

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 19/2005

R.A/C.P No.

E.P/M.A No. 101/2006

1. Orders Sheet..... OA Pg. 1 to 4
2. Judgment/Order dtd. 02.01.2006 Pg. 1 to 6
3. Judgment & Order dtd. Received from H.C/Supreme Court
4. O.A. 19/2005 Pg. 1 to 30
5. E.P/M.P. 101/2006 Pg. 1 to 9
6. R.A/C.P. Pg. to
7. W.S. Pg. 1 to 10
8. Rejoinder Pg. 1 to 5
9. Reply Pg. to
10. Any other Papers Pg. to
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 19/2003

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. 19/2003

Applicants: Md. A. Ali and Oms.

Respondents: U.O. I & Oms.

Advocate of the Applicants: Mr. A. Ahmed.

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

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

27.1.2005

This application is in form
is filed/C. F. for Rs. 50/-
deposited vide IPC/BD

No. 2002/17613

Dated 22/01/05

[Signature]
Deputy Registrar

27/01

Heard Mr. A. Ahmed, learned counsel
for the applicants.

The application is admitted, call
for the records. Issue notice to the
parties. Returnable within four weeks.

List on 28.02.2005 for orders.

[Signature]
Member (A)

Steps taken

on 2/2/05.

Ces
2/2/05.

Notice & order
sent to D/section
for issuing to
resp. Nos. 1 to 3,
by regd. A/D
post.

Ces
8/2

mb

28.02.2005

Present : The Hon'ble Mr. K.V. Prahlar
Administrative Member.

Six weeks time is given to the
respondents to file written statement.

List on 13.4.2005 for orders.

[Signature]
Member (A)

mb

2
O.A. 19/2005

13.4.2005 Present : The Hon'ble Mr. Justice
G. Sivaraman, Vice-Chairman

The Hon'ble Mr. K.V. Prahlada-
dan, Member (A)

Though Ms. U. Das, Addl. C.G.S.C. sought for
since
adjournment / The matter relates to grant of
SDA and. Since a group of O.A.s were heard
and order was reserved, this case also
be disposed of alongwith those cases.
Accordingly, the order is reserved.

K. V. Prahlada
Member (A)

G. Sivaraman
Vice-Chairman

mb

27.05.2005 Present : The Hon'ble Mr. Justice G.
Sivaraman, Vice-Chairman.

Post on 4.5.2005.

G. Sivaraman
Vice-Chairman

mb

04.05.2005 Present : The Hon'ble Mr. Justice G.
Sivaraman, Vice-Chairman.

The Hon'ble Mr. K. V.
Prahladan, Member (A)

1. Heard Mr. A. Ahmed, learned counsel
for the applicant and also Ms. U. Das,
learned Addl. C.G.S.C. for the respondents

This case was posted for final
orders alongwith a batch of cases heard
earlier. Now Ms. U. Das, learned Addl.
C.G.S.C. for the respondents submits that
in view of the different factual situation a written statement is absolutely
necessary and the earlier order dated
13.4.2005 posting the case for disposal
must be set aside. In the circumstances,
the order dated 13.4.2005 is withdrawn
and the application is posted for written
statement on 06.06.2005.

K. V. Prahlada
Member (A)

G. Sivaraman
Vice-Chairman

mb

Notice duly
Served on
RESP. No-3.

12-4-05

No W/s has been

filed.

da

3-6-05

No W/s filed
so far

bm

O.A. 19/2005

Order of the Tribunal

Office Notes

Date

06.06.2005

Mr. A. Ahmed, learned counsel is present. Ms. U. Das, learned Addl. C.G.S.C. submits that the written statement has been sent for vetting. Post on 7.7.2005.

[Signature]
Member

[Signature]
Vice-Chairman

① No. written statement has been filed.

bb

[Signature]
6.7.05

7.7.05

none of the parties
appeared & tomorrow 8.7.05
870

08.07.2005

Mr. A. Ahmed, learned counsel for the applicant is present. Ms. U. Das, learned Addl. C.G.S.C. for the respondents seeks further time for filing written statement. Post on 09.08.2005. No further time shall be granted.

[Signature]
Member

[Signature]
Vice-Chairman

No. written statement has been filed

[Signature]
8.8.05

mb

9.8.2005

Mr. A. Ahmed, learned counsel for the applicant is absent with notice. Ms. U. Das, learned Addl. C.G.S.C. for the respondents submits that she is filing written statement today. Post on 8.9.2005. Rejoinder, any, in the meantime.

[Signature]
Member

[Signature]
Vice-Chairman

No. Rejoinder has been filed.

mb

9.9.05

Post the matter before the next available Division Bench.

[Signature]
[Signature]

[Signature]
Vice-Chairman

No. Rejoinder has been filed.

[Signature]
6.10.05

lm

O.A.19/2005

7.10.2005 . . . Learned counsel for the parties submits that the case may be taken up after the vacation. Post on 21.11.05.

10-11-05

Member

Vice-Chairman

bb

Addl written statement filed on behalf of the respondents. 21.11.2005

post this matter for hearing before the next Division Bench.

Vice-Chairman

bb

22.11.05

Memorandum filed by the Applicant

2.1.2006

Heard learned counsel for the parties. Hearing concluded. Judgement delivered in open Court, kept in separate sheets.

The O.A. is disposed of in terms of the order.

Member

Vice-Chairman

bb

19.1.06

Copy of the order has been sent to the office for the applicant as well as to the L/Adv. for the Respondent.

26.2.07

The Honble Court's order dated 2.1.06 passed by the O.A.19/05 has been complied with. Informed vide letter dated 3.2.07. May kind see at page 17.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO. 19 of 2005.

DATE OF DECISION: 02.01.2006.

Md. Anwar Ali & 42 others

APPLICANT(S)

Mr A.Ahmed

ADVOCATE(S) FOR THE
APPLICANT(S)

- versus -

Union of India & Ors.

RESPONDENT(S)

Ms.U.Das, Addl.C.G.S.C.

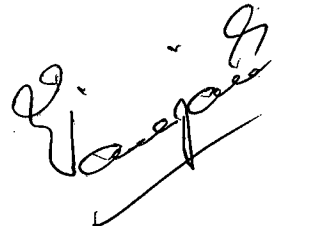
ADVOCATE(S) FOR THE
RESPONDENTS

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

THE HON'BLE MR N.D.DAYAL, 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.



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 19 of 2005

Date of Order: This, the 2ND day of January, 2006

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

THE HON'BLE MR N.D.DAYAL, ADMINISTRATIVE MEMBER.

1. Md.Anwar Ali
P.No.3580
PKR/MATE
2. Shri D. Dhanuwar
P.No.2677
Mazdoor
3. Shri S. Pradhan
P.No.2765
PKR/MATE
4. Shri D. Das
P.No.2559
CARP.
5. Shri J.C.Bora
P.No.2614
CARP
6. Shri N. C. Das
P.No.2552
CARP
7. Shri P.K. Nath
P.No.2405
Sawyer
8. Shri B.K.Saikia
P.No.2535
Sawyer/m
9. Shri A.C.Nath
P.No.502
Sawyer/m
10. Shri J.C.Nath
P.No.2382
Sawyer/m
11. Shri S. Boro
P.No.672
PKR
12. Shri K.C.Nath

P. No.2386
PNTR

13. Shri B.R.Borah
P.No.2534
PKR/MATE
14. Shri K. Das
P.No.2676
Mazdoor
15. Shri A. C. Medhi
P. No.2564
Mazdoor
16. Shri Dipen Borgohai
P.No.2835
Mazdoor
17. Shri S.C.Medhi
P.No.1420
Mazdoor
18. Shri Biren Das
P.No.2530
Mazdoor
19. Shri C.R.Das
P.No.2727
Mazdoor
20. Shri Suren Hero
P.No.2743
Mazdoor
21. Shri B. Gandhiya
P.No.2533
PKRE/MATE
22. Shri R.R.Nath
P.No.2384
PNTR
23. Shri J. Singha
P.No.2622
PKR/MATE
24. Shri Dhaneswar Nath
P.No.2393
PKR/MATE
25. Shri G.C.Rabha
P.No.2522
PKR/MATE
26. Shri B. Das

P.No.2740
PKR/MATE

27. Shri R.C.Nath
P.No.1235
PKR/MATE
28. Shri N.C.Das
P.No.2361
PKR/MATE
29. Shri N.C.Kalita
P.No.2511
PKR/MATE
30. Shri P.C.Das
P.No.2540
PKR/MATE
31. Shri Ujjal Roy
P.No.2796
PKR/MATE
32. Shri K.D.Nath
P.No.2587
PKR/MATE
33. Shri Kuldeep Yadav
P.No.2626
PKR/MATE
34. Shri M.Mazumdar (Asstt)
35. Shri O T Singh (Asstt)
36. Shri B C Poddar (Asstt)
37. Shri K C Paul (UDC)
38. Shri D R Sharma (UDC)
39. Shri G D Das (UDC)
40. Shri H K Lahkar (UDC)
41. Shri Shri Alok Borgohain (UDC)
42. Shri K P Sinha (UDC)
43. Shri D Das (C/Man)

..... Applicants.

