

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 231/2005

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SECTION OFFICER (Judl.)

Harish
06.11.17

FORM NO. 4.
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH..

ORDER SHEET

Original Application No. 231/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(S): A. K. Datta

Respondant(S): M. U. Ahmed

Advocate for the Applicant(S): Adil Ahmed

Advocate for the Respondant(S): Cable M. U. Ahmed

Notes of the Registry	Date	Order of the Tribunal
<p>Application is filed is filed/C.F. 138/05 deposited vide P.D. No. <u>206/136/836</u> Dated <u>20.7.05</u></p> <p><u>Am</u> Dy. Registrar <u>AS</u> 5.9.05</p>	6.9.2005	<p>Heard Mr. A. Ahmed, learned counsel for the applicant and Mr. M. U. Ahmed, learned Addl. C.G.S.C. for the respondents.</p> <p>Issue notice to the respondents. Post on 7.10.2005.</p> <p>Recovery of the amount ordered as per communication dated 26.8.2005 (Annexure - F) is stayed. However, there is no ^{stay} of stopage of SDA.</p> <p><u>Varejan</u> Vice-Chairman</p>
<p>Notice & order sent to D/ Section for issuing to resp. Nos. 1 to 4 by regd. A/D post.</p> <p><u>13/9</u> D/No = 1393 to 1396, dt. 16/9/05.</p> <p><u>18-11-05</u> No ads filed.</p>	7.10.2005	<p>Mr. A. Ahmed, learned counsel for the applicant is present. Mr. M. U. Ahmed learned Addl. C.G.S.C. for the respon- dents seeks for time to file written statement. Post on 23.11.2005.</p> <p><u>Print</u> Member</p> <p><u>Varejan</u> Vice-Chairman</p>

O.A.231/2005

23.11.2005

Mr.A.Ahmed, learned counsel for the applicant and Mr.M.U.Ahmed, learned Adal.C.G.S.C. appearing for the respondents are present. The Standing counsel submits that some more time is required to file written statement. Post on 9.1.2006.

[Signature]
Vice-Chairman

bb

9.1.2006

Heard learned counsel for the parties. The application is disposed of in terms of the order passed in separate sheets.

[Signature]
Vice-Chairman

mb

[Signature]
ADJ. C.S.C.

19.1.06

Copy of the judgment has been sent to the Office for filing the same to the applicant by post and a copy of the same handed over to the Adal. C.G.S.C. on 17.1.06

[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. No. 231/2005

DATE OF DECISION: 09.01.2006.

Sri Akan Kumar Dutta

APPLICANT(S)

Mr. Adil Ahmed

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Ors.

RESPONDENT(S)

Mr. M.U. Ahmed, Addl. C.G.S.C.

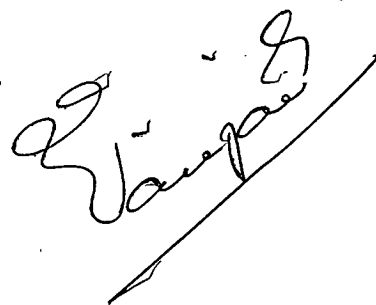
ADVOCATE FOR THE
RESPONDENT(S)

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

THE HON'BLE

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.



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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 231 of 2005.

Date of Order : This the 9th January 2006.

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

Shri Akan Kumar Dutta
Son of Late Sistu Ram Dutta
Draftsman, Grade - I
Office of the Superintending Engineer,
Assam Central Circle 1,
Central Public Works Department,
Guwahati - 21.

... Applicant

By Advocate Mr. Adil Ahmed.

- Versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Urban Affairs, Nirman Bhawan,
New Delhi - 110 011.
2. The Director General Works,
Central Public Works Department, 118-A,
Nirman Bhawan, New Delhi - 110 011.
3. The Chief Engineer (NEZ)
Central Public Works Department
Cleves Colony, Dhankheti, Shillong - 3.
4. The Superintending Engineer,
Assam Central Circle 1,
Central Public Works Department,
Bamunimaidam, Guwahati - 21.

... Respondents

By Mr. M.U. Ahmed, Addl. C.G.S.C.

.....

ORDER (ORAL)

SIVARAJAN. J. (V.C.)

Heard Mr. A. Ahmed, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.

2. The matter relates to grant of Special Duty Allowance (SDA for short) to the applicant. The case of the applicant is as follows: -

3. He belongs to North Eastern Region. He was appointed as Draftsman Grade II on 16.07.1966. He was transferred from Assam on deputation to Jammu & Kashmir in the year 1975. He was re-transferred on 24.04.1979. He was again transferred to West Bengal in the year 1993 from where he was transferred back to Assam. The grievance of the applicant is that though the applicant was paid SDA for period upto August 2005, the respondents by communication dated 26.08.2005 (Annexure - F) sought to recover the same from the applicant and is also not paying SDA from August 2005. The applicant has filed this application seeking to quash the communication dated 26.08.2005 (Annexure - F) and also for direction to the respondents to continue payment of SDA to the applicant.

4. The respondents have filed their written statement in which they have denied the liability. It is stated that they have not seen the judgment of this Tribunal dated 31.05.2005 passed in O.A. 170/1999 and connected cases.

Int

5. Mr. A. Ahmed, learned counsel for the applicant submits that this Tribunal in a common order dated 31.05.2005 had considered the entire matter and have summarized the principle regarding admissibility of SDA in respect of officers of various Central Government departments. Counsel also submits that in view of the principle laid down in the said decision the applicant is entitled to get SDA.

6. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that the question as to whether the applicant is entitled to SDA in the light of the orders passed by this Tribunal is a matter for consideration by the respondents with reference to the factual situations.

7. In these circumstances, I am of the view that this application can be disposed of as follows: -

The applicant has stated the factual situations in paragraph 4.3 of the application and mentioned in this order above. The respondents will verify as to whether the said facts are correct and thereafter, take a decision in the light of the common order dated 31.05.2005 passed in O.A. No. 170/1999 and connected cases. Paragraphs 52 and 53 of the said order are reproduced below: -

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

[Signature]

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

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

A decision as directed will be taken within three months from the date of receipt of this order.

