

50/100

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

8

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Debita
07.11.17

FORM NO. @
 (See Rule 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH.

ORDER SHEET

Original Application No. 295/05
 Misc. Petition No. _____
 Contempt Petition No. _____
 Review Application No. _____

Applicant(s) Dr. B.K. Bhattacharyya & Mrs
 Respondent(S) U.O.I Jery

Advocate for the Applicants M. Chanda, G.N. Chakrabarty
S. Nath

Advocate for the Respondent(S) G. Baishya GGSC
K.N. Chandley, R.S. Choudhury Rly St. Counsel
K. Barthukur

Notes of the Registry	Date	Order of the Tribunal
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Application
 is filed

No. 2693/8989

Dated 6.11.05

[Signature]
 Dy. Secy

29.11.05

Heard Mr. M. Chanda, learned counsel for the applicants and Mr. G. Baishya, learned Sr. C.G.S.C. for the 1st respondents.

Admit. Issue notice to the respondents. Written statement, if any, within six weeks.

There will be a interim direction not to recover any excess payment already made from the applicant till the next posting.

post on 12.1.2006.

[Signature]

Vice-Chairman

bh

Notice & orders sent to D/section for issuing to resp. Nos. 1, 2, 3 by regd. A/D post.

[Signature]
 5/12/05

D/No = 1672 to
 1674
 Dt = 8/12/05

Contd.....

20.01.2006

Present : Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.

19-1-06
Notice issued to all Respondents
Service awaited -

Ms. U. Das, learned Addl. C.G.S.C. for the respondents wanted further time to file reply statement. Let it be done.

Post on 23.2.2006. Interim order dated 29.11.2005 shall continue till the next date.

Vice-Chairman

mb

22-2-06

① Service report were awaited

② NO. Wks has been filed.

ms

Notice duly served on resp. no-2.

22/2/06

Pl. comply order dated 23.2.06.

ms
24.2.06.

order dt. 23/2/06 issuing to learned advocates for both the parties.

24.3.06.

The learned counsel appearing for the respondents has submitted that she would like to have some more time to file written statement. Let it be done. Post the matter on 28.4.05. Interim order shall continue till the next date.

lm

Vice-Chairman

27/2/06

23-3-06

No Wks has been filed.

ms

Pl. comply order dated 24.3.06

NB order dt. 24/3/06 issuing to both the parties.

ms
29/3.

28.4.2006

Mr.G.Rahul, learned counsel appearing on behalf of the counsel for the respondents submits that he would like to have some more time to file reply statement. Let it be done, post on 2.6.2006.

Interim order shall continue till the next date.

Vice-Chairman

24-4-06

No WPs have been filed.

bb

order dt. 28/4/06. issuing to learned advocate's for both the parties.

2.6.2006

Mrs.R.S.Choudhury, learned counsel for the respondents 2 & 3 submits that reply statement on behalf of respondent 2 & 3 has been filed. Mr.S.Nath, learned counsel for the applicant submits that he would like to have some more time to file rejoinder. Let it be done. post on 20.6.2006.

Vice-Chairman

bb

2/5/06

1-6-06

No WPs have been filed.

20.06.2006

Learned counsel for the applicant sought for time for filing reply statement.

Post on 21.07.2006. Interim order will continue till the next date.

Vice-Chairman

5.6.06

WPs filed by the Respondts. Nos. 2 & 3.

mb

19-6-06

No rejoinder has been filed.

21.7.2006

Time is sought for filing rejoinder Let it be done within three weeks.

post on 14.8.2006. Interim order to continue till the next date.

Vice-Chairman

My

order dt. 20/6/06. issuing to learned advocate for both the parties.

bb

21/6/06. No rejoinder has been filed. 20/7/06

31.8.06. The counsel for the applicant has prayed for time to file rejoinder. Two weeks time is granted to file rejoinder as a last chance.

Vice-Chairman

lm

Order dt. 21/7/06 issuing to learned advocate's box both the parties.

15.9.06. Learned counsel for the applicant wanted to file rejoinder to the written statement. Let it be done. Post the matter on 16.10.06.

Vice-Chairman

lm

2.11.06. The counsel for the applicant has submitted that pleadings are completed. Post the matter for hearing alongwith the other similar matters.

Vice-Chairman

lm

11.12.06. Since this is a SDA matter, Registry is directed to post the matter for hearing alongwith other SDA matters.

Vice-Chairman

lm

Post the matter on 9.2.07.

Vice-Chairman

8.1.07.

lm

9.2.07 Post the matter after four weeks.

Vice-Chairman

3.4.07.

Counsel for the respondents prays for time to file written statement. Let it be done. Post the matter on 7.5.07. Interim order shall continue.

Vice-Chairman

lm

21/7/06

- ① Wks has been filed.
- ② No Rejoinder has been filed.

30.8.06

18.9.06

Rejoinder filed by the applicant.

SA

The case is ready for hearing.

1.11.06

order dt 3/4/07
issuing to learned
advocate's for both
the parties

3.4.07. post the matter on 7.5.07. Interim
order shall continue.

Vice-Chairman

5/4/07

7.5.2007 On the prayer of the
counsel for the parties post the
matter on 13.6.07 for hearing.

Vice-Chairman

the case is ready
for hearing.

/pg/

4.5.07

13.6.2007 At the request for the Applicant the
case is adjourned and posted on 2.7.2007
for hearing.

the case is ready
for hearing.

Vice-Chairman

12.6.07

/bb/

02.07.07 Post the matter on 17.7.07 for hearing.

Vice-Chairman

the case is ready
for hearing. 17.7.2007

At the request made by
Mr.M.Chanda, learned counsel for the
Applicant the case is delinked from the
connected cases and posted on 1.8.2007.

31.7.07

Vice-Chairman

1.8/07 The applicant has filed a substitution petition
since the 2nd applicant is expired.

At the request of the counsel for the parties post on

OA 295/05

-6-

~~Vice-Chairman~~

1.8.07 The applicant has filed a substitution petition since the 2nd applicant is expired.

At the request of the counsel for the parties post on 27.8.07 for hearing

The case is ready for hearing.

MA
24.8.07

pg

Vice-Chairman

27.8.07. Counsel for the respondents has submitted that he has got some personal difficulty and he prays for adjournment. Post the matter on 10.9.07.

The case is ready for hearing.

MA
7.9.07

lm

Vice-Chairman

10.9.2007 In view of the order passed in M.P. learned counsel for the Applicant is directed to carry out the substitution by today itself. Let the case be posted on 20.9.2007. for hearing.

The case is ready for hearing.

MA
9.10.07

Vice-Chairman

The case is ready for hearing. /bb/

MA
7.11.07

08.11.07. Mr. M.U. Ahmed learned Addl.C.G.S.C., on behalf of Mr.G.Baishya, learned Sr.C.G.S.C. requested that the case is adjourned for hearing on 4.12.07.


The case is ready for hearing.

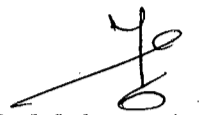
MA
3.12.07

Member(A)

04.12.2007 Heard Mr M. Chanda, learned Counsel for the Applicant and Mr K. Barthakur, learned Counsel for the Respondents in part.

Call this matter on 06.12.2007 for further hearing.


(Khushiram)
Member (A)


(M. R. Mohanty)
Vice-Chairman

nkm

06.12.2007 Heard Mr M. Chanda, learned Counsel for the Applicants and Mrs R.S. Choudhury, learned Counsel for the Respondents.

Hearing concluded. Orders reserved.


(Khushiram)
Member (A)

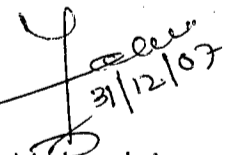

(M. R. Mohanty)
Vice-Chairman

nkm


31.12.2007 Judgment pronounced in open court, kept in separate sheets.

The O.A. is allowed to the extent indicated in the order. No costs.

This has got concurrence of Hon'ble Member.


(M.R.Mohanty)
Vice-Chairman
31/12/07

Received copy of the order dated 31/12/07.


7.1.08
M. R. Mohanty

7.2.08

C. Copy of the order has been collected by the applicant on 4.1.08.



9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.295 of 2005

DATE OF DECISION: 31/12/2007

Dr Birendra Kumar Bhattacharjya and 2 othersAPPLICANT(S)

Mr M. Chanda, Mr G.N. Chakraborty and Mr S. Nath ADVOCATE(S) FOR THE APPLICANT(S)

- versus -

Union of India & Ors.RESPONDENT(S)

Mr K.N. Choudhury, Mrs R.S. Choudhury and Mr K. Barthakur. ADVOCATE(S) FOR THE RESPONDENT(S)

CORAM:

The Hon'ble Mr. M.R. Mohanty, Vice-Chairman

The Hon'ble Mr Khushiram, Administrative Member

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/~~No~~
2. Whether to be referred to the Reporter or not? Yes/~~No~~
3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench and other Benches? Yes/~~No~~
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

.....
Vice Chairman/Member

p

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.295 of 2005

Date of Order: This the 31st day of December 2007

The Hon'ble Shri M.R. Mohanty, Vice-Chairman
The Hon'ble Shri Khushiram, Administrative Member

1. Dr Birendra Kumar Bhattacharjya, Scientist,
Son of Late Ghanashyam Bhattacharjya,
CIFRI (Central Inland Fisheries Research
Institute), (ICAR),
NER Centre, HOUSEFED Complex,
Dispur, Guwahati-781006.
2. Smt Runu Devi Choudhury
(Wife of Late Mahadev Choudhury,
Principal Scientist, CIFRI [Central Inland
Fisheries Research Institute], [ICAR],
NER Centre, HOUSEFED Complex,
Dispur, Guwahati-781006).
3. Dr Aschok Biswas
Technical Officer, T-6,
Son of Late Haridas Biswas,
CIFRI (Central Inland Fisheries Research
Institute), (ICAR),
NER Centre, HOUSEFED Complex,
Dispur, Guwahati-781006.