All the applicants named above are working under
the Commandant 222 Adv Base Ordinance Depot C/o
99 APO.

By Advocate Mr Adil Ahmed.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Defence
101 South Block
New Delhi - 1.
2. The Director General of Ordinance Service
Master General of the Ordinance Branch
Army Head Quarters
DHQ P.O: New Delhi-110 011.
3. The Commandant 222 ABOD
C/o 99 APO. ... Respondents.

Ms. U. Das, Addl. C.G.S.C.

ORDER (ORAL)

SIVARAJAN, J. (V.C.) :

The applicants 43 in number are working under the Commandant of 222 ADV Base Ordinance Depot C/O 99 APO. They have filed this application seeking for direction to the respondents to grant Special Duty Allowance (for short SDA) to them which is available to Central Government civilian employees working in the North Easter Region under various Government orders.

2. The respondents have filed a written statement and the applicants have filed a rejoinder also.

3. We have heard Mr. A. Ahmed, learned counsel for the applicants and Ms. U. Das, learned Addl. C.G.S.C. appearing for the respondents.

4. A Division Bench of this Tribunal had occasion to consider the question of admissibility of SDA in its

[Signature]

judgment dated 31.5.2005 in O.A. No.170/1999 and connected cases. The Division Bench after considering all the relevant orders on the issue and the decisions of the Supreme Court and of this Tribunal had rendered a judgment containing the guidelines in the matter for grant of SDA to Central Government civilian employees. The relevant portion of the said judgment (paras 52 & 53) is extracted herein below:-

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

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

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

We do not find from the pleadings of this case full factual details regarding the applicants for the application of the said judgment. In view of the above, we are of the view that this application can be disposed of with directions. Accordingly, the following directions are issued:-

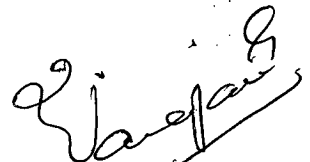
Jm

1. The applicants will file individual representation containing the factual details regarding the admissibility of SDA under the Government orders and the judicial pronouncements as set out in the preceding paragraph so as to enable the concerned respondent to consider the matter in the light of the judgment mentioned above. The applicants will file individual representation before the concerned respondent within a period of one month from the date of receipt of this order.
2. The concerned respondent, among the respondents in this case, on receipt of the representation directed herein above, will consider the matter in the light of the principles laid down in the common order dated 31.5.2005 and the relevant portion extracted herein above and pass appropriate orders thereon within a period of three months thereafter.

The application is disposed of as above. The applicants will produce this order before the concerned respondent alongwith the representation for compliance.



(N.D. DAYAL)
ADMINISTRATIVE MEMBER



(G. SIVARAJAN)
VICE CHAIRMAN

27 JAN 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 19 OF 2005.

BETWEEN

Md. Anwar Ali & Others

... Applicants

-Versus-

The Union of India & Others

... Respondents

LIST OF DATES AND SYNOPSIS:

Annexure-A is the photocopy of extract of Office Memorandum dated 14-12-1983.

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

Annexure-C is the photocopy of Letter No.20/12/99-EA-1-1799 Dated 02-05-2000.

Annexure D, E & ⁴⁶F are the photocopies of the Judgment and Order dated 19-03-2001, 25-04-2003 and 17-02-2004 in O.A.Nos.56/2000, 11/2003, 30/2003 and O.A.No.301/2003 respectively passed by this Hon'ble Tribunal.

This application is not made against any particular order but praying for a direction from this Hon'ble Tribunal to the Respondents for payment of Special Duty Allowance to the Applicant as per Government of India, Cabinet Secretariat Letter No.20-12-1999-EA-1-1789 dated 02-05-2003 and also as per other similar judgments passed by this Hon'ble

Md. Anwar Ali.

Tribunal in O.A.No.56 of 2000, O.A.No.11 of 2003, O.A.No.30 of 2003 and O.A.No.301 of 2003.

RELIEF PRAYED FOR:

That the Hon'ble Tribunal may be pleased to direct the Respondents to pay the Special Duty Allowance to the Applicants.

To Pass any other relief or relieves to which the Applicants may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

To pay the cost of the application.

INTERIM ORDER PRAYED FOR:

At this stage no interim order is prayed for, if the Hon'ble Tribunal deem fit may pass any order or orders.

Md. Anwar Ali

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

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

ORIGINAL APPLICATION NO. OF 2005.

BETWEEN

1. Md. Anwar Ali,
P.No.2580
PKR/MATE,
2. Shri S.Dhanuwar
P.No.2677,
Mazdoor.
3. Shri S.Pradhan
P.No.2765,
PKR/MATE
4. Shri D.Das
P.No.2559,
CARP.
5. Shri J.C.Bora
P.No.2614,
CARP.
6. Shri N.C.Das
P.No.2552
CARP.
7. Shri P.K.Nath
P.No.2405
Sawyer.

Filed by 14
Md. Anwar Ali
Applicant NO 1
through [Signature]
(ADIL AHMED)
Authorate

md. Anwar Ali

8. Shri B.K.Saikia
P.No.2535,
Sawyer/m
9. Shri A.C.Nath
P.No.502,
Sawyer/m
10. Shri J.C.Nath
P.No.2382,
Sawyer/m.
11. Shri S.Boro
P.No.672
PKR.
12. Shri K.C.Nath
P.No.2386,
PNTR.
13. Shri B.R.Borah
P.No.2534,
PKR/MATE.
14. Shri K.Das
P.No.2676
Mazdoor
15. Shri A.C.Medhi
P.No.2564
Mazdoor
16. Shri Dipen Borgohai
P.No.2835
Mazdoor

17. Shri S.C.Medhi
P.No.1420
Mazdoor
18. Shri Biren Das
P.No.2530
Mazdoor
19. Shri C.R.Das
P.No.2727
Mazdoor
20. Shri Suren Hero
P.No.2743
Mazdoor
21. Shri B.Gandhiya
P.No.2533
PKRE/MATE
22. Shri R.R.Nath
P.No.2384
PNTR
23. Shri J.Singha
P.No.2622
PKR/MATE
24. Shri Dharieswar Nath
P.No.2393
PKR/MATE
25. Shri G.C.Rabha
P.No.2522
PKR/MATE
26. Shri B.Das
P.No.2740

Md. Anwar Ali

- PKR/MATE
27. Shri R.C.Nath
P.No.1235
- PKR/MATE
28. Shri N.C.Das
P.No.2361
- PKR/MATE
29. Shri N.C.Kalita
P.No.2511
- PKR/MATE
30. Shri P.C.Das
P.No.2540
- PKR/MATE
31. Shri Ujjal Roy
P.No.2796
- PKR/MATE
32. Shri K.D.Nath
P.No.2587
- PKR/MATE
33. Shri Kuldeep Yadav
P.No.2626
- PKR/MATE
34. Shri M.Mazumdar (Asstt)
35. Shri OT Singh (Asstt)
36. Shri BC Poddar (Asstt)
37. Shri KC Paul (UDC)
38. Shri DR Shama (UDC)
39. Shri GD Das (UDC)
40. Shri HK Lahkar (UDC)
41. Shri Alok Borgohain (UDC)
42. Shri KP Sinha (UDC)
43. Shri D Das (C/Man)

... Applicants

All the Applicants name above are
working under the Commandant 222 Adv
Base Ordinance Depot C/o 99 APO.

md. Anwar M.

-AND-

1. The Union of India represented by the
Secretary to the Government of India,
Ministry of Defence, 101 South Block,
New Delhi-1.
2. The Director General of Ordinance Service
Master General of the Ordinance Branch
Army Head Quarters,
DHQ P.O. New Delhi-110011.
3. The Commandant 222 ABOD,
C/o 99 APO.