The O.A. is disposed of as above. The applicant will produce a copy of this order alongwith copy of the judgment dated 31.05.2005 passed in O.A. No. 170/1999 and connected cases before the respondents for compliance.



(G. SIVARAJAN)
VICE CHAIRMAN

/mb/

- 5 SEP 2005

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

(An Application Under Section 19 of The Central Administrative Tribunal
Act 1985)

ORIGINAL APPLICATION NO. 231 OF 2005.

Shri Akan Kumar Dutta

...Applicant

- Versus -

The Union of India & Others

...Respondents

LIST OF DATES

Annexure - A is the photocopy of the office Memorandum No.21(9)/75-ACC/E-II dated 07.07.1975 issued by the office of the respondent No.4

Annexure - B is the photocopy of the office order No.21(8)/79/SE I /Coord./Cal dated 24.04.1979.

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

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

Annexure - E is the photocopy of Letter No.20-12-1999-EA-1-1799 Dated 02-05-2000.

Annexure - F is the photocopy of letter No. Pay Bill /ACC-I/05/1426 Dated 26.08.2005.

Annexure - G is the photocopy of representation-dated 26.08.2005 submitted by the applicant before the respondent No.4.

Annexure - H is the rejection letter dated 30.08.2005 issued by the respondent No.4.

Akan Kumar Dutta

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(An Application Under Section 19 of The Central Administrative Tribunal
Act 1985)

ORIGINAL APPLICATION NO. 231 OF 2005.

Shri Akan Kumar Dutta

...Applicant

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...Respondents

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6	D	Copy of Office Memorandum No.F.No.11 (2)/97-EII (B) dated 22-07-1998.	17-19
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9	G	Copy of representation-dated 26.08.2005 submitted by the applicant before the respondent No.4.	24
10	H	Copy of the rejection letter dated 30.08.2005 issued by the respondent No.4.	25

Date:

Filed By:

Advocate

(ADIC AHMED)

1

Filed by
Shri Akan Kumar Dutta
Applicant
through
Sd/-
(A/C H.M.20)
Forwarded

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

(An Application Under Section 19 of The Central Administrative Tribunal
Act 1985)

ORIGINAL APPLICATION NO. 231 OF 2005.

BETWEEN

Shri Akan Kumar Dutta
Son of Late Sistu Ram Dutta
Draftsman, Grade - I
Office of the Superintending
Engineer,
Assam Central Circle 1
Central Public Works
Department, Guwahati - 21.
...Applicant


- AND -

1. The Union of India represented
by the Secretary to the
Government of India, Ministry
of Urban Affairs, Nirman
Bhawan, New Delhi-110011.
2. The Director General Works,
Central Public Works
Department, 118-A, Nirman
Bhawan, New Delhi- 10011.
3. The Chief Engineer (NEZ)
Central Public Works
Department,
Cleves Colony, Dhankheti
Shillong - 3.
4. The Superintending Engineer
Assam Central Circle 1,
Central Public Works
Department, Bamunimaindan,
Guwahati - 21.
...Respondents

DETAILS OF THE APPLICATION

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

This application is made against the impugned office
order No. Pay Bill / ACC - 1/ 05 / 1426 Dated 26.08.2005



issued by the respondent No.4 i.e. the office of the Superintending Engineer, Assam Central Circle 1, CPWD wherein it is directed to recover Special Duty Allowance from the applicant for the period w.e.f. 7/2002 to 7/2005 amounting to Rs.54,284/- , the recovery of the amount shall be effected from the month of August 2005 to February 2006 (as the applicant is retiring on Superannuation in the month of February 2006) on monthly installment @Rs.7750/- per month from August 2005 to January 2006 and @Rs.7784/- for February 2006 and praying for further direction to the respondents to continue the Special Duty Allowance to the applicant w.e.f. July 2005 to till his retirement on superannuation in the month of February 2006 as per Government of India, Cabinet Secretariat Letter No.20-12-1999-EA-1-1789 dated 02-05-2000 and also as per this Hon'ble Tribunal Judgment passed on 31.05.2005 in O.A.No.170/1999 and series of cases.

2. JURISDICTION OF THE TRIBUNAL :

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

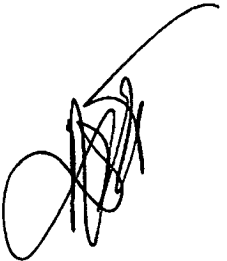
3. LIMITATION :

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.

4. FACTS OF THE CASE :

Facts of the case in brief are given below:

4.1 That your humble Applicant is Indian Citizen by birth and as such he is entitled to get all the rights and privileges guaranteed under the Constitution of India.



4.2 That your Applicant begs to state that that he is working as Draftsman Grade - I under the respondent No.4 i.e. the office of the Superintending Engineer, Assam Central Circle 1, CPWD, Guwahati - 21. It is to worth to mention here that the applicant is drawing the pay scale of Chief Estimator as per second ACP w.e.f. 09.08.99 in the scale of Rs.6500-200-10500. He will retire from his service from superannuation in the month of February 2006.

