decision of the Supreme Court in the case of *Baburam vs. C.C. Jacob and others*, 1999 SCC (L&S) 682 wherein the Supreme Court has observed as follows:-

"The prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and to prevent

multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as well as the appointing authority being prior to the judgment in Sabharwal case we are of the opinion that the Tribunal was in error in applying the decision. For this reason, these appeals succeed and are hereby allowed, setting aside the orders and directions made by the Tribunal in OAs Nos. 186 of 1994 and 961 of 1995."

Based on the aforesaid decisions Shri Devaraj has contended that the later decision of the Supreme Court in the case of R. Swaminathan (supra) will not entitle the respondents to take away the rights which have been conferred upon the applicants by the decisions of the Tribunal which decisions have attained finality.

9. Shri Narasimha Sharma, the learned Senior Government standing counsel appearing on behalf of the respondents has strenuously opposed the prayer made by and on behalf of the applicants in the present OA by contending that the law laid down by the Supreme Court in the case of R. Swaminathan (supra) is binding on one and all which includes the applicants as well. The decisions earlier rendered by the Tribunal can no longer hold the field in view of the law declared by the Supreme Court in the aforesaid decision of R. Swaminathan (supra). As far as the respondents are concerned, they have not withdrawn from the applicants the benefit of the judgments of the Tribunal till the date of decision of the Supreme Court which was rendered on 12.9.1997. It is only after the aforesaid date that the respondents are seeking to enforce the law declared by the Apex Court which is binding on the applicants as well. Hence all that is sought to be done is to recover the excess amount which has been paid over to the applicants subsequent to 12.9.1997. According to the learned senior standing counsel, the stand taken by the respondents is fully justified and no fault can be found with the same.

10. In order to buttress his submissions, Shri Sharma has placed reliance on the decisions of the Supreme Court in C.N. Rudramurthy vs. K. Barkathulla Khan and others, (1998) 8 SCC 275 and M.S.L. Patil vs. State of Maharashtra and others, (1996) 11 SCC 361 and has contended that the law declared by the Supreme Court is binding. Based on the aforesaid decisions, he has contended that the decisions of the Tribunal which run counter to the decision of the Supreme Court later rendered in the case of R. Swaminathan (supra) stand overruled by implication. The aforesaid decision would bind not only the parties before

the Supreme Court in the case of R. Swaminathan (supra) but also apply with same force to one and all which include the applicants also. The claim made by the applicants in the present OA in the circumstances is untenable. The same accordingly deserves to be dismissed.

11. As far as the decisions of the Ernakulam Bench and the Madras Bench are concerned, the same according to Shri Sharma are per incuriam as the same have been rendered without considering the law laid down by the Supreme Court in its proper context and spirit. The said decisions in the circumstances are liable to be ignored and the present OA is liable to be dismissed.

12. We have considered the rival contentions advanced by the learned counsel appearing for the contending parties and we have no hesitation in holding that the applicants herein have made good their claim as raised in the present OA.

13. As far as the present lis is concerned, namely, the issue of stepping up of pay at par with the juniors under FR 27, the same has been squarely answered by the Tribunal in the earlier judgment rendered between the same parties which are parties to the present OA. The Tribunal in the aforesaid OA has found that the applicants in terms of FR 27 are entitled to the stepping up of their pay at par with their juniors. Shri Sharma is, however, justified in his limited contention that the rejection of the SLP filed by the respondents against the aforesaid order passed in favour of the applicants in their earlier OAs cannot act as res judicata as the same has been dismissed on technical ground of laches. However, the decision of the Tribunal, in our view has become final between the parties. Respondents have complied with the order and have stepped up the pay of the applicants at par with their juniors. Applicants have been receiving their pay at the stepped up scale. The Tribunal, in our view, has directed the pay of the applicants to be stepped up at par with their juniors. In other words, applicants have been held to be entitled to receive and to continue receiving the pay at the stepped up stage at par with their juniors. Later decision of the Supreme Court in the case of R. Swaminathan (supra), in our considered view, will not entitle the respondents in any manner to water down the effect of the judgments of the Tribunal. The judgments of the Supreme Court are binding on all courts and Tribunals of the country. That, however, will not annul the issues which have been finally settled and decided prior to the rendering of the aforesaid decision in the case of R. Swaminathan (supra).

14. Aforesaid decision of the Supreme Court in the case of R. Swaminathan (supra) can apply only prospectively. The same cannot be made applicable to unsettle the settled issues which have become final between the parties. If parties are permitted to resile from settled issues which have become final between them, it would go against judicial discipline. Apart from the principle of finality which attaches to every lis between the parties, parties are also governed by the principle of res judicata as enshrined in Section 11 of the Code of Civil Procedure. Though aforesaid provision may not strictly be applicable to the Tribunal, provision

analogous to res judicata will certainly apply. In the circumstances, we have no hesitation in holding that it is not open to the respondents to reopen settled issues and claim refund of the amounts paid over to the applicants under the judgments of the Tribunal which have become final between the parties.