... Respondents

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

This application is not made against any particular order but praying for a direction from this Hon'ble Tribunal to the Respondents for payment of Special Duty Allowance to the Applicant as per Government of India, Cabinet Secretariat Letter No.20-12-1999-EA-1-1789 dated 02-05-2003 and also as per other similar judgments passed by this Hon'ble Tribunal in O.A.No.56 of 2000, O.A.No.11 of 2003, O.A.No.30 of 2003 and O.A.No.301 of 2003.

2) JURISDICTION OF THE TRIBUNAL:

The Applicants declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3) LIMITATION:

The Applicants further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunal Act 1985.

Md. Anwar Ali

4) **FACTS OF THE CASE:**

Facts of the case in brief are given below:

4.1) That your humble Applicants are citizens of India and as such they are entitled to all rights and privileges guaranteed under the Constitution of India. They are Defence Civilian working under the Office of the Commandant, 222 Adv Base Ordinance Depot.

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

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

(iii) Special (Duty) Allowance: -

"Central Government Civilian employee who have All India Transfer liability will be granted a Special (Duty) Allowance at the rate of Rs.25% of basic pay subject to a ceiling of Rs.400/- (Rupees Four Hundred) only per month on posting to any station in the North East Region. Such of these employees who are exempted from payment of Income Tax, will however not be eligible for the Special (Duty) Allowance, Special (Duty) Allowance will be in addition to any Special Pay and for allowances already being drawn subject to the condition that the total of such Special (Duty) Allowance plus Special Deputation (Duty) Allowance will not exceed Rs.400/- (Rupees Four

Md. Anwar Ali

Hundred) only per month. Special Allowance like Special Compensatory (Remote) Locality Allowance, Construction Allowance and Project Allowance and Project Allowance will be drawn separately."

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

Annexure-A is the photocopy of extract of Office Memorandum dated 14-12-1983.

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

4.4) That your Applicants begs to state that they are saddled with All India Transfer liability ~~as per their appointment letter~~ in terms of their offer of appointment and with the said liabilities they have accepted for All India Transfer liability as per their appointment letter. 9.1

4.5) That your Applicants beg to state that in terms of their offer of Appointment and with the said All India Liabilities they have accepted the transfer order of posting from North Eastern Region to outside of this region and also from outside of this region to the North Eastern Region. The Applicants are posted to different places of India from North Eastern Region and also from different places of India to North Eastern Region. As for example they have been posted to 17 FAD Punjab, Jalandhar, Allahabad OD Forth, COD Shheoki, Central Vehicle Depot, Panagarh, Kolkata, 3 Core O.M.C. Maintenance Core, Nankun, Rachi, Delhi COD and Hasimara Airforce West Bengal, etc. 1.1

4.6) That your Applicants beg to state that as per Cabinet Secretariat Letter No.20-12-1999-EA-1-1799 dated 02-05-2000 it has been clearly stated that an employee hailing from NE Region, posted to outside NE Region and reposted to NE Region are entitled for Special Duty Allowance.

Annexure-C is the photocopy of Letter No.20/12/99-EA-1-1799 Dated 02-05-2000.

Md. Anwar H.

4.7) That your Applicants beg to state that similarly situated persons have earlier approached this Hon'ble Tribunal by filing O.A.No.56/2000 ✓ and this Hon'ble Tribunal vide its Judgment dated 19-03-01 directed the Respondents that an employee hailing from NE Region initially but subsequently transferred out of NE Region but reposted to NE Region will also be entitled to S.D.A. The other similar cases decided by this Hon'ble Tribunal regarding payment of Special Duty Allowance to the NE Region Central Government Employees including Defence Civilians also annexed here with for ready reference of this Hon'ble Tribunal.

It is worth to mention here that similarly situated persons who are working under the same Ministry has already given the similar relief by ✓ this Hon'ble Tribunal in O.A.No.301 of 2003. 26

Annexure D, E & F are the photocopies of the Judgment and Order dated 19-03-2001, 25-04-2003 and 17-02-2004 in O.A.Nos.56/2000, 11/2003, 30/2003 and O.A.No.301/2003 respectively passed by this Hon'ble Tribunal. 21

4.8) That your Applicants beg to state that the instant Applicants were also getting the Special Duty Allowance as they have fulfilled the terms and conditions laid down in Office Memorandum regarding payment of Special Duty Allowance. But suddenly it was stopped by the Respondents. After passing of the above judgments (At Annexure-D) by this Hon'ble Tribunal and also clarification issued by the Cabinet Secretariat dated 2-5-2000 (At Annexure-C) the instant Applicants has again approach the Authority concern for continuation of Special Duty Allowance to them in terms of the above said judgments and clarifications issued by the Cabinet Secretariat. But the Authority has refused to grant the said facility to the Applicants. As such finding no other alternative your Applicants are compelled to approach this Hon'ble Tribunal by filing this Original Application for seeking Justice in this matter. ✓

4.9) That your Applicants beg to state that they have fulfilled all the criteria laid down in the aforesaid Memorandum regarding payment of Special Duty Allowance, hence the Respondents can not deny the same to the Applicant without any justification.

4.10) That your Applicants beg to state that similarly situated persons are enjoying this benefit without any interruption as such the action of the Respondents is arbitrary, mala fide, whimsical and also not sustainable in the eye of law as well as on facts.

Md. Anwar AG.

4.11) That your Applicants submit that there is no other alternative remedy and the remedy sought for if granted would be just, adequate and proper.

4.12) That this application is filed bona fide and for the cause of justice.

5) GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1) For that, due to the above reasons and facts, which are narrated in details, the action of the Respondents is in prima facie illegal, mala fide, arbitrary and without justification.

5.2) For that, the Applicants are practically having All India Transfer liability and as such they are legally entitled to draw Special Duty Allowance as per various office memorandums in this regard.

5.3) For that, similarly situated persons who are working under the same Ministry have been granted the Special Duty Allowance but the Respondents are not giving the same relief to the instant Applicants. As such, the actions of the Respondents are bad in the eye of law and also not maintainable.

5.4) For that, similarly situated persons have already granted this relief by this Hon'ble Tribunal in O.A.No.30 of 2003 and in O.A.301 of 2003.

5.5) For that, being a model employer the Respondent cannot deny the same benefits to the instant Applicants which have been granted to the other similarly persons. As such the Respondents should extend this benefit to the Instant Applicants without approaching this Hon'ble Tribunal.

5.6) For that, it is unjust to discriminate among the employee similarly placed in the same department and it is also not proper to insist on every aggrieved employee to approach the court when the cause of action is identical.

Md. Anwar Ali

5.7) For that, in any view of the matter the action of the Respondents are not sustainable in the eye of law.

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

6) DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious and remedy available to the Applicants except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

That the Applicants further declares that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any such application, writ petition of suit is pending before any of them.

8) RELIEF PRAYED FOR:

Under the facts and circumstances stated above the applicant most respectfully prayed that Your Lordship may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the Applicants may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relieves.

8.1) That the Hon'ble Tribunal may be pleased to direct the Respondents to pay the Special Duty Allowance to the Applicants. from the date of their posting at North Eastern Region from outside

Md. Anwar Ali

Li

8.2) To Pass any other relief or relieves to which the Applicants may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.

8.3) To pay the cost of the application.

9. INTERIM ORDER PRAYED FOR:

At this stage no interim order is prayed for, if the Hon'ble Tribunal deem fit may pass any order or orders.

10. APPLICATION IS FILED THROUGH ADVOCATE.

11. PARTICULARS OF I.P.O.

I.P.O. No. :- 206 JJ763
Date of Issue :- 22.1.2005
Issued from :- Guwahati G.P.O.
Payable at :- Guwahati

12. LIST OF ENCLOSURES:

As stated in Index.

Verification...

Md. Anwar Ali

VERIFICATION

I, Md. Anwar Ali, P.No.2580, PKR/MATE, Office of the Commandant 222 Adv Base Ordinance Depot, C/o 99 APO, do hereby solemnly verify that I am the Applicant No.1 of the instant application and I am authorized by the other Applicants to sign this verification. That the statements made in paragraph nos. 4.1, 4.2, 4.4, 4.5, 4.8, 4.9, 4.10 — are true to my knowledge, those made in Paragraphs Nos. 4.3, 4.6, 4.7 — are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 27th day of January 2005 at Guwahati.

Md. Anwar Ali.

New York, the 14th Dec '03

Unit 1 Allowances and facilities for civilian employees of the Central Government serving in the Union and Union Territories of North Eastern Region—improvements thereof.