4.3 That your Applicant begs to state that the Applicant belongs to North Eastern Region and he was appointed as Draftsman Grade -II (Direct) on 16.07.1966. He was transferred from Superintending Engineer, Assam Central Circle 1, CPWD, Guwahati - 21 on deputation to office of the Chief Engineer, Salal Hydro Electrical Project, Jyotipuram (Raisi), J & Kashmir vide order issued by the Superintending Engineer (Coord.) Calcutta Memorandum No.21(87)/75/SEI/Coord./Cal dated 07.04.1975. He was relieved from his duty on 07.07.1975 vide office Memorandum No.21(9)/75-ACC/E-II issued by the office of the respondent No.4. He was transferred from Salal Hydro Electrical Project, J & K to Assam Central Circle 1, CPWD, Guwahati vide office order No.21(8)/79/SE I /Coord./Cal dated 24.04.1979. He was promoted to the post of Draftsman Grade - I on 22.02.1992 in the pay scale of Rs.5500-175-9000/-. He was again transferred to Malda Central Circle, West Bengal, CPWD vide office order No.9(57)/Coord./GENL/697 Dated 18.05.1993 from office of the Superintending Officer, Assam Central Circle 1, CPWD, Guwahati and after serving at Malda Central Circle, West Bengal the applicant was transferred to North Eastern Region i.e. Guwahati Central Division in the year 1994.

Annexure - A is the photocopy of the office Memorandum No.21(9)/75-ACC/E-II dated 07.07.1975 issued by the office of the respondent No.4




Annexure - B is the photocopy of the office order
No.21(8)/79/SE I /Coord./Cal dated 24.04.1979.

4.4 That your Applicant 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) only 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 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 - C is the photocopy of extract of Office Memorandum dated 14-12-1983.


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

4.5 That your Applicant begs to state that he is saddled with All India Transfer liability in terms of his offer of appointment and with the said liabilities they have accepted for All India Transfer liability as per their appointment letter. It is worth to mention here that as per the said All India Transfer Liability he was transferred to J & K and Malda, West Bengal from North Eastern Region and he was reposted to North Eastern Region from outside of North Eastern Region. Therefore, the Applicant is in practice saddled with All India Transfer Liability and in terms of Office Memorandum dated 14-12-1983 and he is legally entitled for grant of Special (Duty) Allowances. Accordingly the applicant was paid Special Duty Allowance.

4.6 That your Applicant begs to state that as per Cabinet Secretariat Letter No.20-12-1999-EA-1-1799 dated 02-05-2000 it has been further clarified that an employee hailing from NE Region and subsequently posted to outside of NE Region and reposted from outside of NE Region to NE Region will also be entitled for Special Duty Allowance.

Annexure - E is the photocopy of Letter No.20-12-1999-EA-1-1799 Dated 02-05-2000.

4.7 That most surprisingly the office of the respondent No.4 vide his impugned office order issued under letter No. Pay Bill /ACC-I/05/1426 Dated 26.08.2005 wherein it is directed to



recover Special Duty Allowance from the applicant for the period w.e.f. 7/2002 to 7/2005 amounting to Rs.54,284/-, the recovery of the amount shall be effected from the month of August 2005 to February 2006 (as the applicant is retiring on Superannuation in the month of February 2006) on monthly installment @Rs.7750/- per month from August 2005 to January 2006 and @Rs.7784/- for February 2006.

Annexure - F is the photocopy of letter No. Pay Bill /ACC-I/05/1426 Dated 26.08.2005.

4.8 That your applicant begs to state that after receiving the impugned order of stoppage and recovery of Special Duty Allowance he immediately on 26.08.2005 filed a representation before the Respondent No.4. The respondent No.4 vide his letter dated 30.08.2005 rejected the representation of the applicant dated 26.08.2005. In this rejection letter it has been stated by the respondent No.4 that it was a mistake by the authority regarding payment of Special Duty Allowance to the applicant. Hence finding no other alternative your applicant is compelled to approach this Hon'ble Tribunal seeking justice in this matter.

Annexure - G is the photocopy of representation-dated 26.08.2005 submitted by the applicant before the respondent No.4.

Annexure - H is the rejection letter dated 30.08.2005 issued by the respondent No.4.

4.9 That your applicant begs to state that the Special Duty Allowance paid to the applicant by the respondents authorities itself after full satisfaction of criteria laid down in different memorandum regarding payment of Special Duty Allowance. After receiving the same the applicant spent the said allowance in maintaining his dependent family members. He has not obtained the said allowance by way of fraud rather




the allowance was duly paid to him by the respondents themselves. It may also be stated that the respondent No.4 has also admitted that they have committed mistake regarding payment of Special Duty Allowance to the applicant. Hence your applicant cannot be held responsible for the mistake committed by the respondent authorities. Therefore, the applicant cannot be held responsible since he has no hands in the matter of sanction or discontinuation of Special Duty Allowance, when the authority paid the Special Duty Allowance to the applicant and he has spent the same as such question of recovery does not arise for no fault of applicant. Moreover, it will cause great financial hardship to the applicant if the same is allowed to recover from the applicant. The applicant has not committed any fraud in receiving the Special Duty Allowance. Therefore, the impugned order is not sustainable in the eye of law.

It is further submitted that the applicant is likely to suffer due to discontinuation of the Special Duty Allowance as he has fulfilled all the criteria laid down in various memorandums and judgment & order passed by this Hon'ble Tribunal.

4.10. That your applicant state that the respondent has already deducted Rs.7750/- from the pay bill of the applicant for the month of August 2005. As such it is now necessary for the applicant for seeking an interim order from this Hon'ble Tribunal for stay of impugned recovery order dated 26.08.2005 issued by the respondent No.4.

4.11 That your applicant beg to state that recently this Hon'ble Tribunal vide its Judgment and order dated 31.05.2005 passed in O.A. No. 170/1999 and other series of cases held that an employee belongs to N.E. Region and subsequently posted to outside the North Eastern Region and again he is reposted to North Eastern Region, he will be entitled for payment of Special Duty Allowance.



The applicants crave leave of this Hon'ble Tribunal to refer to and rely upon a copy of the said Judgment at the time of hearing of the instant case.

4.12 That your Applicant begs to state that he has fulfilled all the criterion laid down in the aforesaid Memorandum regarding payment of Special Duty Allowance, hence the Respondents cannot deny the same to the Applicants without any justification.

4.13 That your Applicant begs to state that similarly situated persons are enjoying the same benefit without any interruption, as such the action of the Respondents is arbitrary, malafide, whimsical and also not sustainable in the eye of law as well as on facts.