15. There is one other reason why respondents cannot be permitted to enforce their impugned order at Annexure A1. Persons similarly placed as the applicants in the present OA filed similar OAs in the Ernakulam Bench and the Madras Bench of the Tribunal. Aforesaid OAs have been allowed and the relief claimed therein has been granted. Applicants herein as also applicants before the aforesaid Benches are all Accounts Officers under the very same department, namely, department of Telecom. Applicants in the circumstances cannot be discriminated with the applicants before the aforesaid Benches. Similarly, the respondents cannot be permitted to create a class within a class and give a treatment to one class different to the treatment given to another class thus offending the principle of equality as enshrined in Articles 14 and 16 of the Constitution.

16. For the foregoing reasons, the aforesaid question referred to the Full Bench is answered in the negative. Present OA will now go back to the Division Bench for decision in the light of the observations contained hereinabove, on merits and in accordance with law.

**CENTRAL ADMINISTRATIVE TRIBUNAL
(FULL BENCH - NEW DELHI)**

O.A. 1369/2000

Decided on 23.10.2001

J.P. Kaushik

Versus

Applicant

Union of India

Respondents

For the Applicant: Mr. Sant Lal, Advocate.

For the Respondents: Mr. R.P. Aggarwal, Advocate.

PRESENT

The Hon'ble Mr. S.R. Adige, Vice Chairman (A)

The Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)

The Hon'ble Dr. A. Vedavalli, Member (A)

Telephone Facilities—Circular dated 25.9.1998 provides concessional telephone facilities to the employees of DOT who have rendered 20 years or more service before retirement or having their last posting in DOT for at least one year before retirement—Service rendered by an employee in the erstwhile P&T Department (i.e. prior to 1.4.1985 when the two Department DOP and DOT were bifurcated) would be counted towards continuous service as in DOT claiming the said benefit—Applicant who was last posted in DOP and retired as such cannot claim the said benefit on the ground that cadre controlling authority is the same in the DOP and DOT.

ORDER

Smt. Lakshmi Swaminathan, Vice Chairman (J):—The Full Bench has been constituted for consideration of the following two questions:

(i) Whether the service rendered by an employee in the erstwhile P&T Department should be counted towards continuous service as in DOT for claiming the benefit of accord of free concessional telephone facility by DOT to their employees by letter dated 25.9.98; and

(ii) Whether the service rendered by the applicant in P&T Accounts and Finance Service Group 'A' after 1.4.85 is to be reckoned as service in DOT for the purpose of according him the benefit of concessional benefits as per letter dated 25.9.98".

2. The above reference has been made in the case of J.P. Kaushik Vs. Union of India through Secretary to the Govt. of India, DOT (OA 1369/2000), on 27.7.2001. The respondents by their Circular dated 25.9.1998 have granted certain concessions by way of telephone facility to retired employees of the Department of Telecommunications (DOT) as a matter of policy. The applicant is a retired Deputy Director of Accounts (Postal), Department of Posts (DOP) and he has assailed the aforesaid Circular issued by the respondents dated 25.9.1998. He has been denied the extension of the benefits of the concessional free telephone, on the ground that he had not put in a minimum of 20 years or more continuous service in DOT as retired from that Department. Hence, he has prayed in the O.A. that a direction may be given to the respondents to grant him the benefit of the concession of free telephone now being given to retired or retiring DOT employees by treating his entire service in the P&T Accounts and Finance Service Group 'A' (hereinafter referred to as 'the Service') which is common to both the DOT and DOP as service in DOT. The Tribunal by order dated 27.7.2001 had noted that there were conflicting decisions of the Tribunal, namely, the Calcutta Bench (Jiban Kanta Bhattacharya Vs. Union of India & Ors. - O.A. 429/2000) decided on 28.9.2000, which had distinguished the decision of the Principal Bench in Amal Kanti Kanjilal Vs. Union of India (OA 1124/99). The Chandigarh Bench of the Tribunal by order dated 9.7.2001 in Birbal Narang Vs. Union of India & Ors. (OA 212/HR/2001) has followed the judgment of the Calcutta Bench in J.K. Bhattacharya's case (supra). Another order passed by the Tribunal (Chennai Bench) dated 4.3.2000 in Bharat Postal Pensioners Forum Vs. Union of India & Ors. (OA 937 of 1999), has also been referred to.

3. We have heard Shri Sant Lal, learned counsel for the applicant and Shri R.P. Aggarwal, learned counsel for the respondents and perused the records and aforesaid decisions of the Tribunal.

4. Shri Sant Lal, learned counsel has submitted a paper book for the Full Bench and has made reference to the documents therein, copy placed on record. One of the main contentions of Shri Sant Lal, learned counsel is that even after the bifurcation of the Ministry of Communi-

115

120