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

- 1) Tenure of posting/deputation.
x x x x x x x x
- 11) Eight-ages for Central deputation/training abroad
and special mention in confidential Record.
x x x x x x x x
- 111) Special (Duty) Allowance :

Central Government civilian employees who have All India transfer liability will be granted a special (Duty) Allowance at the rate of 25 percent of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Such of those employees who are exempted from payment of income tax will, however, not

Control.

be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and pro Deputation (Duty) Allowance 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.

xxxxxxx

xxxxxxxxx

xxxxxxxxxxx

xxxxxxxxxxx

xxxxxxxxxxx

SD/- S.C. KHALIK
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Contd.

New Delhi, Dated July 22, 1998. 28

OFFICE MEMORANDUM

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

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

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

(I) Tenure of Posting/Deputation

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

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

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

(III) Special [Duty] Allowance

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

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

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

18

Special Compensatory Allowances

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

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

(v) Travelling Allowance on First Appointment

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

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

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

(vii) Leave Travel Concession

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

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

OR

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

These special provisions shall continue to be applicable.

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

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

20-20-201-19-30 ✓

(vii) Children Education Allowance and Hostel Subsidy

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

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

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

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

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

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

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

(xii) Medical Facilities

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

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

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

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

6. Hindi version will follow.

N. Sunder Rajan

(N.SUNDER RAJAN)

Joint Secretary to the Government of India

To

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

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

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

COURT CASE

MOST IMMEDIATE

Cabinet Secretariat
(E.A. Section)

Annexure-VI

ANNEXURE-C

Subject: Special (Duty) Allowance for Civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region - regarding.

1. SSB Directorate may kindly refer to their UO No. 42/SSB/AT/99(18)- 2369 dated 31.03.2000 on the subject mentioned above.
2. The points of doubt raised by SSB in their UN No. 42/SSB/AT/99(18) - 5282 dated 29.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Department of Expenditure) and clarification to the points doubt is given under for information, guidance and necessary action :

i)	The Hon'ble Supreme Court in their Judgment delivered on 26.11.96 in Writ Petition No. 794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E.Region from outside the region and in the following situation whether a Central Government employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their uO No. 11(3)/95.E.II(B) dated 7.5.97	
a)	A person belongs to outside N.E.Region but he is appointed and on first appointment posted in the N.E.Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer Liability.	No
b)	An employee hailing from the N.E. Region selection on the basis of an All India recruitment test and borne on the Centralised cadre/service common seniority on first appointment and posted in the N.E.Region. He has also All India Transfer Liability.	No
ii)	An employee belongs to N.E.Region was appointed as Group "C" or "D" employee based	No

Pls send
for
Advocate

	on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No. 20014/2/83-E.IV dated 14.12.1983 and 20.4.87 read with O.M. 20014/16/86E.II(B) dated 1.12.1988) but subsequently the post/cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the N.E.Region though they can be transferred out to any place outside the NE Region having All India Transfer Liability.	
iii)	An employee belongs to N.E.Region and subsequently posted outside N.E.Region, whether he will be eligible for SDA if posted/transferred to N.E.Region. He is also having a common All India seniority and All India Transfer Liability	YES
iv)	An employee hailing from NE Region, posted to NE region initially but subsequently transferred out of NE Region but reported to NE Region after sometime serving in non NE Region	YES
v)	The MOF. Deptt. Of Expdr. Vide their UO No. 11(3)/95-E.II(B) dated 7.6.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. For determination of the admissibility of the SDA to any Central Govt. Civilian employees having All India Transfer Liability will be by applying tests (a) whether recruitment to the Servic/Cadre /Post has been made on All India basis (b) whether promotion is also done on the basis of All India Zone of promotion based on common seniority for the service/cadre/post as a whole (c) in the case of SSB/DGS, there is a common recruitment system made on All India basis and promotions are also one on the basis of All India Common Seniority. Based on the above criteria/tests all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from N.E.Region or posted to N.E.Region from outside the N.E.Region	In case the employee hailing from NE region is posted within NE Region he is not entitled to SDA till he is once transferred out of that Region
vi)	Based on point (iv) above, some of the units of SSB/DGS have authorised payment of SDA to othe employees hailing from NE Region and posted within the N.E.Region while in the case of others, the DACS have objected payment of SDA	It has already been clarified by MOF that clause in the appointment order regarding All India

	to employees hailing from NE Region and posted within the NE Region irrespective of the fact that their transfer liability is All India Transfer Liability or otherwise. In such cases what should the norm for payment of SDA i.e. on fulfilling the criteria of All India Recruitment Test & to promotion of All India Common Seniority basis having been satisfied are all the employees Eligible for the grant of SDA	transfer Liability does not make him eligible for grant of SDA
vii)	Whether the payment made to some employees hailing from NE Region and posted in NE Region be recovered after 20.9.1994 i.e. the date of decision of the Hon'ble Supreme Court and/or whether the payment of SDA should be allowed to all employees including those hailing from N.E. Region with effect from the date of their appointment if they have All India Transfer Liability and are promoted on the basis of All India Common Seniority List.	The payment made to employees hailing from NE Region & Posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employee hailing from NE Region and posted in NE region be recovered from the date of payment or after 20th Sept., 94 whichever is later.

3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1349 dated 11.10.1999 and Ministry of Finance (Expenditure)'s I.D. No. 1204/E.II(B) dated 30.3.2000.

Sd/-
Illegible
(P.N.THAKUR)
DIRECTOR(SR)

1. Shri R.S.Bedi, Director ARC
2. Shri R.P. Kureel, Director, SSB
3. Birg.(Retd)G.S.Uban, IG,SFF
4. Shri S.R.Mehra, JD(P&C), DGS
5. Shri Ashok Chaturvedi, JS(Pers),R&AW,
6. Shri B.S.Gill, Director of Accounts, DACS
7. Shri J.M.Menon, Director Finance(S),Cab. Sectt.
8. Col. K.L. Jaspal, CIOA, CIA

Cab. Sectt. UO. No. 20/12/99-EA-1-1799 dated 2.5.2000.

Original Application No. 56 of 2000

Date of decision : This the 19th day of March, 2001.

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

Hon'ble Mr. K.K. Sharma, Member (A).

Shri Manoj Kumar,

Lower Division Clerk,

Office of the Deputy Director,

Subsidiary Intelligence Bureau,

Basistha Road, Guwahati-28 & 107 Ors.

By Advocate Mr. A. Ahmed.

Applicants.

-versus-

1. Union of India,
represented by the Secretary to the
Government of India, Ministry of
Home Affairs, North Block,
New Delhi.

2. The Director,
Intelligence Bureau,
North Block, New Delhi.

3. The Deputy Director,
Subsidiary Intelligence Bureau,
Basistha Road,
Guwahati-28.

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

Respondents.

ORDER (ORAL)

CHOWDHURY J. (V.C.).

The applicants are one hundred and sixty eight in number serving under the Deputy Director, Subsidiary Intelligence Bureau, in different capacities, like Lower Division Clerks, Assistant, Stenographer, Security Assistant, A.C.I.O-1/C, P.S., J.O-11/C, Section Officer, Upper Division Clerk etc. Their grievance is common in nature claiming Special Duty Allowance (hereinafter referred to as SDA) payable to the Central Government employees serving in the North Eastern Region. By now the issue is involved in appeal on the basis of numerous decision of the Supreme

Contd..

- 22 - 33 -
- 24 -

Court subsequently clarified by the department. Cabinet

Secretariat (EA.I Section) clarified the matter by a Notification dated 2.5.2000. The civilian employees who have all India transfer liability are entitled for grant of SDA on being posting to any station in the NE Region from outside the Region. An employee hailing from the North Eastern Region selected on the basis of all India recruitment test and borne on the centralized cadre/service, common seniority on first appointment and posted in the N.E. region per se is not entitled for the SDA. He or she would be entitled to SDA only if posted outside NE Region on transfer. An employee hailing from NE Region initially but subsequently transferred out of the NE Region but reposted to NE Region would also be entitled to SDA.

From the materials made available in this application it is difficult for the Tribunal to determine/evaluate as to nature of posting of each individual applicant.