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

4.15 That this application is filed bonafide 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 prima facie illegal, malafide, arbitrary and without justification. As such the impugned order dated 26.08.2005 is liable to be set aside and quashed.

5.2 For that, the Applicant is practically having All India Transfer liability and as such, he is legally entitled to draw Special Duty Allowance as per various office memorandums in this regard. As such the impugned order dated 26.08.2005 is liable to be set aside and quashed.



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 Applicant. The actions of the Respondents are bad in the eye of law and also not maintainable. As such the impugned order dated 26.08.2005 is liable to be set aside and quashed.

5.4 For that, similarly situated persons have already granted this relief by this Hon'ble Tribunal.

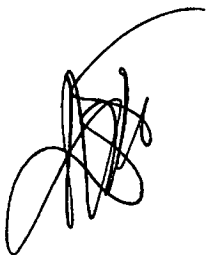
5.5 For that, being a model employer the Respondents cannot deny the same benefits to the instant Applicant, which have been granted to the other similarly persons. The Respondents should extend this benefit to the Instant Applicant without approaching this Hon'ble Tribunal. As such the impugned order dated 26.08.2005 is liable to be set aside and quashed.

5.6 For that, it is unjust to discriminate among the employees who are similarly placed in the same ministry and also it is not proper to insist on every aggrieved employee to approach the court of law when the cause of action is identical. As such the impugned order dated 26.08.2005 is liable to be set aside and quashed.

5.7 For that, in receiving the Special Duty Allowance the applicant did not commit any fraud or misrepresentations and as such he is not responsible for grant of the Special Duty Allowance by the authorities.

5.8 For that, applicant is legally entitled to payment of Special Duty Allowance in terms of the various judgments of this Hon'ble Tribunal.

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



The Applicants crave 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 Applicant 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 Applicant further declare 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 Lordships 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 Applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relief (s) : -

8.1 That the Hon'ble Tribunal may be pleased to set aside the impugned office order No.Pay Bill/ACC-1/05/1426 dated 26.08.2005 (ANNEXURE - F).

8.2 That the Hon'ble Tribunal may be pleased to direct the respondents to continue the payment of Special Duty Allowance to the applicant.



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

8.4 To pay the costs of the application.

9. INTERIM ORDER PRAYED FOR :

During the pendency of this application, the applicant most respectfully pray for the following relief : -

9.1 That the Hon'ble Tribunal may be pleased to stay the operation of the impugned order issued under office order No.Pay Bill/ACC-1/05/1426 dated 26.08.2005 (ANNEXURE - F) till disposal of this Original Application.

10. THIS APPLICATION IS FILED THROUGH ADVOCATE.


11. PARTICULARS OF I.P.O.

I.P.O. No. :- 206-136836
 Date of Issue :- 20-7-05
 Issued from :- G.P.O.
 Payable at :- Gwalah

12. LIST OF ENCLOSURES:

As stated in Index.

Verification



V E R I F I C A T I O N

I, Shri Akan Kumar Dutta, Son of Late Sistu Ram Dutta, Draftsman, Grade - I, Office of the Superintending Engineer, Assam Central Circle 1, Central Public Works Department, Guwahati - 21, aged about 59 years do hereby solemnly verify that I am the Applicant No. 2 of the instant application and I am authorized by the other applicant to sign this verification. That the statements made in paragraph 4.1, 4.2, 4.5, 4.9, 4.10, 4.11, 4.12, 4.13 are true to my knowledge, those made in paragraph Nos. 4.3, 4.4, 4.6, 4.7, 4.8, are being matters of record are true to my information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and the rests are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 5th day of September 2005 at Guwahati.

Akan Kumar Dutta
DECLARANT

13

ANNEXURE A¹³

Government of India
Central Public Works Department

No. 3(13)/75-ACC/E-II

Dated Gauhati, the 7 -7-1975.

OFFICE MEMO

In pursuance of Superintending Engineer(Co-ordination) Calcutta Central Circle No. II, C.P.W.D., Calcutta's Office Memorandum No. 21(37/75/SEI/Coord/Cal, dated 7-4-1975, Shri A.K. Dutta, Draftsman Grade II attached to this office is hereby relieved of his duties to-day the 7-7-1975 Afternoon and is directed to report for duty to the Chief Engineer, Salal Hydro Electrical Project, Jyotipuram (Raisi), J & Kashmir.

E.A. to Superintending Engineer
Assam Central Circle
C.P.W.D., Gauhati-21.

Copy forwarded to:-

- 1) The Chief Engineer, Salal Hydro Electrical Project, Jyotipuram, (Raisi) J. & Kashmir.
- 2) The Superintending Engineer (Coord), Calcutta Central Circle I, C.P.W.D., Calcutta-20.
- 3) The Surveyor of Works, Assam Central Circle, CPWD, Gauhati.
- 4) The Cashier, Assam Central Circle, CPWD, Gauhati. The L.P.C. of the incumbent may please be issued immediately after receipt of a no demand certificate.
- ✓ 5) Shri A.K. Dutta, Draftsman Grade II, Assam Central Circle, CPWD., Gauhati-21.

C.P.
E.A. to Superintending Engineer.
E-17

Kr. 7/7/1975

R. H. G.
S. P.
A. M. G.

CENTRAL PUBLIC WORKS DEPARTMENT

NO:21(8)/79/SHI/Coord/Cal.

Dated Cal, the 24/4/79.

OFFICE ORDER

The following transfers are hereby ordered with immediate effect in the interest of public service.

S.No.	Name & Designation	From	To	Remarks
1)	Shri A.K.Dutta, D/M.II	Salal Hydro- Electric Project, Jyotipuram.	A.C.C. Gauhati	Against Sh. T.P.Singh transferred
2)	Smt. Chandra Kala Dutta, L.D.C.	-do-	G.E.D.II, Gauhati.	Against existing vacancy.