.....Applicants

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

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Agriculture,
Krishi Bhawan, New Delhi-110001.
2. The Director,
Central Inland Fisheries Research Institute (CIFRI),
I.C.A.R. Barrackpore,
Kolkata-700120.

3. Senior Administrative Officer
Central Inland Fisheries Research Institute (CIFRI),
I.C.A.R. Barrackpore,
Kolkata-700120.

.....Respondents

By Advocates Mr K.N. Choudhury,
Mrs R.S. Choudhury and Mr K. Barthakur.

.....

ORDER

KHUSHIRAM, ADMINISTRATIVE MEMBER

The facts of the case in brief are —

- a) The Applicant No.1 was selected as Scientist in the Agricultural Research Service (ARS) and joined Indian Council of Agricultural Research (ICAR) in Hyderabad on 15.02.1995. From there he was transferred to Barrackpore in West Bengal and thereafter transferred to Guwahati vide letter dated 01.10.1996.
- b) The Applicant No.2 also a Senior Research Assistant (Statistics) since 23.10.1972 with ICAR and was posted at Guwahati where he joined on 29.11.1972. He was inducted to Agricultural Research Service on 24.07.1976. He was transferred to Bangalore on 28.06.1989 and thereafter he was transferred back to Guwahati on 16.11.1990.
- c) The Applicant No.3 was initially posted as Senior Training Assistant T-6 (Animal Science) at Krishi Vigyan Kendra of Central Inland Capture Fisheries Research Institute (ICAR), Kakdwip, West Bengal on 07.06.1995. He was transferred to Guwahati on 30.06.2004 and joined at Guwahati on 02.07.2004.




2. All the Applicants have claimed that their services are subject to All India Transfer liability and are liable to be transferred anywhere in the country. They have claimed Special (Duty) Allowance (SDA for short) for the periods they are posted in the N.E. Region (on their transfer) from outside the region. It has been stated that the Applicant Nos.1 and 2 hail from the N.E. Region and the Applicant No.3 though not originally a resident of N.E. Region but saddled with All India Transfer liability and his promotion is granted to him on common All India seniority.

3. The moot question in this case is as to whether the Applicants are entitled to SDA for the period they are posted in the N.E. Region; in spite of the fact that two of the Applicants are original residents of N.E. Region and the third has no possibility of promotion based on All India Seniority and as to whether SDA that has already been paid to them is liable to be refunded. By raising the said question the Applicants have prayed (by filing the present Original Application under Section 19 of the Administrative Tribunals Act, 1985) to quash the impugned order for recovery that has been passed on 17.08.2005. The Applicants have supported their claims by filing copies of the requisite appointment/transfer orders as Annexures- 1, 2 and 3.

4. The impugned order dated 17.08.2005 has been issued in the light of the views expressed by the Supreme Court and Government of India O.M. dated 29.05.2002 reiterating as under:

"a. The Special Duty Allowance shall be admissible to central Govt. Employees having All India Transfer Liability posting to North Eastern Region (including Sikkim) from outside the region.



b. The amount paid on account of SDA to ineligible persons after 05.10.2001 will be recovered."

In the light of the above O.M., the Applicants have been identified as not fulfilling the criteria as laid down for grant of SDA.

Name of the Officer/Designation	Reasons for not fulfillment of the criteria
Applicant No.1: Dr B.K. Bhattacharyya, Scientist	Belongs to N.E.H. Region
Applicant No.2: Dr Mahadev Choudhury, Principal Scientist (expired on 06.07.2007 and his name has been substituted by Smt R.D. Choudhury vide order dated 10.09.2007)	Belongs to N.E.H. Region
Applicant No.3: Dr Ashok Biswas, T-6	Does not fall under All India Transfer Liability.


5. Another Office Order dated 05.11.2005 (Annexure-6 to the O.A.) was issued ordering recovery of SDA already paid to the ineligible persons after 05.10.2001 to 31.07.2005 in suitable installments effective from the salary of November 2005 onwards.

6. Written statement has been filed on behalf of the respondents challenging the filing of joint application as the Applicants are not entitled to leave under Section 4(5) of the Central Administrative Tribunal (Procedure) Rules, 1985. It has been contended by the Respondents that the Apex Court, in its decision reported in AIR 1971 SC 2451, has laid down that once preliminary objections, so raised, the Courts should not proceed any further on merits and ought to dismiss the petition. In the written statement, orders were issued for recovery/stoppage of payment of SDA in respect of Applicant No.1 as he belongs to the N.E. Region. It is also stated that the mere clause in the appointment letter to the effect that

the person concerned is liable to be transferred anywhere in India does not make it a ground for the grant of SDA. The Ministry of Finance O.M. dated 29.05.2002 clarifies, inter alia, that the amount already paid on account of SDA to ineligible persons on or before 05.10.2001 shall be waived. But the amount paid to ineligible persons after 05.10.2001 will be recovered. It has been clarified that all other previous circulars stand modified after issue of O.M. dated 29.05.2002 and mistakenly the allowance paid to the ineligible persons is an administrative lapse, which cannot be taken benefit of by the Applicants.

7. Shri M. Chanda, learned Counsel for the Applicants, pleaded that the issue have been dealt with in a number of cases decided earlier (vide O.A.No.170 of 1999 dated 31.05.2005, O.A.No.294 of 2005 dated 02.07.2007, 2006 (1) GLT 599 dated 04.01.2006 and the decision of the Apex Court in Civil Appeal No.7000 of 2001) wherein it was held that "the Union of India shall not be entitled to recover any amount paid, as special duty allowances inspite of the fact that this appeal has been allowed".

8. In All India Services Law Journal IV-2002 (1) 67 it is stated that Special Duty Allowance is granted to the Central Government Employees having 'All India Transfer Liability' as clarified vide Finance Ministry O.M. dated 12.01.1996 on their posting to the N.E. Region from outside the region. The allowance is given as an incentive to attract talented officers to serve the N.E. Region from outside the region. It cannot be granted to Group 'A' and 'B' officers belonging to the N.E. Region and posted to the N.E. Region. It is further clarified that there is no bar on eligibility of Special Duty Allowance for the



officers belonging to the N.E. Region, if they satisfy the criteria that their appointment in service/post is made on All India basis and the promotion is also done on the basis of All India Common Seniority. However, it will be admissible when they are posted in N.E. Region from outside the region.

9. In the case of Regional Director, Employees State Insurance Corporation and others Vs. Secretary, Employees State Insurance Corporation Employees Union and others, 2006 (1) GLT 599, it was observed as follows:

"The Government of India, Ministry of Finance (Department of Expenditure) thereafter issued an office memorandum dated 13.6.2001 regarding admissibility of SDA of postal employees in their posting in N.E. Region. In the said office memorandum it has been clarified that there is no bar in eligibility of SDA for the officers belonging to North Eastern Region if they satisfy the criteria that their appointment in service/post is made on All India basis and the promotion is also done on the basis of All India common seniority. However, it has been made clear that they will be entitled to the same, if they are posted in N.E. Region from outside the region."

In para 20 of the said judgment it was held that:

"In view of the law laid down by the Apex Court The Postal employees belonging to N.E. Region but posted in the said Region from outside the region on their promotion on the basis of the All India Common seniority List shall also be entitled to SDA from the date of such posting. The employees and officers, other than, the employees and officers mentioned above, shall not be entitled to SDA"

10. The O.M. dated 29.05.2002 clarified that SDA will not be payable merely because of the clause relating to All India Transfer liability. The Ministry clarified that the criteria for payment of SDA, as upheld by the Supreme Court is as under:

"The Special Duty Allowance shall be admissible to Central Government employees having All India Transfer

Liability on posting to North Eastern region (including Sikkim) from outside the region."

11. The above memorandum also clarified that the amount already paid on account of SDA to ineligible persons on or before 05.10.2001 will be waived. However, recoveries, if any, already made need not be refunded. The memorandum further clarified that the amount paid on account of SDA to ineligible persons after 05.10.2001 will be recovered.

12. Mrs R. S. Choudhury, learned Counsel for the Respondents, contended that the citation 2006 (1) GLT 599 does not apply in the instant case as it is applicable to the employees of the Postal Department only. ICAR being an autonomous body has to adopt the Government Circulars for application to its employees and that, only then, these circulars become applicable to them. The learned Counsel for the Respondents cited 1995 (2) SCC 532 (Chief General Manager, (Telecom) N.E. Telecom Circle and Another Vs. Rejendra Ch. Bhattacharjee and others) wherein it has been held that SDA meant for attracting and retaining the services of competent officers, the benefit of such a provision is not available to persons belonging to the said region itself. More so, when the person concerned had, for most part of his service, been posted to the place of his choice (his hometown).