In the circumstances upon hearing the learned counsel Mr. A. Ahmed for the applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C. we are of the view that ends of justice will be met if a direction is issued to the applicant to submit individual representation before the concerned authority narrating the factual position. Accordingly we direct the applicants to make individual representations within a period of one month from the date of receipt of certified copy of this order. The respondents on receipt of such application consider the same in the light of the OM issued from time to time more particularly on the basis of the Clarification issued by the Director(SK), Cabinet Secretariat dated 2.5.2000 with the concurrence of the Finance Division as early as possible at any rate within the

Contd.....

period of two months from the date of receipt of individual representation from the applicants.

The application is disposed of accordingly. There shall however, no order as to costs.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Copy
প্রমাণিত প্রতিলিপি

Section Officer (J)

আসাম প্রশাসনিক (সিনিয়র) বিভাগ
Central Administrative Tribunal

কেন্দ্রীয় প্রশাসনিক বিভাগ
Guwahati Bench, Guwahati-8

গুৱাহাটী : অফিস, গুৱাহাটী-৪

৪/৩/৭২

Original Application No. : 11/03
Misc. Petition No. :
Contempt Petition No. :
Review Application No. :
26

ANNEXURE - AAE

Applicant(s) : Manik Sengupta

- vs. -

Respondent(s) : U. C. T. Roy

Advocate for the Applicant(s) : Adil Ahmed

Advocate for the Respondent(s) : P. C. C.

Name of the Registry Date Order of the Tribunal

25.4.2003

Heard Mr. A. Ahmed, learned counsel for the applicants and also Mr. A. Deb Roy, learned Sr. C.C.S.C. for the respondents.

The controversy pertains to grant-
ing of Special Duty Allowance (SDA) to
the applicant. The respondents in its
written statement contended that SDA is
admissible only to the Civilian Employ-
ees posted from outside the region and
not to others. Admittedly, the applicant
who belongs to North East Region was
initially posted at Siliguri and by
order dated 8.3.1995 the applicant was
re-posted at Guwahati from Siliguri.
Therefore, as per memorandum issued by
the Cabinet Secretariat an employee
hailing from N.E. Region, posted to
N.E. Region initially but subsequently
transferred out N.E. Region after some-
time serving in non N.E. Region is
entitled SDA. As a matter of fact the
respondent admitted the same in the
written statement and asserted that in
terms of the memorandum of the Cabinet
Secretariat the respondents continued
to pay the SDA to the applicant from
28.2.2001. However, the same was stopped
later on in the light of the observation
made in the Swamynews in terms of the
Supreme Court judgment. The aforementio-
ned considerations are totally irrelevan-
t on the facts situations in the
context of the decisions of the Central
Govt. The impugned action of the
respondents in withholding the SDA due
to the applicant and consequent recovery
of the same is thus unsustainable in
law.

In the circumstances and in the
light of the decision rendered by the
Tribunal, the impugned office order
No. AIR/CC/32-CH/2(2)/2002-A/6830-34
dated 09.12.2002 issued by the respond-
ent No.4 is thus set aside and quashed

Contd/-



— 27 —



25.4.2003² and the respondents are directed to pay the SDA to the applicant forthwith.

The application is allowed
No order as to costs.

Sd/VICE CHAIRMAN

Verified to be true Copy
प्रमाणित प्रतिलिपि
[Signature]
Regional Officer (J)
आदेशानुसार (न्यायालय द्वारा)
Regional Administrative Tribunal,
उधमपुर न्यायालय, उधमपुर
Udhampur Bench, Udhampur
जम्मू एवं कश्मीर, भारत

Original Application No. : 90/07,
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

ANNEXURE - F

Applicant (s) Ranjit Subudhan

Respondent (s) H. N. Q. Ann.

Advocate for the Applicant (s) H. Chandra G. N. Chakrabarty
Mr. A. S. Ray
Advocate for the Respondent(s) Sr. C. A. P.

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

The issue relates to payment of Special Duty Allowance (SDA). The applicants are 25 in number who were working group 'C' and 'D' cadre in the Canteen Store Department, Missamari Jave and except applicant No. 9 who was posted at Port Blair Canteen Store Department at the time of filing this application.

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

According to the applicants, they were paid SDA in terms of memorandum dated 14.12.1993, 1.12.1998 and 22.7.1998 and the same was sought to be stopped whereupon the applicants moved this Tribunal by the O.A.

The respondents submitted written statement and contended that in view of the decision rendered by the Supreme Court in S. Vijaya Kumar and Ors. and like cases the Ministry of Finance issued appropriate direction for taking appropriate measure in regards payment of SDA vide communication dated 29.3.2002. According to the respondents SDA is admissible only to civilian employees posted from the outside region and not others. The decision of the Supreme Court in U.C.I. & Ors. Vs. Sh. S. Vijaya Kumar & Ors. has clarified the same. It was also mentioned that SDA would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

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

Contd/-



3.6.2003

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

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

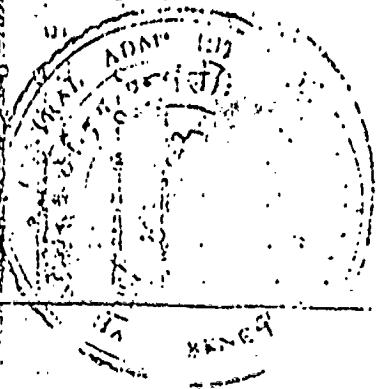
Accordingly, the application is allowed in the light of the decision of this Bench in O.A. No. 32/2001 disposed on 12.9.2001.

The application is allowed. order as to costs.

SC/VICE CHAIRMAN

CERTIFIED TRUE COPY

[Signature]
23.12.03
Section Officer (J)
C.A.T. GUWAHATI BENCH
Guwahati 781005



FROM No. 41
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: - 301 / 03

Misc Petition No: -

Contempt Petition No: -

Review Application No: -

Name of the Applicant(s): - K R Dora & Co.

Name of the Respondant(s): -

Advocate for the Applicant:- Mr. A. Ahmed

Advocate for the Respondant:- C S S C

Notes of the Registry | date | Order of the Tribunal

17.2.2004

Present: Hon'ble Mr K.V. Prahladan,
Administrative Member

By this application the applicants have claimed Special (Duty) Allowance (SDA for short) on the strength of the Circular No.20-12-1999-EA-1-1789 dated 2.5.2003 of the Cabinet Secretariat.

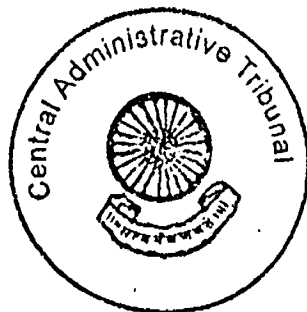
Heard Mr A. Ahmed, learned counsel for the applicants and also perused the application. On hearing the learned counsel for the applicants and on perusal of the application, I dispose of the application with the following direction:

The respondents may regulate the payment of SDA to the applicants in terms of the Circular dated 2.5.2003 of the Cabinet Secretariat on SDA for Civilian employees of the Central Government in the States of N.E. Region and Union Territories.

The respondents are directed to complete the above exercise within four weeks from the date of receipt of the order.

The O.A. is accordingly disposed of.

(K. V. PRAHLADAN)
Administrative Member



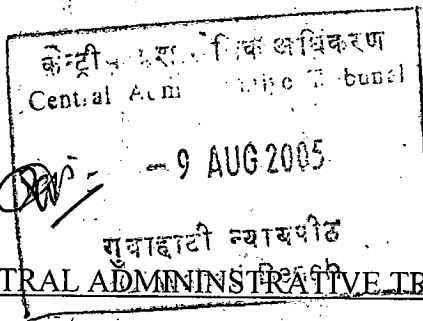
Certified to be true Copy
प्रमाणित प्रतिलिपि

Section Officer (J)

C.A.T. GUWAHATI BANCH

Guwahati-781005

20/2/04 nkm



Filed by 52
the Respondents through
Ms. Das.
Addl. Secy.
CAT/WHY
4/8/05

OA NO. 19/2005

MD.A.ALI & ORS

.....APPLICANTS

-VERSUS-

UNION OF INDIA & ORS

.....RESPONDENTS

WRITTEN STATEMENT FILED BY THE RESPONDENTS

- 1) That the respondents have received copy of the OA, have gone through the same and have understood the contentions made thereof. Save and except the statements, which are specifically admitted herein below, rest may be treated as total denial. The statements, which are not borne on record, are also denied and the applicants are put to the strictest proof thereof.
- 2) That with regard to the statement made in paragraph 1 of the application, the respondents denied the contention made therein since the Govt of India, Ministry of Finance, Department of Expenditure, vide Office memorandum No. 11(5)/97-EII (B) dated 29 May 2002 modified the earlier order/instructions of the Govt, disentitling the applicants of the instant OA for further SDA to the applicants. It may be mentioned the Govt. of India, Ministry of Finance has issued the ibid orders on payment of Special Duty Allowance in view of the judgement passed by Supreme Court of India dated 05.10.2001 in a recent appeal filed by Telecom Department (Civil Appeal No 7000 of 2001 arising out of SLP No. 5455 of 1999. In view of the aforesaid judgement passed by Hon'ble Supreme Court the criteria for payment of Special Duty Allowance is reiterated as under.