Sd/-
Superintending Engineer(Coord)
Calcutta Central Circle No.I,
C. P. M. D., Calcutta.

Government of India
Office of the General Manager
Salal Hydro Electric Project
Jyotipuram

No.GMSP/PF-776/79/15337-37 Dated, the 2 May, '79.

Cepy forwarded for information and necessary action to:-

- 1/ The Superintending Engineer, Salal Civil Circle No.III, Jyotipuram.
- 2/ ✓ Shri A.K. Dutta, Draftsman.
- 3/ Smt. Chandra Kala Dutta, L.D.C.

(R. P. Saini)
EXECUTIVE ENGINEER(Admn.)
for GENERAL MANAGER

Atk 21
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Adm to

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(Typed Copy)
Relevant portion

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ANNEXURE - C

ANNEXURE - C

No. 20014/2/83/B.IV
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 14th Dec '83

OFFICE MEMORANDUM

Sub.: Allowances and facilities for civilians employees of the Central Government serving the States and Union Territories of North Eastern Region - improvements thereof.

The need for attracting and retaining the services of competent officers for service in the North Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Mizoram has been engaging the attention of the government for some time. The Government had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and 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 not pleased to decide as follows:-

i) Tenure of posting/deputation

There will be a fixed tenure posting of 3 years at a time for Officers with service of 10 years or less and of 2 years at a time for Officers with more than 10 years of service, periods of leave. Training etc. in the excess of 15 days per year will be excluded in counting the tenure period of 2 / 3 years. Officer on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government Employees to the station / Union territories of the North Eastern Region will generally be for 3 years which can be extended in exceptional cases in exigencies of public services as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

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- ii) Weightage for Central deputation / training abroad and special mention in confidential records.

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iii) Central Government Civilian employees who have all India transfer liability will be granted a special (Duty) Allowance at the rate of 25 percent of basic pay subject to any ceiling of Rs. 400/- per month on postings to any station in the North Eastern Region. Such of those employees who are exempted from payment of income tax will, however, not be eligible for this Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any special pay and pre deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/deputation (Duty) Allowance will not exceed Rs. 400/- p.m. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

Sd/- eligible

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Attended
Sd/-
Advent

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(Typed Copy)

ANNEXURE - D
ANNEXURE - B

Government of India
Ministry of Finance
Department of Expenditure

New Delhi dated July, 22, 1998

OFFICE MEMORANDUM

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

With a view to attracting and retaining competent officers for serving in the North Eastern Region, comprising of 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 liberalized in this Ministry's O.M. No. 20014/16/86/E.IV/E.II(3) 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 posting/deputation contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read

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with O.M. No. 20014/16/86-E.II(8) dated December 1, 1988, shall continue to be applicable.

(ii) Weightage for Central Deputation/Training Abroad and Special Mention in Confidential Records. The provisions contained in this Ministry's O.M. No. 200014/3/83.E.IV date December 14, 1983, read with O.M. No. 20013/16/86-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 percent 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 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(8) dated July 17, 1998.

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Attention is also invited in this connection to the clarificatory orders contained in this Ministry's O.M. No. 11(3)/95-E.II(13) dated January 12, 1996, which shall continue to be applicable not only in respect of the Central Government employees posted to serve in the North Eastern Region but also to those posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands.

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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 mutalis mulandis 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 issued after consultation with the Comptroller and Auditor General of India.

6. Hindi version will follow.

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

To

All Ministries / Department of the Government of India (As per standard Distribution List)

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

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

Attested
Jil
Asante

COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(E.A. Section)

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 2.9.1999 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 u/o 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

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	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 reposted 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

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	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/-
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(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.

Attended
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Adm to

-23-

ANNEXURE - F

Government of India
Office of the Superintending Engineer
Assam Central Circle-I, C.P.W.D.,
Guwahati - 781 021

No. Pay Bill/ACC-I/05/ 1426

Dated, Guwahati, the 26/8/05

Office Order

Subject:- Recovery of payment made towards Special(duty)
Allowances in respect of Shri A.K.Dutta, Draftsman, Grade-I

An amount of Rs.54,284/- (Rupees fifty four thousand two hundred & eighty four) only was paid to Shri Akan Kumar Dutta, Draftsman, Grade-I, ACC-I, CPWD, Guwahati on account of Special(Duty) Allowances w.e.f. 7/2002 to 7/2005.

As the transfer liabilities of Draftsman, Grade-I are not on All India basis and their recruitment and transfer are regionalized. In accordance with Govt. of India's Order, any civilian employees having all India Transfer liability on posting to any station in the North-Eastern Region from outside the Region is eligible for drawal of Special(Duty) Allowances.

As payment made to Shri A.K.Dutta, Draftsman, Gd.I on account of SDA is not admissible to him for the period w.e.f. 7/2002 to 7/2005 amounting to Rs.54,284/-, the recovery of the amount shall be effected from the month of August/2005 to February/2006 (As Shri Dutta, D/Man-I is retiring on superannuation in the month of February/2006) monthly instalments as under:-

- 1) From August/2005 to January/2006 @ Rs.7750/- per month
- 2) February/2006 @ Rs.7784/-

Superintending Engineer

Copy to:-

- 1) The Chief Engineer(NEZ), CPWD, Cleave's Colony, Shillong-793003.
- 2) The Pay & Accounts Officer, CPWD(NEZ), Shillong-I.
- 3) The Bill Clerk/ACC-I in duplicate.
- 4) Shri A.K.Dutta, Draftsman, Grade-I, ACC-I.

Superintending Engineer

Attchd
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ANNEXURE - ~~4~~ F G

Date: 26/08/2005

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To

The Superintending Engineer
Assam Central Circle No.1
C.P.W.D., Guwahati - 21.

Subject:- Recovery of payment made towards special duty allowances in respect of
Shri A.K. Dutta, Draughtsman Gr.I

Sir,

Kindly refer your Office Order No. Pay bill/ACC-I/05/1426 dt. Guwahati the, 26th
August, 2005 on the subject.