13. After reviewing the rival contentions of the learned Counsel for the parties, it is seen that the point of autonomy of ICAR has not been pleaded by the respondents in their written statement, which would have gone a long way as far as grant of SDA to the employees of N.E. Region posted in the region is concerned. Besides,

the citations and circulars cited above, the circular of the Cabinet Secretariat (E.A.I Section) dated 2.5.2000 is noteworthy, which inter alia clarifies the eligibility for payment of SDA on posting in the N.E. Region. The said circular is reproduced below:

"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 Intengrated Finance and Ministry of Finance (Department of Expenditure) and clarification to the points of 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/ centralized seniority list and All India Transfer Liability.

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

NO

common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.

ii) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were centralized rules for the post (prior to grant of SDA vide Ministry of Finance O.M. No.20014/2/83-E.IV dated 14.12.83 and 20.4.87 read with O.M. 20014/16/86 E.II(B) dated 1.12.88) but subsequently the post/cadre was centralized 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 N.E. Region having All India Transfer Liability.

NO

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 N.E. Region posted to N.E. region initially but subsequently transferred out of N.E. Region but re-posted to N.E. Region after sometime serving in non N.E. Region.

YES

v) The MOF. Deptt. of Expdt. 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 Service/Cadre/ Post has made on All India basis

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

(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 done on the basis of All India Common Seniority basis. 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 NE Region from outside the NE Region.

vi) Based on point (iv) above, some of the units of SSB/DGS have authorized payment of SDA to the employees hailing from NE Region and posted within the NE Region while in the case of others the DACS have objected payment of SDA 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 be 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.

It has already been clarified by MOF that clause in the appointment order regarding All India 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

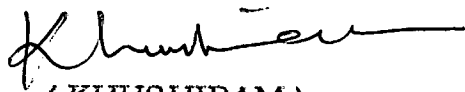
the ineligible employees hailing from NE Region and posted in NE Region be recovered from the Date of payment or after 20th Sept. 94 whichever is later.

3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No.1349 dated 11.10.99 and Ministry of Finance (Expenditure)'s I.D. No.1204/E.II (B) dated 30.3.2000."

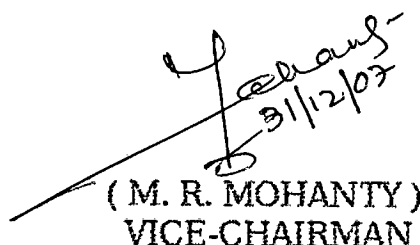
14. Though, on the face of it, it appears strange that SDA cannot be sanctioned to an employee who is originally a resident of N.E. Region and posted in the N.E. Region, but a similarly situated employee, if he gets posted outside the N.E. Region but manages to come back again to the N.E. Region, he becomes entitled to SDA. In our view the rationale that sanction of SDA to some of the employees (who have been transferred out and have managed to come back) and to deny the same to those who have never sought to be transferred out/or who are originally recruited and posted in the N.E. Region and never had an occasion to get transferred out will have to be deprived of to the grant of SDA. This discrimination certainly appears violative of Article 14/16 of the Constitution, where such discrimination cannot be sustained. However, in the instant case the Applicant No.1 and Applicant No.2 (since deceased), though residents of N.E. Region, were posted outside the N.E. Region and have managed to come back,

will accordingly be entitled to the grant of SDA and the SDA paid already to them cannot be recovered. However, the case of the Applicant No.3, who was originally posted in West Bengal and on winding up of the office there, has apparently opted for posting in the N.E. Region with no possibility of being transferred outside the N.E. Region does not qualify for grant of SDA.

15. The O.A. is accordingly allowed to the above extent and stands disposed of. No order as to costs.

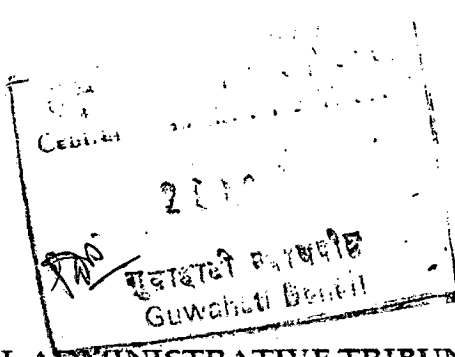


(KHUSHIRAM)
ADMINISTRATIVE MEMBER



(M. R. MOHANTY)
VICE-CHAIRMAN

nkm



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

O.A. No. 295 /2005

Dr. Birendra Kumar Bhattacharya & Ors.

-Vs-

Union of India & Ors.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 11.04.1995- Applicant No. 1 was selected as Scientist to the Agricultural Research Service through all India competitive examination. He was initially posted at Barrackpore, West Bengal vide order dated 05.07.95. (Annexure- I & II)
- 01.10.1996- Applicant No. 1 was transferred and posted to CIFRI Center at Guwahati in public interest and accordingly he reported for duty at Guwahati on 25.10.1996. (Annexure- III & IV)
- 23.10.1972- Applicant No. 2 was initially recruited to the post of Sr. Research Asstt. (Statistics) in the CIFRI, Barrackpore. He was posted at Guwahati and joined on 29.11.1972. (Annexure- VII)
- 24.07.1976- Applicant No. 2 was inducted in the Agricultural Research Service under Agricultural Research Service Rules, 1975. According to Rule 20 of the Agricultural Research Services Rules a Scientist is liable to be transferred in any place of India. (Annexure- VIII)
- 03.01.1983- Applicant No. 2 was promoted to the next higher grade of S-1. (Annexure-IX)
- 28.06.1989- Applicant No. 2 was transferred and posted from Guwahati to Bangalore and accordingly he was relieved vide order dated 20.11.1989. (Annexure-X & XI)
- 16.11.1990- Applicant No. 2 was transferred back from Bangalore to CICFRI Guwahati Centre and accordingly he joined at Guwahati. (Annexure- XII)
- Applicant No. 1 and 2 were granted SDA by the respondents themselves.
- 07.06.1995- Applicant No. 3 was recruited to the post of T-6 at Krishi Vigyan Kendra of CICFRI (ICAR) at Kakdwip, West Bengal through all India recruitment. Accordingly he joined at Kakdwip on 21.07.1995. (Annexure-XIV)

Handwritten signature: M. L. Das

- 25
- 21.07.1995- Applicant No. 3 was formally appointed to the cadre of Sr. Training Assistant, T-6 and placed on probation for a period of 2 years.
- 18.06.2004- Applicant No. 3 was transferred from Kakdwip, W.B to CICFRI, NER Centre, Guwahati in public interest. Accordingly he was relieved from duty vide order dated 30.06.04.
(Annexure- XVI & XVII)
- 02.07.2004- Applicant No. 3 reported for duty at CIFRI, NER Centre, Guwahati.
- 17.08.2005- Respondent issued impugned order dated 17.08.05, whereby it has been decided that all the 3 applicants are not entitled to payment of SDA and accordingly stopped payment of SDA to the applicants.
(Annexure- V Series)
- 05.11.2005- Respondents issued another impugned order directing recovery of the amount which have already been paid to the applicants as SDA.
(Annexure- VI Series)
- 12.09.2005- Applicants submitted representations against the impugned order dated 17.08.05 praying for continuation of SDA but to no result.
(Annexure- XXVI Series)

Hence this Original Application:

P R A Y E R S

Relief(s) sought for:

Under the facts and circumstances stated above, the applicants humbly pray that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

1. That the Hon'ble Tribunal be pleased to set aside and quash the impugned order bearing letter No. 2/1/05/Adm. III/2005/5402 dated 17.08.2005, order bearing letter No. 2/1/05/Adm. III/2005/5403 dated 17.08.2005 and order bearing letter No. 2/1/05/Adm. III/2005/5404 dated 17.08.2005 (Annexure-V Series) as well as impugned order bearing No. 2/1/05/Adm-III/2005/6841 dated 05.11.2005, No. 2/1/05/Adm-III/2005/6842 dated 05.11.2005 and No. 2/1/05/Adm-III/2005/6843 dated 05.11.2005 (Annexure- VI Series).
2. That the Hon'ble Tribunal further be pleased to declare that the applicants are entitled to payment of SDA in terms of O.M dated 14.12.1983, 01.12.1988, 22.07.1998 and also in terms of clarificatory Order dated 12.01.1996 as well as O.M dated 29.05.2002.
3. That the Hon'ble Tribunal be pleased to direct the respondents to refund back the amounts, if any, already recovered from the applicants.

4. Costs of the application.
5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During pendency of this application, the applicants pray for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to direct the respondents not to make any recovery of the amount already paid to the applicants till the disposal of the Original Application.

Hence this original application.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O. A. No. 295 /2005

Dr. Birendra Kumar Bhattacharjya & Ors. : Applicants

- Versus -

Union of India & Others: Respondents.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 295 /2005

BETWEEN

1. Dr. Birendra Kumar Bhattacharjya, Scientist,
Son of Late Ghanashyam Bhattacharjya.
CIFRI (Central Inland Fisheries Research Institute), (ICAR)
NER Centre, HOUSEFED Complex,
Dispur, Guwahati-781006.

Smb. Runu Devi Choudhury,
Dr. Mahadev Choudhury, Expd. red on 6.7.07

2. Principal Scientist.
Son of Late Chandra Kanta Dev Choudhury.
CIFRI (Central Inland Fisheries Research Institute), (ICAR)
NER Centre, HOUSEFED Complex,
Dispur, Guwahati-781006.

3. Dr. Ashok Biswas,
Technical Officer, T-6.
Son of Late Haridas Biswas.
CIFRI (Central Inland Fisheries Research Institute), (ICAR),
NER Centre, HOUSEFED Complex,
Dispur, Guwahati-781006.