“ The Special Duty Allowance shall be admissible to Central Govt. employees having All India Transfer liability on posting to North Eastern Region (including Sikkim) from outside the region.”

A copy of the OM dated 29.5.2002 is annexed herewith and marked as Annexure-RI.

- 3) That all cases for grant of Special Duty Allowance including those of All India Service Officers, is regulated strictly in accordance with the above mentioned criteria. The applicants of this OA have not fulfilled the criteria enumerated in the Ministry of Finance Deptt of Expenditure letter dated 29.5.2002 as mentioned above.
- 4) That with regard to the statement made in paragraph 2 & 3 of the OA, the respondents beg to state that the matter relates to the provisions of the Administrative Tribunal Act, 1985 and the rules made there under accordingly save (except) what appears there from, the respondents beg to offer no comments.
- 5) That with regard to the statement made in paragraph 4.1 of the OA, the respondents beg to state that the same are matter of record and nothing beyond record is admitted.
- 6) That with regard to the statement made in paragraph 4.2 of the OA, the respondents beg to offer no comments.
- 7) That with regard to the statement made in paragraph 4.3 of the OA, the respondents beg to state that Govt. of India, Ministry of Finance, Department of Expenditure vide office memorandum No.11 (5)/97-EII (B) dated 29.5.2002 has superseded all the earlier orders issued on the payment of Special Duty Allowance to the employees working in the North Eastern Region. As such the contention expressed by the applicants through the Para is totally denied.
- 8) That with regard to the statement made in paragraph 4.4 of the OA, the respondents beg to state that merely having " All India Transfer Liability " the applicants do not entitle themselves to receive Special Duty Allowance. To receive SDA, the employees working in the NE Region is required to fulfill the criteria enumerated at Para 5 of Ministry of Finance, Deptt of Expenditure memo No. 11 (5)/97-E II (B) dated 29.5.2002. As per Min. of finance ibid letter dated 29.5.02 the Special Duty allowance shall be admissible to Central Govt. employees having All India transfer liability on posting to North Eastern region (including Sikkim) from outside the region. Moreover, through the ibid letter dated 29.5.02 of Ministry of Finance, it has been emphatically stated that " 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.
- 9) That with regard to the statement made in paragraph 4.5 of the OA, the respondents beg to state that clarification given through the Para does not confer them to receive SDA. For entitle to receive the SDA, the applicants have to fulfill the criteria mentioned at Para 5 of Ministry of Finance, Deptt of Expenditure Office memo dated 29.5.2002 as mentioned above.

10) That with regard to the statement made in Para 4.6, it is stated that Cabinet Sectt letters dated 02 May 2000 was not received by us earlier. The same is only made available through the OA-19/05 as filed by the applicant in the Hon'ble Tribunal. However, the Cabinet Sectt ibid letter dated 02 May 2000 has been superseded by Govt. of India, Min of Finance, Deptt of Expenditure vide letter No.11(5)/97-E II (B) dated 29 May 2002.

11) That with regard to the statement made in paragraph 4.7 of the OA, the respondents beg to offer no comments.

12) That with regard to the statement made in paragraph 4.8 of the OA, the respondents beg to state that due to the modification of the policy effected by the Govt of India, Min of Finance (Deptt of Expenditure) OM No.11 (3)/95-E-II (B) dated 12 Jan 96 regarding payment of SDA to the Employees working NE Region, the payment of SDA was stopped. The prayer made by the applicant for payment of SDA based on the judgement passed by the Hon'ble CAT, Guwahati Bench as explained in the above paragraphs as also Cabinet Sectt letter dated 02.5.2000 was turned down as no direction for payment of SDA has been received to these categories of persons from Govt. Regarding the statement made in latter part of the paragraph, the respondents beg to offer no comments. (A copy of OM dated 12 Jan 96 is annexed herewith and marked as Annexure- R2)

13) That with regard to the statement made in paragraph 4.9 of the OA, the respondents beg to state that due to the modification of the earlier order on the Payment of SDA to the worker/employees serving in NE Region through Ministry of Finance, Deptt of Expenditure office memo dates 29.5.2000. the allowance was not paid to the applicants. Hence the contention expressed through the paragraph is denied.

14) That with regard to the statement made in paragraph 4.10 of the OA, the respondents beg to state that the allegations made by the applicants are false, baseless and devoid of merit and hence denied. It may be mentioned the employees who have recruited outside the region and subsequently posted outside the Region to this depot are only receiving the allowance.

15) That will regard to the statement made in paragraph 4.11 & 4.12 of the OA, the respondents beg to offer no comments

16) That with regard to the statement made in paragraph 5.1 of the OA, the respondents beg to state that the allegation made by the applicants is false, baseless and devoid of merit and denied.

17) That with regard to the statement made in paragraph 5.2 of the OA, the respondents while denying the contentions made therein beg to rely and refer upon the statement made above.

18) That with regard to the statement made in paragraph 5.3 of the OA, the respondents beg to state that due to the modification of policy as issued vide Govt. of India, Min of Finance, Deptt of Expenditure's Office memo No. 11(5)/97-E II (B) dated 29 May 02 the allowance can not be given to the applicants. The allegations made by the applicants through the instant paragraph are unjust and devoid of merit and hence denied.

19) That with regard to the statement made in paragraph 5.4 of the OA, the respondents beg to offer no comments.

20) That with regard to the statement made in paragraph 5.5 of the OA, the respondents while denying the contentions made therein beg to rely and refer upon the statements made above. It is further stated that no formal direction for payment of SDA to the categories of personnel as that of the applicants has been received from the Govt so far and as such the respondents have not paid the allowance to them.

21) That with regard to the statement made in paragraph 5.6 & 5.7 of the OA, while denying the contentions made therein beg to rely and refer upon the statement made above. It is further stated that there is no merit of the case.

22) That with regard to the statement made in paragraph 6 of the OA, the respondents beg to offer no comment.

23) That with regard to the statement made in paragraph 7 of the OA, the respondents beg to state that the same are matters of record and nothing beyond record is admitted.

24) That with regard to the statement made in paragraph 8,8.1,8.2,8.3 & 9 of the OA, the respondents while denying the contentions made therein beg to rely and refer upon the statements made above. It is further reiterated that due to the modification of earlier order on the payment of SDA to the workers/employees serving in the NE Region through Ministry of Finance, Deptt of Expenditure's OM No.11 (5)/97-E II (B) dated 29.5.2002, the allowance cannot be given to the applicants. In view of the modification of the earlier orders by the Govt of India, Ministry of Finance through the ibid letter dated 29.5.2002 the prayer made by the applicants could not be considered and hence the OA is liable to be dismissed with cost. The prayer made by the applicants through the instant OA is baseless illegal and unwarranted and denied the contentions thereon.

-4-

46

VERIFICATION

I Shri Col Harjinderjit Singh at present
working as Commandant at 222
ABOD. c/o 99 APO who is taking steps in this

case, being duly authorized and competent to sign this verification, do
hereby solemnly affirm and state that the statement made in paragraph

1 are true

to my knowledge and belief, those made in paragraph

2 to 16 being matter of records, are

true to my information derived there from and the rest are my humble

submission before this Humble Tribunal. I have not suppressed any material

fact.

And I sign this verification this 22 the day of Jun 2005 at Guwahati


(Harjinderjit Singh)
DEPONENT

(H. I. Singh)
Colonel
Commandant

Annexure - R I

-5-
47

Ministry of Defence
D(Civ.I)

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

A copy of Ministry of Finance, Department of Expenditure's O.M. No. 11(5)/97-E.II(B) dated 29th May, 2002 on the above mentioned subject is forwarded herewith for information and necessary action, in so far as civilians paid from Defence Services Estimates are concerned.