The Special (duty) Allowance w.e.f. 7/2002 to 7/2005 have been paid to the undersigned by the authority and not on my personal request. Sir, the arrears amount which you have mentioned shall not be deducted until and unless the case is decided by the Central Administrative Tribunal (C.A.T). Sir, being a Central Govt. Employee I have every liberty to protest against the order and shall abide by as per the decision of the Court of Law spells out in order. In this context, I like to mention that if I am not entitled for SDA then why I have been allowed to draw the SDA since 7/2002 till now. It is also to be mentioned here that I have been granted 2nd ACP w.e.f. 9.8.99 in the Scale of 6500-200-10,500 in the scale of Chief Estimator. The post of C.E. is regarded by you having All India Transfer Liability. Sir, I was transferred from Guwahati to Kashmir for services and also I was transferred from Guwahati to Malda on public interest. It was done due to the fact that I have all India Transfer liability. In the appointment offer it is clearly mentioned that as and when required I may be transferred to any place of duty all over India.

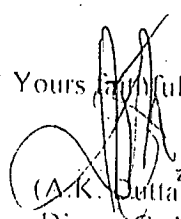
It is also to be mentioned from the appointment criteria of the employees who did not serve here and drawing SDA on promotion to the higher grade i.e. on appointment criteria they are also getting the incentive even though they were not entitled earlier to their promotion having no transfer liability all over India.

It is, therefore, requested that the final decision may be made after it is decided by the Court of law in the CAT. My SDA is considered in the pay scale of Chief Estimator under ACPs and not in the pay scale of D'man Gr.I at present and the upgradation with All India Transfer Liability.

It is the authority that allowed me to draw the SDA and hence question of deduction does not arise until Court of law gives the order and till then it is requested to kindly continue the SDA and oblige.

Thanking you

Yours faithfully,


(A.K. Dutta)
D'man Gr.I
ACC-I/CPWD

2/c

26/8/05

Attended
Jil - Asante

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ANNEXURE-H

35

Government of India
Office of the Superintending Engineer
Assam Central Circle-I
CPWD, Guwahati-21.

No. Pay Bill/ACC-I/05/1442

Dated, Guwahati, the 30.8.05

To
Shri A.K. Dutta, Draftsman, Grade-I,
Assam Central Circle-I,
CPWD, Guwahati- 781 021.

Subject:- Recovery of payment made towards Special(Duty) Allowance in
respect of Shri Akam Kumar Dutta, Draftsman, Grade-I

Ref:- Your letter dated 26-8-05

In reference to your above cited letter on the subject, the line-wise replies of
this office are furnished as under :-

- 1) Not disputed. The same authority has decided that it was not payable to you.
- 2) It is agreed that you are at liberty to challenge the order and are bound to follow the decision of the Court of Law, but this office is not bound to wait for such a decision before implementing its decisions.
- 3) It was a mistake. Moreover, Chief Engineer(NEZ), CPWD Office has opined now that Draftsman, Grade-I have Regional posting. ✓
- 4) It is not disputed that you have been granted 2nd ACP which equates to the pay scale of Chief Estimator and the post of Chief Estimator carries "All India Transfer liabilities". It is however, informed that irrespective of 2nd ACP, you hold lien as Draftsman, Grade-I and not Chief Estimator, therefore, Chief Estimator's Recruitment Rules cannot be extended to you.
- 5) Transfers were effected as per transfer policy prevalent then based on the definition of Region at that point of time. You were posted to Kashmir on deputation on your reckoning and Malda is within the same Region. It is therefore, clear that your posting have been regional so far except for deputation to Kashmir, which was on your choice.
- 6) It is already a settled issue that mere mention in appointment letter is not sufficient, the posting should be speaking of all India transfer liabilities which is not so in your case.
- 7) The provision does not grant any relief to you.

In light of above, your request to defer the recovery of over-payment on account of SDA is hereby rejected.

[Signature]
Superintending Engineer

[Handwritten initials]
A.K. Dutta

Draft reply to O.A
231 of 2005
Annexure G

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

IN THE MATTER OF :

O.A.No. 231 of 2005.

Shri Akan Kr. Dutta

...Applicant

- Vs -

The Union of India & Ors.

....Respondents

- AND -

IN THE MATTER OF :

Written statement submitted by the respondents

No. 1 to 3.

WRITTEN STATEMENT

The humble answering respondents submit their
written statements as follows :

1.(a) That I ~~am~~ ^{Sh} Gaje Singh Executive Engineer (Admn.)
Age 40 years

_____ and respondent No. 4 in the above case.

I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statements, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the written statement on behalf of all the respondents.

(b) The application is filed unjust and unsustainable both on facts and in law.

© That the application is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.

Executive Engineer (Admn.)
Assam Cent. Circle No-1
CPWD, Guwahati-21
M. L. Akh... 10/10/08

(d) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(e) That the any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

2. That with regard to the statements made in paragraph 3, 4.1, 4.2, 4.7 and 4.8 of the application, the answering respondents do not admit anything except those are in record.

3. That with regard to the statements made in paragraph 1 of the application, the answering respondents beg to submit that it is not denied that the respondent No.4 has initiated recovery of Special Duty Allowance which was not due to the applicant and has stopped paying Special Duty Allowance (SDA) since August 2005. The action of the Respondent is not violative of Government of India, Cabinet Secretariat letter No.20/12/99-EA-1-1799 dated 2.5.2000 even though it does not apply to CPWD and is case specific for SSB only. The Respondents reserve their rights to make their submission in respect of Hon'ble Tribunal judgment passed on 31.5.2005 in O.A. No.170/1999 and other series of cases is as much as they apply to the instant case as the said judgment have not been filed by the applicant alongwith the Writ. It is denied that the matter is within the jurisdiction of the Hon'ble Tribunal. The Hon'ble Tribunal's intervention has been sought against the decisions of the Respondent No.4. The applicant has so far not appealed against the decisions of the Respondent No.4 to Respondent No.3, Respondent No.2 and Respondent No.1 having hierarchical control in serial turn over Respondent No.4. The appeal before the Hon'ble Tribunal

is therefore premature and deserves to be set aside with the direction to the applicant to freeze the departmental channels.