...Applicants.

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Agriculture,
Krishi Bhawan,
New Delhi- 110001.
2. The Director,
Central Inland Fisheries Research Institute (CIFRI)
I.C.A.R, Barrackpore,
Kolkata- 700 120.
3. Senior Administrative Officer,

Birendra Kumar Bhattacharjya

28
Filed by The applicant's
Muzh S. Nath Adv.
Substantive.
28/11/05.

Amendment-
made in terms
of Hon'ble Court's
order dated 10/9/07

Central Inland Fisheries Research Institute (CIFRI)
I.C.A.R, Barrackpore,
Kolkata- 700 120

... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned order dated 17.08.2005 (Annexure-V Series) whereby payment of Special Duty Allowance (for short SDA) has been discontinued to the applicants as well as against the order dated 05.11.2005 (Annexure- VI Series), whereby the respondents have directed to recover the amount already paid to the applicants as SDA and further praying for a direction upon the respondents to continue payment of SDA to the applicants.

2. Jurisdiction of the Tribunal.

The applicants declare that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicants further declare that this application is filed within the period of limitation prescribed under Section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case.

- 4.1 That the applicants are citizens of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

Birendra Kumar Bhattacharyya

4.2 The applicants pray for permission to move this application jointly in a single application under Section 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules 1985 as the reliefs sought for in this application by the applicants are common, therefore they pray for granting leave to approach the Hon'ble Tribunal by a common application.

4.3 That your applicant no.1 was initially selected as scientist to the Agricultural Research Service (ARS) vide office order bearing letter no F. No. 35(1)/95-Per.I dated 11.4.1995. Pursuant to an advertisement issued by the Agricultural Scientists Recruitment Board (ASRB) of the Indian Institute of Agricultural Research (ICAR), Krishi Bhawan, New Delhi, the applicant applied for the Agricultural Research Service (ARS) Examination 1991 and got selected as Scientist of ARS. The said examination was conducted on All India basis (written test followed by viva-voce) and the post of Scientist belongs to group-A category. The applicant was initially posted at Barrackpore, West Bengal vide office order bearing letter No. F. No. 35(2)/93. Per. I (Pt. I) dated 05.7.1995. The seniority and promotion of the applicant No. 1 is being maintained on all India basis. However, the applicant no.1 while working at Barrackpore, he was transferred and posted to CIFRI center at Guwahati in public interest vide office order no. 307-E/10042 dated 01.10.1996 and accordingly the applicant no.1 reported for duty at Guwahati on 25.10.1996.

Copy of the joining report dated 25.10.1996 forwarded to the Director, CIFRI, Barrackpore as well as to the Head of Division (R), CIFRI, Allahabad is shown here for perusal of the Hon'ble Court.

Though the applicant No. 1 is a permanent resident of Assam, he was selected for the post of Scientist through all India examination and initially posted at Barrackpore in the state of West Bengal i.e. outside the N.E. Region and thereafter transferred and posted at Guwahati in public interest. It is submitted that after joining at Guwahati the respondents

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3)

were pleased to grant SDA to the applicant No. 1 on their own after being found eligible for entitlement of the said allowance and accordingly the respondents have paid SDA to the applicant No. 1 since his joining at Guwahati. Be it stated that his recruitment zone, promotion zone and seniority is maintained on all India basis. Surprisingly, the said SDA has been stopped by the respondents from the month of August' 05, without issuing any show cause notice before stoppage of the said allowance. However, the Sr. Administrative Officer issued impugned office order bearing letter no. 2/1/05/Admn.III/2005/5403 dated 17.8.2005, wherein it is stated that on scrutiny of the service records in the light of the decision contained in the O.M no. 11(5)/97-E- II (B) dated 29.05.2002, the applicant No. 1 do not fulfill the criteria as laid down for grant of SDA and as such payment has been stopped with immediate effect (from 01.08.2005) and the amount already paid on account of SDA after 05.10.2001 would be recovered in suitable installments in due course of time. It is to be noted here at this stage that in the impugned office order dated 17.8.2005, the respondents did not disclose or specify what are those criteria laid down in O.M dated 29.05.2002, which could not fulfilled by the applicant No. 1.

The respondents again issued impugned office order bearing letter no. 2/1/05/Adm-III/2005/6842 dated 5.11.2005, wherein it is stated that the amount paid after 5.10.2001 to 31.7.2005 shall be recovered in suitable installments effective from the salary of the applicant No. 1 effective from November'2005.

Copy of the office order dated 11.4.1995, 5.7.1995, transfer order dated 1.10.1996, joining report dated 25.10.1996, impugned order dated 17.8.2005 and dated 5.11.2005 are enclosed as Annexure-I, II, III, IV, V (Series) and VI (Series) respectively.

- 4.4 That your applicant no. 2 was initially recruited to the post of Sr. Research Asstt. (Statistics) in the CIFRI, Barrackpore, West Bengal vide memorandum no. 95-C/16118 dated 23.10.72 and posted at Guwahati and

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joined in service on 29.11.1972. However, in the meanwhile in exercise of the powers conferred by the Rule 38 of the Indian Council of Agricultural Research (ICAR), the Governing Body with the approval of the President, ICAR, constituted a service known as Agricultural Research Service (ARS) consisting of Scientists recruited to the service under rules 10 and 11. As per rule 10, there shall be an Agricultural Scientist Recruitment Board (SRAB), which shall constitute a selection committee with the Chairman or his nominee as President with not more than 3 Scientists as core members and not more than 3 other Scientists as additional members to assess the suitability of the Council's candidates in the grades included in the cadres. On receipt of the recommendation of the committee, the Board shall forward its recommendation to the Secretary, ICAR for absorption/induction in the Agricultural Research Service (ARS). Accordingly, the applicant no. 2 was inducted in the Agricultural Research Service under the Agricultural Research Service Rules, 1975 (which came into force w.e.f. 1.10.1975) vide memorandum bearing letter no. 21-1/76-Per (I) dated 24.7.1976. In the said memorandum dated 24.7.1976 there is a specific clause of all India Transfer liability incorporated under clause no. IV of the said memorandum. However, the specific transfer policy has been laid down in Chapter 5 of the ARS Rules, 1975. According to Rule 20 of the ARS, a Scientist is liable to be transferred in anywhere in India. The relevant policy laid down in chapter 5 of the ARS Rules 1975 is quoted below:-

"Chapter 5

TRANSFER POLICY

According to Rule 20 of the Rules for Agricultural Research Service, a Scientist is liable to transfer to any place in India. A Scientist is also required to serve a minimum period of time in backward or comparatively less developed area of the country, as may be determined

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and decided by the controlling authority. The question of evolving suitable guidelines for making transfers of Scientists of ARS from one place to another has been considered, and it has been decided with the approval of the SFC/GB and the President, Indian Council of Agricultural Research that the following revised guidelines will be observed for making transfers of ARS Scientists from one institute to another, and within the institute with effect from 17.11.1980."

In view of the above transfer policy, it is quite clear that the applicant no. 2 is also saddled with all India transfer liability and his recruitment/induction in the cadre of Scientist is also made on all India basis.

By the office order bearing letter no. 5(7)/81-^{AU} ACE(5) dated 3.1.1983, the applicant No. 2 was promoted to the next higher grade of S-1 under provision of Rule 19 of the service rules for ARS. While working as Scientist S-1, applicant no.2 was transferred and posted from Guwahati to Bangalore vide office order bearing letter no. 997-P/8163 dated 28.6.1989 as per rule and accordingly he was relieved from Guwahati vide office order dated 20.11.1989. The applicant accordingly reported for duty at Bangalore. However, vide office order bearing letter no. 370-E/10384 dated 16.11.1990, the applicant was again transferred back to CICFRI, Guwahati Centre from Bangalore. The applicant accordingly joined at Guwahati. It is relevant to mention here that applicant no. 1 and 2 were granted SDA by the respondents themselves after being found eligible in terms of the O.M dated 14.12.1983, 1.12.1988 and also in terms of O.M dated 22.7.1998 issued by the Govt. of India.

Copy of the memorandum dated 23.10.1972, 24.07.1976, office order dated 03.01.1983, office order dated 28.06.1989, office order dated 20.11.1989 and office order dated 16.11.90 are enclosed as Annexure- VII, VIII, IX, X, XI & XII respectively.

Birendra Kumar Bhattacharyya

4.5 That your applicant no. 3 is a permanent resident of village - Aniapara, P.O and P.S-Bangaon, Dist- North 24 Paraganas, West Bengal. The applicant no. 3 pursuant to an advertisement no. 2/93 dated 18.12.1993 issued by the Central Inland Capture Fisheries Research Institute, ICAR Barrackpore applied for the post of Sr. Training Asstt., T-6 (Animal Science) at Krishi Vigyan Kendra of CIFRI, Kakdwip, West Bengal. The said advertisement and recruitment was made on all India basis. The applicant was selected on the recommendation of the selection committee and accordingly an offer of appointment was issued to the applicant No. 3 vide memorandum bearing letter no. 1/3/95/Adm/KVK/KAK/3841 dated 7.6.1995 to the post of Sr. Training Asstt, T-6 (Animal Science) and posted at Krishi Vigyan Kendra (KVK) of Central Inland Capture Fisheries Reserch Institute (ICAR), Kakdwip, Dist- South 24 Parganas, West Bengal. In the said memorandum, there is a specific clause of all India Transfer liability to the effect that the applicant is liable to serve anywhere in India. The applicant no.3 also belongs to Group- A service (Technical Officer under category III, Grade T-6). The applicant accepted the aforesaid terms and conditions and joined in the post of Sr. Training Asstt., T-6 (Animal Science) on 21.7.1995. The applicant was appointed formally to the aforesaid cadre vide office order dated 4.8.95 and placed on probation for a period of 2 years. However, the applicant No. 3 was relieved from KVK, Kakdwip upon closure of the KVK at Kakdwip w.e.f. 31. 3.2004. The applicant was transferred in public interest to CIFRI NER Centre, Guwahati vide office order bearing letter no. 307-E/2659 dated 18.6.2004 and accordingly he was relieved for his duties on 30.06.2004 vide office order dated 30.6.2004 and accordingly he reported for duty at Guwahati on 2.7.2004.