Piara Ram
(Piara Ram)
Under Secretary

AG/Org-4(Civ)(d)
Air HQrs./PC-5
NHQ/CP Dts.
R&D/Orgn./DOP
MP.4/Civ (a)

DGNCC/Pers(c)
DGAfMS/DG-2(B)
OFB Calcutta
DPR
R&D/DOP/MPD

DGDE/Admin
DGAQA
DGQA/Admin.-7B
CAO/Coord

MoD I.D. No.4(6)2002/D(Civ.I) dated 10.10.2002

Copy to :-

D(Appnt.), D(Fy.II); D(R&D); D(GS.III); D(QS); D(Q&C); D(JCM); D(AG); D(N.II);
D(Air.III); D(Works-II); D(O.II).

The CGDA; All CDAs; All Sr. Dy. DADS; The DGADS; The Asst. Audit Officers
(Defence Services), Kirkee, Kanpur, Bangalore and Allahabad; The Director of Accounts
(Postal) APS Section, Nagpur-440001.

DFA(AG/PB); DFA(Navy); DFA(AF); DFA(Works); DFA(Budget-II); DFA(DP-I);
C.C.A. (Factory), Calcutta.

OF Cell, 'G' Block; Chief Canteen Officer/QMG's Branch; OC Defence Security
Troops, Room No.4, 'H' Block; Air HQrs./IDPC; AG/PS-3A; AG/PS-3B; AG/Budget;
E-in-C's Branch/CSCC; E-in-C's Branch/EIB; Addl. DGOF, Kanpur;
DGQA/Admin.(14); Coast Guard HQrs., National Stadium, New Delhi;
AD/DGQA(Coord); HQ ATVP, Paryavaran Bhavan.

48
6
General Secretary, All India Defence Employees Federations, 70 Market Road, Kirtee, Pune-411003.

General Secretary, Indian National Defence Workers Federations, 25/19, Karachi Khana, Kanpur-208001.

Chairman, Central Administrative Tribunal, Faridkot House, Copernicus Marg, New Delhi.

General Secretary, Bhartiya Pratiraksha Mazdoor Sangh, 2, Navin Market, Kanpur-208001.

Copy of Govt. of India, Ministry of Finance, Department of Expenditure's Office Memorandum No.11(5)/97-E.II(B) dated 29th May, 2002 regarding Special Duty Allowance for civilian employees of the Central Government serving in the State and Union Territories of North Eastern Region including Sikkim.

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20014/16/86-E.IV/E.II(B) dated 1.12.88 and OM No. 11(3)/95-E.II(B) 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 14.12.83. Special Duty Allowance (SDA) is one of the incentives granted to the Central Government employees having 'All India Transfer Liability'. The necessary clarification for determining the All India Transfer Liability was issued vide OM dated 20.4.87, laying down that the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc; i.e.; whether promotion as also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in NE region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgement delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993 in the case of UOI and Ors V/s Sh. Vijaya Kumar and Ors) have upheld the submissions of the Government of India that C.G. civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

1-11

7-11

The Special Allowance shall be payable to central government employees serving all India establishments wholly or partly in North Eastern Region including Sikkim, subject to the following conditions:-

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

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

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

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

application to employees of Indian Audit & Account Department these consultation with the Comptroller and Auditor General of India.

(N.P. Singh)
Under Secretary to the Government of India.



Tele : 222-2288

REGISTERED
Headquarters
Eastern Command (Cnd)
Fort William
Calcutta - 21.

321908/1/ 157 /OS-30

11 Oct 96

222 0300
LIST 15

SPECIAL D ALLOWANCE FOR CIVILIAN EMPLOYEES
OF THE CENTRAL GOVERNMENT SERVING IN THE STATE
AND UNION TERRITORIES OF NORTH EASTERN REGION
REGARDING

A copy of Govt of India, Min of Fin (Deptt of Exptr) CM
No 11(3)/95-E.I (E) dated 12.1.96 recd under Army HQ letter to
10067/01/1/157 dated 17 Sep 96 on the above subject, is
forwarded herewith for information and strict compliance.

(D K Gupta)
Lt Col
DA DCS (Adm)
for MG ACC

Copy of Min of Fin (Deptt of Exptr) CM No 11(3)/95-E.I (E)
dated 12 Jan 96/

9 ABOVE

The undersigned is directed to refer to this Departmental
CM No 20014/3/83-E.IV dated 14.12.83 and 20.4.87 read with CM No
20014/16/88-E.IV/E.II(1) dated 1.12.83 on the subject mentioned
above.

2. The Govt of India vide the above mentioned CM dated
14.12.83 granted certain incentives to the Central Govt civilian
employees posted to the NE Region. One of the incentives was
payment of a 'Special Incentive Allowance' (SDA) to those who have
'All India Transfer Liability'.

3. It was clarified in the above mentioned CM dated
20.4.87 that for the purpose of sanctioning 'Special Incentive Allow-
ance', the All India Transfer Liability of the members of the
service/cadre or incumbent of any post/group of posts has to be
determined by applying the tests of recruitment Zone, Promotion
Zone etc. ie. whether recruitment to service/cadre/post has been
made on all India basis or whether promotion is made 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

- 2 -

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

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

(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 issued in consultation with the comptroller and Auditor General of India.

Sd/-

(C. Baldev Prasad)

Under Secretary to the Govt of India.

Govt. of India
Ministry of Law & Justice
Deptt. of Legal Affairs
Branch Sectt. Calcutta



234/4, A.J.C. Bose Rd.,
Nizam Palace, 18th floor,
Calcutta-20.

Sub: Vetting of the Draft Reply Statement in
OA No. 19/05 filed by Md. A. Ali & Ors.
on the file of Cal. Guwanati.

Ref. No. 1509/CC/OA-19/05/ADM dated Nil.

The draft Reply Statement has been vetted and
it appears formally in order subject to the following
observations:-

- ✓ 1. Cause Title to be given as given in the
2. The department may give reply clearly what
are the eligibility conditions to receive
the S.D.A. and how the petitioners are
entitled to receive the same vide para 8
of the draft Counter Affidavit.
3. Reply may be given for para 4(6) of the
O.A.
4. The department is advised to give the date
of the policy and all other particulars
in connection with the policy at para
4(8) of the O.A. Similarly, the suitable
reply may be given for para 5(3) of the
O.A.

The department is advised to check up all the
facts once again before finalising the same.

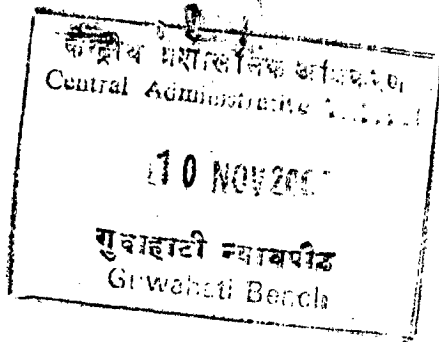
The original reference is returned herewith.

Encl: Reference

G. Jayaramulu
(G. Jayaramulu) 28/6/05 —
Dy. Legal Adviser
Tel. No. 2247 9171

Lt. Col., Adm. Officer, 222, Agrim Sthai Ayudh Bhandar,
222, Adv. Base Ord. Depot, C/O 99 APO.

MOL U.O. No. 1682/05/Adv./Cal. Date: 28.6.05.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO. 19/2005

A. ALI & OTHERS

.....APPLICANTS

-VERSUS-

UNION OF INDIA & ORS

.....RESPONDENTS

IN THE MATTER OF

Additional Written Statement filed by the
respondents

- 1) That the respondents most respectfully submitted that Md. A. Ali & others have filed Original Application No. 19/2005 before the Hon'ble Tribunal for payment of Special Duty Allowance (SDA) to the applicants as per Government of India, Cabinet Sectt U O No. 20/12/99-EA-1/1799 dated 02/05/2000. In this regard respondent No.3 had approached the Higher Headquarters for issuing necessary clarification on the payment of SDA to the applicants. Army Headquarters had approached Ministry of Defence, who in turn has clarified that Cabinet Secretariat order are not applicable to Defence Civilian employees, who are governed by the orders issued by the Ministry of Finance, Deptt. Of Expenditure OM No. 11(5)/97-E-II (b) 29 May 2002. The D.O. letter No. A/24302/Md A.Ali /26/0s-8c (ii) dated 26/8/2005 from Col Ranjan Bakshi, Director OS (Personnel) of Army Headquarters, New Delhi who is the officer in charge for Civilian Working in Ordnance Establishment, is submitted to the Hon'ble Tribunal.

A copy of the letter dated 26/8/2005 is
annexed herewith and marked as Annexure-
5.