4. That with regard to the statements made in paragraph 4.2 of the application, the answering respondents beg to submit that the applicant is working as D/Man Gr.I in the office of respondent No.4. The applicant has been granted pay scale of Rs.6500-200-20500 under Assured Career Progression (ACP) Scheme on completion of 24 years of service, which is next pay scale in hierarchy of cadre of applicant. Grant of ACP is purely financial upgradation in existing hierarchy and is not a promotion. The benefits under ACP do not confer designation, duties and responsibilities of higher post. The transfer liability ~~is~~ remains same as that of post held and is not governed on the basis of scale of pay enjoyed. Therefore, the applicant remains D/man Grade I and not as Chief Estimator irrespective of grant of ACP in the pay scale of Rs.6500-200-10500/- as per clarification issued by Ministry of Personnel, Public Grievances and Pensions (DOPT) vide No. 35034/1/9A-Estt.(D Vol.IV) dated 10.02.2000 (Annexure A). The applicant's submission with respect to his enjoyment of Chief Estimator's scale, are therefore of little relevance in so far as application of tests for drawal of SDA is concerned.

5. That with regard to the statements made in paragraph 4.3 of the application, the answering respondents beg to submit that it is denied that the applicant was transferred on deputation, in fact the applicant was ^{merely} ~~nearly~~ relieved on deputation. Similarly on completion of deputation term, the applicant was repatriated back to the parent department but was never transferred. Superintending Engineer (Coord) issued the order of transfer upon repatriation. Therefore, the Respondents deny that the applicant was transferred to and from Salal Hydro Electric Project. Such foreign/deputation service from parent department cannot be attributed

as transfer. The transfer to Malda is however accepted. The same was within the service condition of the applicant which restrict his ^{transfer} liability to the state of Assam, Arunachal Pradesh, Mizoram, Nagaland, Meghalaya, Tripura, Manipur, Sikkim, West Bengal, Bihar, Jharkhand and Orissa only. Posting liabilities to these States do not confer All India Service Liability to the applicant. Therefore, transfer to and from Malda does not change the status of the applicant is so far as drawal of SDA is concerned.

6. That with regard to the statements made in paragraph 4.4 of the application, the answering respondents beg to submit that they have no comment as it is a matter of record. But they do not apply on the applicant as he hails from the same region and has limited regional transfer liability.

7. That with regard to the statements made in paragraph 4.5 of the application, the answering respondents beg to draw the attention on the judgment of Hon'ble Supreme Court delivered on 20.9.1994 (in Civil Appeal No.3251 of 1993 in the case of Union of India & Others Vs. Sri S.Vijaya Kumar & Others) wherein the Hon'ble Supreme Court was pleased to decide that Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liabilities. The applicant was never transferred to J&K. He proceeded on deputation to J&K. The applicant was transferred to Malda under limited regional transfer liabilities as spelt in Para 5 above. Subsequent posting to North Eastern Region has limited role to allow him the solicited benefit as the same is applicable to those native incumbents of the North East Region who are transferred out of the North East Region on All India Transfer Liability instead of limited regional transfer liability and are again posted back to the North East

Region. The applicant does not pass this test and is therefore not found fit for drawal of SDA. The applicant was paid SDA alongwith other staff members. Whereas the payment of SDA to other similarly placed staff members has been stopped earlier, the same has been done so in the case of the applicant now. This action of the Respondent alongwith the recovery of SDA paid after 5.10.2001 is in conformity with the decision of Hon'ble Supreme Court as circulated by Department of Expenditure, Ministry of Finance vide O.M.No.10(5)/97-E-II(B) dated 29/5/2002 wherein it has been decided as under :-

(i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria specified on or before 05/10/2001, which is the date of judgment of Supreme Court will be waived. However, recoveries, if any, already made not be refunded.

(ii) The amount paid on account of Special Duty Allowance to ineligible persons after 05/10/2001 will be recovered. That in the matter of payment of SDA to the Civilian Employees in the Central Govt. serving in the North Eastern States, the office of the respondent No.3 issued O.M.No.71/2/2002-Admn. Dated 17.07.2002. (Annexure B). Wherein it was stipulated that all cases of SDA were to be regulated strictly in accordance with the office memo No. 11(5)/95-E-II (B) dated 29.05.2002 issued by the Ministry of Finance, Deptt. Of Expenditure, Govt. of India and the O.M. No.1069/DOI/W&E/02 dated 06.06.2002 issued by the Ministry of Urban Development and Poverty Alleviation Govt. of India (Annexure-C). It was also stipulated in the said O.M. dated 17.07.2002 that as per instructions contained in the aforesaid O.M. and on examination of matter of payment of SDA, it was found that the Group 'C', 'D' and 'Work Charged Employees' of the North Eastern Region are not entitled for SDA irrespective of being posted in the North Eastern

Region from outside the region as the employees falling in the above categories do not fulfill the condition stipulated in the O.M. dated 12.01.1996 issued by the Ministry of Finance, Govt. of India, except Office Superintendent, Junior Engineer and Steno Grapher Gd-I belonging to outside of the North Eastern Region as clarified by the Respondent No.3 vide No.71/2/2002-Admn dated 17.7.2002 (Annexure-D).