It is submitted that direct recruitment to the post of T-6 i.e. group-A service is made through the Agricultural Scientists Recruitment Board

Birendra Kumar Bhattacharya

on all India basis, which is evident from Appendix - V of ICAR Handbook of Technical Services.

The relevant portion of Appendix-V is quoted below; -

"1. Selection committee for posts in the grade of T-6 (Rs. 700-1300), T-7 (Rs. 1100-1600), T-8 (Rs. 1300-1700) and T-9 (Rs. 1500-2000) in the Technical service.

Direct recruitment to these posts will be made through the Agricultural Scientists Recruitment Board on all India basis."

In view of the above premises, it is quite clear that the recruitment of applicant no.3 has been made on All India basis and the same would also be evident from the advertisement issued by the Central Inland Capture Fisheries Research Institute (ICAR), Barrackpore. It further appears that the transfer policy laid down in chapter V of the ARS service is also applicable to the members of the technical services, more particularly in view of the provision laid down in transfer policy. The relevant portion is quoted below; -

"The Directors are competent to order intra-institutional transfers of scientific and technical staff, but DG would like to be apprised through a quarterly statement about the scientific/technical staff transferred from one place to the other within the institute. In giving the statement, the place of previous posting and the length of posting at the station should also be indicated".

It is further submitted that on his joining at Guwahati, the respondents found the applicant No. 3 eligible for grant of SDA and accordingly applicant no.3 was also paid SDA from the date of joining at Guwahati (2.07.2004) as per decision of the authority.

It would be evident from the office order dated 18.06.2004 that upon closure of Krishi Vigyan Kendra of CIFRI, Kakdwip, Shri S.K. Sudhukhan, T-8 has been transferred from Kakdwip to Bangalore and the other officers have been adjusted at CIFRI H.Q (Barrackpore), Frazerganj

Birendra Kumar Bhattacharyya

Survey Centre (W.B) and at Kolkata, therefore it is quite clear that the applicant no.3 is also saddled with all India Transfer liability. Recruitment zone, promotion zone of the applicant No. 3 is also on all India basis. As such he is also entitled to payment of SDA and the question of recovery as proposed in the impugned office order dated 17.08.2005 and dated 05.11.2005 does not arise at all in the light of the facts and circumstances stated above so far applicant is concerned.

Copies of the advertisement (translated) dated 18.12.93, order dated 7.6.1995, dated 4.8.95, dated 18.6.2004 and dated 30.6.2004 are enclosed herewith and marked as Annexure- XIII, XIV, XV, XVI, and XVII respectively.

- 4.6 That it is stated respondents vide officer order bearing letter No. 2/1/05/Admn. III/2005/5402-5404 dated 17.08.2005, whereby it has been decided that in view of the Govt. of India, Ministry of Finance O.M No. 11 (5)/97-E (B) dated 29.05.2002 all the applicants are not entitled to payment of SDA. So far as the reason assigned in respect of applicant No. 1 and 2, it has been stated that applicant No. 1 and 2 belongs to North Eastern Region. Therefore, they are not entitled to payment of SDA and so far as applicant No. 3 is concerned it has been stated that the applicant No. 3 is not entitled to payment of SDA since he is not saddled with all India transfer liability. Subsequently, another impugned office order bearing letter No. 2/1/05/Adm-III/2005/6841-6843 dated 05.11.2005 has been issued by the Sr. A.O directing recovery of the amount which has already been paid to the applicants after 05.10.2001 upto 31.7.05 in suitable installments effective from the salary of Nov' 2005 onwards, wherein it has been decided to make recovery of Rs. 71, 892/-, Rs. 1,26,717/- and Rs. 37,367/- in respect of applicant No. 1, 2 and 3 respectively on the ground of alleged excess payment since the applicants have been declared ineligible for drawal of SDA by the impugned office order dated 17.08.05. It is further stated in the office order bearing letter No. 2/1/05/Adm-

Birendra Kumar Bhattacharjee

III/2005/6841-6843 dated 5.11.2005 the payment of SDA has been stopped w.e.f. 01.08.05 and the order of recovery dated 05.11.05 have been issued by the Sr. Administrative Officer without application of mind and also without consulting the rules. More particularly, Agricultural Research Service Rule of ICAR and recruitment rule, namely; Agricultural Research Service Rules 1975 and also without considering the transfer policy laid down in Chapter- 5 of the said rule. Moreover, it appears from the impugned order dated 17.08.05 and 05.11.05 that the Sr. A.O not at all aware of the Cabinet Secretariat letter EA. Section vide Cab. Sectt. U.O No. 20/12/99-EA-1-1799 dated 02.05.2000 as well as the office memorandum issued by the Govt. of India, Ministry of Finance bearing O.M No. F. No./11 (3)/2000-E-II (B) dated 13.06.2001, wherein it has been specifically clarified that there is no bar in eligibility of SDA for the officers belonging to the NE Region if they satisfy the criteria that their appointment in service/post is made on all India basis and the promotion is also done on the basis of All India Common Seniority. However, it will be admissible when they are posted in NE Region from outside the region. In the instant case, all the applicant No. 1 and 3 were initially recruited and posted on all India basis outside the NE Region and subsequently they have been transferred and posted to Guwahati in the NE Region while applicant No. 2 was initially posted at Guwahati and thereafter transferred to Bangalore and again transferred to Guwahati. Therefore, in view of the Cabinet Secretariate letter dated 02.05.2000 as well as Ministry of Finance O.M dated 13.06.2001 all the applicants are eligible for payment of SDA and as such the benefit of payment of SDA cannot be denied to the applicants in the light of the Govt. clarifications indicated above and as such the question of recovery of SDA does not arise at all in the instant case of the applicants and on that score alone the impugned order dated 17.08.05 as well as impugned order dated 05.11.05 are liable to be set aside and quashed.

Copy of the letter dated 02.05.2000 and O.M dated 13.06.01 are enclosed herewith and marked as Annexure- XVIII & XIX respectively.

- 4.7 That the applicants further beg to say that they are also entitled to payment of SDA in view of the O.M issued by the Govt. of India, Ministry of Finance bearing letter No. 11 (3) 95-E.II (B) dated 12.01.1996 as well as in view of the subsequent O.M bearing No. F. No. 11 (5) 97-E. II (B) dated 29.05.2002. As per the aforesaid O.Ms the applicants must be saddled with all India transfer liability and vide O.M dated 20.04.87 it has been laid 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 test of recruitment zone, promotion zone etc. and a mere clause in the appointment letter to the effect that the person concerned are liable to be transferred in anywhere in India did not make them eligible for grant of SDA. In view of Clause 5 of O.M dated 29.05.2002 all the applicants are posted from outside the NE Region on transfer and their recruitment zone and promotion zone has been made on all India basis as stated in the preceding paragraphs and in this connection the applicants urge to produce relevant recruitment rule at the time of hearing of the Original Application.

It is surprising to note that the O.M dated 12.01.96 has been issued by the respondents after the judgment delivered by the Hon'ble Supreme Court in the U.O.I & Ors. -Vs- S. Vijayakumar & Ors., wherein it has been stated that whatever amount paid after the decision of S. Vijayakumar's case shall be recovered from the employees through their O.M dated 12.01.96. However, the Hon'ble High Court in a series of decision on the question of recovery of excess amount paid as SDA, it is held that the respondent Union of India is not entitled to make any recovery of the amount which has been paid on account of SDA even to ineligible persons. The applicants urge to produce all those decisions on the

question of recovery at the time of hearing the application. It is surprising to note that the respondent Union of India again issued a similar O.M dated 29.05.2002 after the decision rendered by the Hon'ble Supreme Court in Civil Appeal No. 7000 of 2001 (U.O.I & Ors.- Vs- National Union of Telecom Engineering Employees Union and Ors.). It is contended in the said O.M that the amount paid on account of SDA to the ineligible persons after 05.10.2001 will be recovered. But the Hon'ble Supreme Court in the order dated 05.10.2001 passed in Civil Appeal No. 7000 of 2001 rather categorically held that Union of India shall not be entitled to recover any amount paid as SDA in spite of the fact that the said appeal has been allowed. Therefore, issuance of the memorandum dated 29.05.2002 directing to make recovery to the amount already paid is in fact contrary to the decision of the Hon'ble Supreme Court rendered in Vijay Kumar's case as well as in Civil Appeal No. 7000 of 2001 and on that score Sub Clause II of Clause 6 of the O.M dated 29.05.02 is liable to be declared void.