Filed by
the Respondents through
Usha Das.
Added 8/11/05
Col Haxjindas Jit Singh
(H J Singh)
Colonel Commandant
53

VERIFICATION

I Shri Col Harjinderjit Singh

aged about 48 years at present working as

Commandant, 222 ABOD, c/o 99 APO

....., who is taking steps in this case, being duly authorized and competent to sign this verification, do hereby solemnly affirm and state that

the statement made in paragraph

_____ are true

to my knowledge and belief, those made in paragraph

1 being matter of records, are

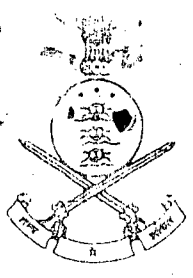
true to my information derived there from and the rest are my humble

submission before this Humble Tribunal. I have not suppressed any material

fact.

And I sign this verification this 10th the day of Oct 2005 at Guwahati

✓ [Signature]
(Col Harjinderjit Singh)
(H J Singh)
Colonel
Commandant



कर्नल राजन बक्शी
निदेशक (आयुद्ध सेवा कार्मिक)

Col Rajan Bakshi
Director OS (Personnel)
Tele : 23018900 (0)
23375177 (0)

आयुद्ध सेवा महानिदेशालय
मास्टर जनरल ऑफ आयुद्ध शाखा
सेना मुख्यालय
नई दिल्ली - 110099
Directorate General of Ordnance Services
Master General of Ordnance Branch
Army Headquarters
New Delhi - 110011

A/24302/Ind A All/26/OS-8C (II)

26 Aug 2005

Dear Col, Colonel,

Please refer to your DO letter No 1509/CC/OA-19/05/28/Adm dt 05 Aug 2005.

2. The matter was referred to Min. of Def to seek clarification on the point raised by you. It has been clarified that Cabinet Secretariat orders are not applicable to Defence Civilian employees, who are governed by the orders issued by the Min of Fin, Deptt of Expdr OM No 11 (5)/97-E. II (B) dated 29 May 2002.

3. I hope the position is quite clear now. The case should now be defended properly and it should be ensured that the case is not lost by default.

with best wishes,

Yours Sincerely,

[Signature]
Ranbharshi

PO
Ld. & P. up with
16/8/05

Col HJ Singh
Commandant
222 APOD
C/O 99 APO

PO
Re T. G. S.

1/8/05

Mr D. N. Sharma to SPL 8/9

714/DC
5/9/05
Raj Ar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

O.A.No.19 of 2005

IN THE MATTER OF :

Md. Anwar Ali & Others

... Applicants

-Versus-

The Union of India & Others

... Respondents

- AND -

IN THE MATTER OF :

Rejoinder Submitted by the Applicants in
the above said Original Application
against the additional written statement
filed by the Respondents.

The humble Applicants submit this Rejoinder as follows:

1. That with regard to statement made in paragraph 1 of the Written Statement filed by the Respondents are false and also misleading to this Hon'ble Tribunal. It is to be stated that this Hon'ble Tribunal vide its Judgment dated in O.A.No.170 of 1999 and other similarly situated cases held "The Special Duty Allowance is admissible to Central Government Employee who have been posted / transferred to the North Eastern Region from outside the Region." In the above said cases majority of the applicants are Defence Civilian Employee who are working in the North Eastern Region. The Military Engineering Service who are under the Ministry of Defence has already taken steps to implement the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati Judgment & Order dated 31st May 2005 passed in O.A.No.170, 202, 319 of 1999 and 179, 224, 155 and 201 of 2000 vide Order issued under No.90237/6935/EIC(Legal-

Md. Anwar Ali

C) dated 30th September 2005. In the said letter it has been stated that Ministry of Defence and Ministry of Finance decided to implement the above said Judgment & Order in favour of the Defence Civilian Employee who are posted from outside to North East Region. As such the contention of the Respondents in their additional written statement is false and also misleading to the Hon'ble Tribunal.

ANNEXURE - X is the photocopy of the Order No.90237/6935/EIC(Legal-C) dated 30th September 2005.

From the above, the additional written statement submitted by the Respondents are wholly bereft of substance and no credence ought to be given to it. Thus, in view of the abject failure of Respondents to refute the contentions, averments, questions of law and grounds made by the Applicant in the Original Application filed by the Applicant deserve to be allowed by this Hon'ble Tribunal.

VERIFICATION

I, Md.Anwar Ali, P.No.2580, PKR/MATE, Office of the Commandant 222 Adv Base Ordinance Depot, C/o 99 APO, do hereby solemnly verify that I am the Applicant No.1 of the instant application and I am authorized by the other Applicants to sign this verification. That the statements made in paragraph nos. — x — are true to my knowledge, those made in paragraph nos. — \ — are being matters of records are true to my information derived there from which I believe to be true and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 21st day of November, 2005.

Md. Anwar Ali

81625/CAT/Gen

Tele : 23019376

Dic Gen of Personnel
Military Engineer Service
Engineer in Chief's Branch
Army Headquarters
Kashmir House
New Delhi-110011.

ANNEXURE - X

90237/6935/IEIC(Legal-C)

30 Sep 2005

Chief Engineer
Eastern Command;
Fort William
Kolkata - 21.

**IMPLEMENTATION OF HON'BLE CAT GUWAHATI BENCH JUDGEMENT
DATED 31 MAY 2005 IN OA NOS 170, 202, 319 OF 1999 AND 179, 224, 155 AND
201 OF 2000**

1. Reference Hon'ble CAT Guwahati Bench Judgement dated 31 May 2005. The Hon'ble CAT observed as under :-

'All the applicants will be entitled to SDA provided their case would fall within the norms/guidelines stated in para 52 (supra). The question as to whether the applicants in these cases satisfy the same be considered by the competent authority amongst the respondents within a period of two months from the date of receipt of this order'.

2. The matter was under correspondence with MOD/Min of Fin and it has been decided by Min of Fin (Dept of Exptr) vide their U.O. No 25 (4)/E.II(B)/2001 dated 02 Aug 2005 that provisions of Min of Fin OM No 11(5)/E.II-B/97 dated 29.5.2002 should be applied in all cases barring those where CAT/Court has passed specific directions in respect of any particular person(s). (Copy enclosed for ready reference).

3. In this connection, another clarifications issued by Min of Finance (Dept of Exptr) vide their I.D. No 25(4)/E.II(B)/2001 dated 19.02.2003 (copy enclosed) states that as per the orders issued by this Ministry, Special Duty Allowance is admissible to the Central Govt employees who have All India Transfer Liability on their posting to NE Region from outside the region, as reiterated in this Ministry's OM dated 29.5.2002. It has further been mentioned that in the above stated ID that no restriction has been made to the effect that the residents of NE Region shall not be entitled to the Special Duty Allowance when they fulfil the criteria of All India Transfer Liability and are transferred/posted in NE Region from outside the region.

4. In view of above, you are advised to process all pending cases on SDA where CAT/Courts have already given judgements in favour of applicants, as well as other pending cases where audit has raised observations, with the concerned audit authorities.

Attn:
Tel. No. 23019376

copy to sent to
AO Shillong
CGDA

- 5 -

60

Confirmation regarding implementation of judgements be furnished, subsequently, except where SLP/WP are pending.

NO. OF SHILLONG ZONE	
L	
Pr. Dir (Wks)	
CO. Dir	
Copy to	
AO 1	CGDA, West Block
AO 1	RK Purnam, New Det
O.S	

(Sant Ram)
SE

Director (Legal)
For E-in-C

cc put copy to GWE/GC(I) for info / wa
and the file action on
for info along with copies of above letters.
66 per case 4 on hand
confirmation regarding
implementation of Judgments
to be furnished thereafter
-do-

Udhyan Vihar, Narang
Guwahati 781 171

3. AAO Shillong

for necessary action along with copies of above

4. Chief Engineer
Shillong Zone
Spread Eagle Falls
Shillong

-do-

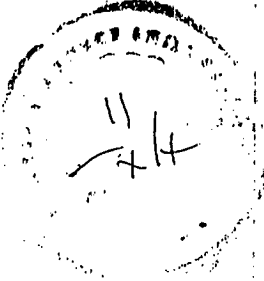
5. Chief Engineer (Ajr Force) Shillong
Elephant Falls
Shillong

-do-

Internal

EIC (3) Section
EIB (P&A)

- w.r.t. your B/21838/SDA/NER/EIC (3) dt 25.8.2005
- for info along with



Attn
1
Amto