The matter regarding payment of SDA to the applicant has been considered in accordance with the O.M. mentioned in the foregoing paras and found ineligible for grant of SDA w.e.f. 07.02.2002 (i.e. the joining dated of the applicant in the office of Respondent No.4) after transfer from Malda as the applicant has no All India Transfer Liability. His transfer liability is restricted within Eastern Region. The applicant was relieved from the Department to serve the Salal Hydro Electric Project (J&K State) on deputation as per his option/willingness and transferring from Malda station to Guwahati falls within the same region (Eastern Region) for the purpose of recruitment/promotion and transfer. The seniority list of Draughtsman Grade-I maintained for the purpose of recruitment/promotion and transfer is restricted to Eastern Region only and is not on All India basis. Moreover applicant is bonafides resident of the State of Assam (Guwahati) as per his service records. The SDA was required to be paid to those Central Govt. Civilian Employees who had been posted in North Eastern Region from outside the region and not to those who are bonafides residents of N.E.Region (save upon North East Region native incumbents having effective All India transfer Liability when posted back to North East Region from outside North East Region). The O.M. dated 20.04.87 (annexure E) has clearly stated that the allowance would not become payable merely because of the clause in the

appointment letter to the effect that person concerned is liable to be transferred anywhere in India. The O.M. dated 20.04.1987 clearly mentioned that SDA was meant to attract the Civilian Employees from outside of North Eastern Region to work in that region because of inaccessibility and difficult terrain. Therefore, the applicant's contention and claim for possessing All India Transfer liability is refuted and is denied.

8. That with regard to the statements made in para 4.6 of the application, the answering respondents beg to submit that the quoted reference is specific to the quarries of SSB and can therefore not be applied as a rule. The service conditions and recruitment rules of staff of SSB are different from that of CPWD. Therefore, no relief is tenable to the applicant. Nevertheless, the applicant was posted outside North East Region but not outside from his limited transfer liability zone. In SSB (unlike CPWD) employees do not have limited transfer liability (they can be transferred anywhere in India). The decision of the Cabinet Secretariat is therefore not applicable to CPWD staff.

9. That with regard to the statements made in para 4.9 of the application, the answering respondents beg to submit that Special Duty Allowance was paid to the applicant w.e.f. July 2002 to July 2005 inadvertently and it has been corrected by the respondent No.4 vide Office Order No. Pay Bill/ACC-1/05/1426 dated 26.08.2005 to safeguard the Govt. interest as per decision of Hon'ble Supreme Court. It can be checked even now that merits do not permit payment of SDA to the applicant. It is also not denied that payment of the disputed allowance was not based on any fraud by the applicant but the enrichment were not due to him legally. The respondents are administratively bound to recover the excess payment as per Department of Expenditure, Ministry

of Finance O.M. No. 11(5)/95-E-II (B) dated 29.05.2002. Therefore, the impugned order is sustainable in the eye of law. The contention of the applicant that the payment has been made to him after full satisfaction of the laid down criteria is not correct.

10. That with regard to the statements made in para 4.10 of the application, the answering respondents beg to submit that it is a matter of record. The decision to effect the recovery of the over paid amount of SDA has been taken by the respondent No.4 to safeguard the Govt. interest as the applicant is retiring on superannuation in Feb'2006 and therefore its recovery of excess payment is to be effected during his remaining service period so as to clear his pensionary benefits in time.

11. That with regard to the statements made in para 4.11 of the application, the answering respondents beg to submit that it is a matter of argument. The respondents office has not received the judgment passed by the Hon'ble Tribunal, order dated 31.05.2005 in O.A.No.170/1999 and this has not been found Annexed with the application of the applicant and therefore no comments are being offered at this stage. The contention of transfer from North East Region and back to North East Region needs careful examination and test of the transfer liability is still required to be applied. A person with limited regional transfer liability when transferred out to North East Region but within his regional transfer liability zone is not entitled for SDA benefits when posted back to North East Region. The provision as quoted by the applicant applies to those North East Region native incumbents who are:

- i) Having All India Transfer Liability as per rule and not merely by way of mention in appointment letter.
- ii) Had been posted in North East Region on first posting.

iii) Had been transferred out to North East Region on subsequent posting, and

iv) Had been transferred back to North East Region after (iii).

The respondents crave leave of this Hon'ble Tribunal to defend their submissions as and when the copy of said judgment is relied upon by applicant during the course of hearing in the instant case.

12. That with regard to the statements made in para 4.12 of the application, the answering respondents beg to submit that the contents are denied as the applicant fails to satisfy All India Transfer Liability requirement.

13. That with regard to the statements made in para 4.13 of the application, the answering respondents beg to submit that the contents are denied. The similarly placed person in the category of Draughtsman who hail from North East Region and are posted in the North East are not being paid any SDA since all of them are having limited regional transfer liability, regional recruitment and regional promotion rules and there seniority is being maintained on regional basis. The applicant may be called upon to substantiate his submission with cogent evidence.

14. That with regard to the statements made in para 4.14 of the application, the answering respondents beg to submit that the submission of the applicant is false. He has not utilized the departmental channel for redressal of his grievance and has invoked this Hon'ble Tribunal instead. It is accordingly prayed that Hon'ble Tribunal be pleased to direct the applicant to utilize the departmental channel before making them party to this case before this Hon'ble Tribunal.

15. That with regard to the statements made in para 4.15 of the application, the answering respondents beg to submit that it is denied. The application fall short in merits. The applicant is claiming for

personal enrichments and not justice by turning blind eye to (1) the defined procedure for redressal of grievance and (2). Interpretation of Government orders.

16. That the respondents submit that the application is devoid of merit and as such the same is liable to be dismissed.

17. That this written statement is made bona fide and for the ends of justice and equity.

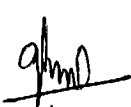
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VERIFICATION

I, Sh. Gazi Sush, Executive Engineer, 4147
CPWD, aged ab. 40 yrs do hereby
solemnly affirm and verify that the statements made hereinabove are
true to my knowledge, belief and information and nothing is being
suppressed.

I sign this verification on this 9th day of Jan
2006 at Cachhat.


Executive Engineer (Admn.)
Assam Cent. Circle No-1
CPWD, Guwahati-21