It is to be noted at this stage that in the instant case of the present applicants the respondents themselves has paid the SDA to the applicants after finding them eligible for payment of SDA in terms of O.M dated 12.01.88, 12.01.96, 22.07.98 as well as in terms of O.M dated 29.05.02 and the applicants never misrepresented or committed any fraud in the matter of payment of SDA. Moreover, no notice or show cause has been issued to the applicants before any decision of recovery of the amount paid to the applicant on account of SDA and as such the impugned order of recovery dated 17.08.05 and 05.11.05 are liable to be set aside and quashed only on the ground that the same has been issued in total violation of the principle of natural justice.

Moreover, in view of decision rendered in S. Vijyakumar's case and Civil Appeal No. 7000 of 2001 by the Hon'ble Supreme Court, the

Birendra Kumar Bhattacharya

respondents are not entitled to make any recovery of the amount paid on account of SDA from the applicants.

Copy of the O.M dated 14.12.83, 12.01.96, 29.05.02 and Hon'ble Supreme Court's order dated 05.10.01 are enclosed herewith as Annexure- XX, XXI, XII & XXIII respectively.

- 4.8 That the case of the present applicants are squarely covered following the decision of the Hon'ble Tribunal passed in O.A. No. 237/2000 decided on 22.12.2000 in the case of Paban Chandra Paul -Vs- U.O.I. & Ors which is upheld by the Hon'ble Gauhati High Court vide its order dated 05.03.01 in W.P (C) No. 107/2000.

Copy of the judgment dated 22.12.2000 as well as judgment dated 05.03.01 are enclosed herewith as Annexure- XXIV & XXV respectively.

- 4.9 That it is stated that the respondents have allowed SDA to the similarly situated persons working in the cadre of ARS Scientists in ICAR, at present posted at CIFRI, NER Centre, Guwahati, namely; (1) Dr. Ranjan Kumar Manna, Scientist (Sr. Scale), (2) Dr. Md. Aftabuddin, Scientist (Sr. Scale), (3) Sri Nagesh Kr. Banik, Scientist, (4) Sri Ganesh Chandra, Scientist and they are still receiving payment of SDA although the respondents have stopped payment of SDA to the present applicants. Therefore, it is quite clear that the cadre of ARS Scientists are recruited on all India basis and saddled with all India transfer liability and they are entitled to payment of SDA. Be it stated that all the above four persons are working in NE Region and still receiving the payment of SDA. As such the present applicants cannot be discriminated in the matter of SDA being similarly situated, otherwise the action of the respondents will be in violation of Article 14 of the Constitution of India. Therefore, the Hon'ble Tribunal be pleased to pass necessary order directing the respondents to continue payment of S.D.A and further be pleased to pass an interim order

Birendra Kumar Bhattacharjya

restraining the respondents to make any recovery of the alleged excess payment on account of S.D.A.

- 4.10 That it is stated that applicants being aggrieved with the impugned orders dated 17.08.2005 submitted representations to the Director, CIFRI Barrackpore, praying for continuation of payment of SDA on 12.09.2005, however, applicant No. 3 submitted another representation for continuation of SDA on 06.10.2005, but to no result. Be it stated that after issuance of impugned order dated 05.09.2005 applicants are now apprehending recovery of alleged excess amount paid to them as SDA, therefore they are approaching before this Hon'ble Tribunal for a direction upon the respondents not to make any recovery till disposal of the Original Application.

Copy of the representations dated 12.09.05 are enclosed herewith and marked as Annexure-XXVI (Series).

- 4.11 That this application is made bona-fide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

- 5.1 For that, the applicants have fulfilled all the conditions/criteria laid down in the Memorandum dated 14.12.1983, 01.12.1988 and also in O.M. dated 12.01.1996, 22.07.1998 as well as O.M dated 29.05.2002, as such they are entitled to payment of SDA in terms of the O.M. referred to above.
- 5.2 For that, the applicants are posted at Guwahati from outside the N.E. Region, and moreover, applicant No. 3 is not the permanent residents of N.E. Region.
- 5.3 For that, the applicants had been directed to move to N.E. Region for their posting at Guwahati.

Birendra Kumar Bhattacharjee

- 5.4 For that, the applicants are saddled with all India Transfer liability as per condition stipulated in their offer of appointment orders.
- 5.5 For that, the impugned order dated 27.06.2005 (Annexure- VIII Series) are contrary to the clarification given by the Govt. of India, Ministry of Finance in their O.M dated 13.06.2001 and also in I.B. Headquarter Memo dated 14.10.03, as such the impugned orders dated 27.06.2005 are not sustainable in the eye of law.
- 5.6 For that, discontinuation of payment of SDA has been made in total violation of the Principles of natural justice.
- 5.7 For that, recovery and discontinuation of payment of SDA has been made in total violation of the principles of natural justice and the action is contrary to the policy decision of the Govt. of India.
- 5.8 For that, issues involved in the instant case have already been settled by this Hon'ble Tribunal in a series of cases of similar nature.
- 5.9 For that, the cases of the applicants are squarely covered following the clarificatory order contained in the O.M. dated 12.01.1996 and O.M. dated 29.05.2002 issued by the Govt. of India, Ministry of Finance, more particularly in view of the clause 5 of the memorandum dated 29.05.2002.
- 5.10 For that, decision rendered by this Hon'ble Tribunal on 20.12.2000 in O.A. No.136/2000 and in O.A. No.8/2002 decided on 13.02.2003 also gain support of the contention raised by the present applicants in the instant proceeding.
- 5.11 For that, the case of the applicants are squarely covered by the judgment and order dated 19.03.2001 passed in O.A. No. 56/2000 (Manoj Kumar -Vs- U.O.I & Ors.), judgment dated 20.12.2000 passed in O.A. No. 237/2000 (Paban Chandra Paul -Vs- U.O.I & Ors.) which is further confirmed by the

Hon'ble Gauhati High Court in W.P (C) No. 107/2000 decided on 05.03.2001.

- 5.12 For that, the recruitment zone, promotions of the applicants are being made on all India basis. As such, all the applicants fulfill the criterion as laid down in O.M dated 12.01.1996 as well as O.M dated 29.05.2002.
- 5.13 For that, in view of the O.M dated 13.06.01 as well as Cabinet Secretariate letter dated 02.05.2000, the applicant No. 1 and 2 are entitled to payment of SDA.
- 5.14 For that, the applicant No. 3 is a permanent resident of West Bengal and he was initially posted at Kakdwip and thereafter transferred to Guwahati and he is saddled with all India transfer liability as per clause of the appointment order and advertisement for the post of T-6 as well as in terms of relevant transfer policy.
- 5.15 For that, recruitment zone of the applicant No. 3 is also made on all India basis and as such applicant No. 3 is also entitled to payment of SDA.
- 5.16 For that, all the applicants belong to Group 'A' cadre in the Department of Agricultural Research and Education (ICAR), who are being recruited on all India basis and saddled with all India transfer liability and as such entitled for payment of SDA.
- 5.17 For that, denial of SDA to the applicants who are similarly situated like the persons of the same department who are being granted the same as stated in paragraph 4.9 above and such action of the respondents are in violation of Article 14 of the Constitution of India.
- 5.18 For that, in view of the decision rendered by the Supreme Court in S. Vijayakumar's case as well as in Civil Appeal No. 7000 of 2001, the

respondents Union of India are not entitled to make any recovery of the amount already paid to the applicants as SDA.

6. Details of remedies exhausted.

That the applicants state that they have exhausted all the remedies available to them and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicants humbly pray that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order bearing letter No. 2/1/05/Adm. III/2005/5402 dated 17.08.2005, order bearing letter No. 2/1/05/Adm. III/2005/5403 dated 17.08.2005 and order bearing letter No. 2/1/05/Adm. III/2005/5404 dated 17.08.2005 (Annexure-V Series) as well as impugned order bearing No. 2/1/05/Adm-III/2005/6841 dated 05.11.2005, No. 2/1/05/Adm-III/2005/6842 dated 05.11.2005 and No. 2/1/05/Adm-III/2005/6843 dated 05.11.2005 (Annexure- VI Series).

Birendra Kumar Bhattacharjya

- 8.2 That the Hon'ble Tribunal further be pleased to declare that the applicants are entitled to payment of SDA in terms of O.M dated 14.12.1983, 01.12.1988, 22.07.1998 and also in terms of clarificatory Order dated 12.01.1996 as well as O.M dated 29.05.2002.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents to refund back the amounts, if any, already recovered from the applicants.
- 8.4 Costs of the application.
- 8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicants pray for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to direct the respondents not to make any recovery of the amount already paid to the applicants till the disposal of the Original Application.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- | | | | |
|------|---------------|---|-------------|
| i) | I. P. O. No. | : | 266 318989 |
| ii) | Date of Issue | : | 11-2005 |
| iii) | Issued from | : | G.P.O, Ghy |
| iv) | Payable at | : | G.P.O, Ghy. |

12. List of enclosures.

As given in the index.

VERIFICATION

I, Dr. Birendra Kumar Bhattacharya, S/o Late Ghanashyam Bhattacharya, aged about 38 years, working as Scientist in CIFRI, NER Centre, Housefed Complex, Guwahati- 16, applicant No. 1 in the instant Original Application duly authorized by the others to verify the statements in this application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 28th day of November, 2005.

Birendra Kumar Bhattacharya

Registered

Indian Council of Agricultural Research
Krishi Bhavan, New Delhi-1

....

F.No. 35(1)/95-Per.I

Dated the 11 April, 1995

OFFICE ORDER

The President, I.C.A.R. is pleased to appoint the under-mentioned Scientists to the A.R.S. on probation with effect from the date mentioned against their names in the pay scale of Rs.2200-75-2800-EB-100-4000 on the terms and conditions contained in the offers of appointment made to them:-

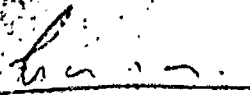
Sl. No.	Name of the Scientist	Discipline	Date of appointment
1	2	3	4
1.	Ms.K.Manorama	Agronomy	13.2.95(F.N.)
2.	Sh.Kameshwar Jat	-do-	-do-
3.	Dr.K.Kasturi	-do-	-do-
4.	Ms.S.Sujatha	-do-	-do-
5.	Ms.S.Issabella Rani	Agricultural Economics	-do-
6.	Ms.P.Ranjitha	-do-	-do-
7.	Dr.L.S.Gangwar	-do-	-do-
8.	Sh.A.K.Sarkar	-do-	-do-
9.	Sh.Kam Sagar	Agricultural Extension	-do-
10.	Ms.Nagaratna B. Biradar	-do-	-do-
11.	Sh.Rajesh Kumar	-do-	-do-
*12.	Dr.V.Venkata Subramanian	-do-	-do-
13.	Sh.Dinesh Kumar	Agricultural Statistics	-do-
14.	Sh.Ajit	-do-	-do-
15.	Sh.Ravindra Kumar	Animal Genetics & Breeding	-do-
16.	Dr.H.K.Narula	-do-	-do-
17.	Dr.Sultan Singh	Animal Nutrition	-do-
18.	Sh.V.P. Maurya	Animal Physiology	-do-
19.	Ms.Suman Gaba	Bio-Chemistry(A.S.)	-do-
20.	Sh.Rajeev Kapila	-do-	-do-
21.	Sh.Dinesh Kumar	Bio-Chemistry(P.S.)	-do-
*22.	Sh.B.K.Bhattacharjya	Fish & Fishery Science	15.2.95(FN)
23.	Sh.Naresh Babu	Horticulture	13.2.95(F.N.)
24.	Ms.K.Sujatha	-do-	-do-
25.	Purushottam Sharma	Livestock Production & Management	-do-
26.	Ms.J.Gulsar Banu	Nematology	-do-

p.t.o.

*A. H. ...
Sub. ...
Advocate*

	2	3	4
7.	Sh. Arvind Singh Negi	Organic Chemistry	13.2.95(FN)
8.	Sh. P.L. Haranadh	Plant Breeding	-do-
9.	Sh. Vishnu	-do-	-do-
10.	Dr. P.K. Katiyar	-do-	-do-
11.	Sh. Lakshmi Kant	-do-	-do-
12.	Sh. D.K. Agarwal	-do-	-do-
13.	Ms. M. Latha	-do-	-do-
14.	Sh. M.Y. Sandur	-do-	-do-
15.	Sh. P. Maniyel	-do-	-do-
16.	Dr. Chuni Lal	-do-	-do-
17.	Sh. Venkatesh Bhat B.	-do-	-do-
18.	Sh. Krishanu Mukherjee	Plant Pathology	-do-
19.	Ms. M. Anuradha	Plant Physiology	-do-
20.	Sh. Ravishankar K.V.	-do-	-do-
21.	Sh. Jagroop	-do-	-do-
22.	Sh. Rakesh Seth	Seed Technology	-do-
23.	Sh. Rajiv Marathe	Soil Science	-do-
		Soil Physics/Soil & Water Conservation	
24.	Dr. K. Pani Prasad	Vety. Bact. & Virology	-do-
25.	Dr. Fateh Chand	Vety. Medicine	-do-

*Scientists belongs to
ARS-91 Exam..


(G.R. Desh Bandhu)
Dy. Director (P)

Distribution:-

1. The Director, N.A.A.R.M., Hyderabad with reference to his letter No. 17-21/94-ARS/A.IV dated 16.2.1995 with 90 copies - one for the Scientist concerned and another for his/her personal file. Medical examination in respect of the above Scientists have been completed.
2. Accounts Officer, NAARM, Hyderabad (5 copies).
3. Secretary, ASRB, Krishi Anusandhan Bhavan, New Delhi (5 copies).
4. Individual files (45).
5. Computer Cell/Guard file.
6. Spare copies (10).

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FAX MESSAGE

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAVAN : NEW DELHI

F.No.35(2)/93-Per.I(Pt.I)

Dated the 5th July 1995

OFFICE ORDER

The following Scientists (on probation) after completion of training at NAARM, Hyderabad are directed to report at the Institutes mentioned against their names, where they have been placed for posting on regular basis till further orders :-

<u>Sl.No.</u>	<u>Name of the Scientist</u>	<u>Discipline</u>	<u>Place of posting</u>
1.	Dr.V.V.Subramanian	Agril. Extension	IVRI, Izatnagar
2.	Dr.K.Pani Prasad	Vety. Bacteriology & Virology	CIFE, Bombay
3.	Sh. Ravi Shankar, K.V.	Plant Physiology	IIHR, Bangalore
4.	Sh. B.K. Bhattacharjya	Fish & Fishery Science	CICFRI, Barrackpore
5.	Sh. Vinayak Ranjan	Mechanical Engg.	JIRL, Calcutta

These Scientists will be entitled to 10 days travel time on uniform basis to join the place of posting from the date of their relief. The unavailed period of travel time shall not be credited to their Earned Leave in any case. They will also be entitled to Travelling Allowance (including D.A.) as admissible under Rules for the journey to be performed by them to join at the place of posting. They may be relieved on 12-7-1995 (AW). They may also be informed that no representation for change of place of posting will be entertained.

(Signature)
(G.R. Desh Bandhu)
Deputy Director (P)

Distribution :-

1. Director, NAARM, Hyderabad with reference to his letter No. ARS-91/R.Post/2841 dated 30.5.95 and Fax message No. 17-21/94-ARS/A.IV dated 24.6.95 for necessary action.
2. Directors, IVRI, Izatnagar, CIFE, Bombay, IIHR, Bangalore, CICFRI, Barrackpore & JIRL, Calcutta.
3. Accounts Officers of the Institutes at Sl.No.2.
4. Secretary, ASRB, Faza, New Delhi - 12.
5. Personal files of the Scientists (5).
6. Computer Cell/Personal IV Section.
7. Guard file.
8. Spare copies (10).

VSY/US0795

Director *unrep'd see*40
5/7/95Jagdish Chandra
5th July 1995Attested
Sub.
Advocate

No. 307-E/10042

Dated the 1st October, 1996

OFFICE ORDER

Sri
Dr. B.K. Bhattacharjee, Scientist is transferred from CIFRI Headquarters, Barrackpore to CIFRI Centre at Guwahati in public interest.

2. He shall be entitled to joining time, joining time pay and transfer T.A. as per rules.
3. He may join at the new place of posting after availing of admissible joining time.
4. In terms of Rule 6 of the CCS(JT) Rules, 1979 unavailed joining time shall not be credited to his leave account unless he proceeds alone to the new place of posting and joins the post without availing full joining time and takes his family later within the permissible period of time for claiming T.A. for the family.

M. Sinha
(M. SINHA)
DIRECTOR

DISTRIBUTION

1. ✓ Dr. B.K. Bhattacharjee, Scientist thro' the Head, Division of Floodplain Lakes & Wetlands, CIFRI, Barrackpore.
2. The Head, Division of Floodplain ~~Wetlands~~ Wetlands, CIFRI, Barrackpore.
3. The Officer-in-Charge, CIFRI Centre, Guwahati, Assam. He is requested to intimate the date of joining of Dr. Bhattacharjee at Guwahati Centre in due course.
4. The Officer-in-Charge, Library & Documentation Section
5. The Finance & Accounts Officer
6. The Superintendent(Adm.III-Bills)
7. The Superintendent(Adm.I)
8. P.A. to Director
9. SAO's Cell
10. The Dealing Assistant(GSLI)
11. CCR Dossier
12. Service Book
13. Personal File
14. Guard File

CIFRI, Barrackpore

To Mr. Bhattacharjee in
original

03.10.96
(V.K. Sengupta)

Attested
Sri. Advocate

From B. K. Bhattacharjya
Scientist
Central Fisheries
Guwahati-5

Dated: 25.10.1996

To The Director
Central Inland Capture Fisheries
Institute, Barrackpore.

Sir, (Through proper channel)

In compliance to H.O. letter No. 1474-P/10675 dated 15.10.96, I have the honour to report for duty to the Officer Incharge, CICFR Centre, Guwahati, in the forenoon of 25th October 1996, after availing admissible joining time.

Yours faithfully,

B.K. Bhattacharjya
(B.K. Bhattacharjya)

CENTRAL INLAND CAPTURE FISHERIES RESEARCH CENTRE
(ICAR)
BHANGAGARH, RAJGARH ROAD, GUWAHATI-781005

Endt. No. BKBH/96- *4115-4/16*

Dated: 25.10.96

Forwarded to the Director, Central Inland Capture Fisheries Research Institute, Barrackpore, for favour of information and necessary action. This has a reference to H.O. letter No. 1474-P/10676, dated 15.10.96.

Copy forwarded to the Head of Division (R), Central Inland Capture Fisheries Research Institute, Allahabad, for favour of information and necessary action.

V. Lakshmi
25/10/96
OFFICER INCHARGE
ul
1377

Attested
Dr. Acharya



CENTRAL INLAND FISHERIES RESEARCH INSTITUTE
(Indian Council Of Agricultural Research) # 2592 1190/91
BARRACKPORE: KOLKATA - 700120 : WEST BENGAL

No. 2/1/05/Adm.III/2005/ 5403

Dated.: 17 08 2005

Office Order

As per provision contained in FR & SR Appendix 9 (iii), the Officer having All India Transfer Liability are eligible for special duty allowance at a rate of 12.5% of the basic including D.P. The G.I.M.F OM No. 11(5)/97-E-II(B) dated 29.05.2002 has clarified the term "All India Transfer Liabilities" laying down that the All India Transfer Liabilities of the members of any Service/Cadre or incumbents of any post/grant of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc., i.e. whether recruitment to Service Cadre/Post has been made on All India basis and whether promotion is also done on the basis of an All India Common Seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the Person Concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance. Further in the aforesaid OM criteria for payment of Special Duty Allowance, as upheld by the Supreme Court, is reiterated as under.

- a. The Special Duty Allowance shall be admissible to central Govt. Employees having All India Transfer Liability posting to North Eastern Region (including Sikkim) from out side the region.
- b. The amount paid on account of SDA to ineligible persons after 05.10.2001 will be recovered.

In view of the decision/clarification made in the OM referred to above, it is very clear that to get the benefits of SDA by the Officers and Staff Members posted at Guwahati Research Centre are required to fulfill the above criteria. After scrutiny of the records, it has found that the following Officers /Staff Member do not fulfill the criteria as laid down for grant of SDA.

Contd. P-- 2

A. K. Saha
Secy. Adm. Cell

Sl. No.	Name of the Officer	Designation	Reasons for not fulfillment of the criteria
1	Dr. Mahadev Chowdhury	Principal Scientist	Belongs to N.E.H Region
2	Dr. B. K. Bhattacharjya	Scientist	Belongs to N.E.H Region
3	Dr. Ashok Biswas	T-6	Do not not fall under All India Transfer Liability
4	Shri Rajendra Ram	S.S.Gr. III	Do not not fall under All India Transfer Liability

The Payment of SDA to the above ineligible persons are being stopped with immediate effect. The amount already paid on account of SDA to the ineligible persons after 05.10.01 will be recovered in suitable instalments in due course of time.

This order is issued with the approval of the competent authority.


Senior Administrative Officer

Distributions :-

- 1. Dr. Mahadev Chowdhury, Principal Scientist
 - 2. Dr. B. K. Bhattachariya, Scientist
 - 3. Dr. Ashok Biswas, T-6
 - 4. Shri Rajendra Ram, S.S.Gr.III
- } through the Officer-in-Charge, Guwahati Centre, CIFRI, Guwahati, Assam for information.
- 5. The Head, Floodplain Wetlands Division, CIFRI, Barrackpore
 - 6. The Officer-in-Charge, Guwahati Centre, CIFRI, Guwahati, Assam
 - 7. The Finance & Accounts Officer, CIFRI, Barrackpore.
 - 8. The Drawing & Disbursing Officer, CIFRI, Barrackpore.
 - 9. The P.S to the Director, CIFRI, Barrackpore
- } for information



CENTRAL INLAND FISHERIES RESEARCH INSTITUTE
(Indian Council Of Agricultural Research) 2592 1190/91
BARRACKPORE, KOLKATA -700120 : WEST BENGAL

No. 2/1/05/Adm.III/2005/6402

Dated.: 17 08 2005

Office Order

As per provision contained in FR & SR Appendix 9 (iii), the Officer having All India Transfer Liability are eligible for special duty allowance at a rate of 12.5% of the basic including D.P. The G.I.M.F OM No. 11(5)/97-E-II(B) dated 29.05.2002 has clarified the term "All India Transfer Liabilities" laying down that the All India Transfer Liabilities of the members of any Service/Cadre or incumbents of any post/grant of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc., i.e. whether recruitment to Service/Cadre/Post has been made on All India basis and whether promotion is also done on the basis of an All India Common Seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the Person Concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance. Further, in the aforesaid OM criteria for payment of Special Duty Allowance, as upheld by the Supreme Court, is reiterated as under.

- a. The Special Duty Allowance shall be admissible to central Govt. Employees having All India Transfer Liability posting to North Eastern Region (including Sikkim) from out side the region.
- b. The amount paid on account of SDA to ineligible persons after 05.10.2001 will be recovered.

In view of the decision clarification made in the OM referred to above, it is very clear that to get the benefits of SDA by the Officers and Staff Members posted at Guwahati Research Centre are required to fulfill the above criteria. After scrutiny of the records, it has found that the following Officers (Staff Member) do not fulfill the criteria as laid down for grant of SDA

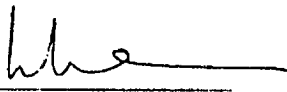
Contd. P-- 2

Allesha
SAC
Advocate

Sl. No.	Name of the Officer	Designation	Reasons for not fulfillment of the criteria
1	Dr. Mahadev Chowdhury,	Principal Scientist	Belongs to N.E.H Region
2	Dr. B. K. Bhattacharjya	Scientist	Belongs to N.E.H Region
3	Dr. Ashok Biswas	T-6	^{Date} Has not fall under All India Transfer Liability
4	Shri Rajendra Ram	S.S.Gr. III	^{Date} Has not fall under All India Transfer Liability

The Payment of SDA to the above ineligible persons are being stopped with immediate effect. The amount already paid on account of SDA to the ineligible persons after 05.10.01 will be recovered in suitable instalments in due course of time.

This order is issued with the approval of the competent authority.


Senior Administrative Officer

Distributions :-

- ✓ 1. Dr. Mahadev Chowdhury, Principal Scientist
 - 2. Dr. B. K. Bhattachariya, Scientist
 - 3. Dr. Ashok Biswas, T-6
 - 4. Shri Rajendra Ram, S.S.Gr.III
- } through the Officer-in-Charge, Guwahati Centre, CIFRI, Guwahati, Assam for information.
-
- 5. The Head, Floodplain Wetlands Division, CIFRI, Barrackpore
 - 6. The Officer-in-Charge, Guwahati Centre, CIFRI, Guwahati, Assam
 - 7. The Finance & Accounts Officer, CIFRI, Barrackpore
 - 8. The Drawing & Disbursing Officer, CIFRI, Barrackpore.
 - 9. The P.S to the Director, CIFRI, Barrackpore
- } for information



CENTRAL INLAND FISHERIES RESEARCH INSTITUTE
(Indian Council Of Agricultural Research) # 2592 1190/91
BARRACKPORE, KOLKATA -700120 : WEST BENGAL

No. 2/1/05/Adm.III/2005/5/04

Dated.: 17-08-2005

Office Order

As per provision contained in FR & SR Appendix 9 (iii), the Officer having All India Transfer Liability are eligible for special duty allowance at a rate of 12.5% of the basic including D.P. The G.L.M.F OM No. 11(5)/97-E-II(B) dated 29.05.2002 has clarified the term "All India Transfer Liabilities" laying down that the All India Transfer Liabilities of the members of any Service/Cadre or incumbents of any post/grant of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc., i.e. whether recruitment to Service/Cadre/Post has been made on All India basis and whether promotion is also done on the basis of an All India Common Seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the Person Concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance. Further, in the aforesaid OM criteria for payment of Special Duty Allowance, as upheld by the Supreme Court, is reiterated as under:

- a. The Special Duty Allowance shall be admissible to central Govt. Employees having All India Transfer Liability posting to North Eastern Region (including Sikkim) from out side the region
- b. The amount paid on account of SDA to ineligible persons after 05.10.2001 will be recovered.

In view of the decision clarification made in the OM referred to above, it is very clear that to get the benefits of SDA by the Officers and Staff Members posted at Guwahati Research Centre are required to fulfill the above criteria. After scrutiny of the records, it has found that the following Officers Staff Member do not fulfill the criteria as laid down for grant of SDA *

Contd. P-- 2

Sl. No.	Name of the Officer	Designation	Reasons for not fulfillment of the criteria
1	Dr. Mahadev Chowdhury,	Principal Scientist	Belongs to N.E.H Region
2	Dr. B. K. Bhattacharjya	Scientist	Belongs to N.E.H Region
3	Dr. Ashok Biswas	T-6	^{Dg 12} Not not fall under All India Transfer Liability
4	Shri Rajendra Ram	S.S.Gr. III	^{Dg 12} Not not fall under All India Transfer Liability.

The Payment of SDA to the above ineligible persons are being stopped with immediate effect. The amount already paid on account of SDA to the ineligible persons after 05.10.01 will be recovered in suitable instalments in due course of time.

This order is issued with the approval of the competent authority.



Senior Administrative Officer

Distributions :-

1. Dr. Mahadev Chowdhury, Principal Scientist
 2. Dr. B. K. Bhattachariya, Scientist
 3. Dr. Ashok Biswas, T-6
 4. Shri Rajendra Ram, S.S Gr. III
- } through the Officer-in-Charge,
Guwahati Centre, CHRI,
Guwahati, Assam for
information.
5. The Head, Floodplain Wetlands Division, CHRI, Barrackpore
 6. The Officer-in-Charge, Guwahati Centre, CHRI, Guwahati, Assam
 7. The Finance & Accounts Officer, CHRI, Barrackpore.
 8. The Drawing & Disbursing Officer, CHRI, Barrackpore.
 9. The P.S to the Director, CHRI, Barrackpore
- } for
information

24.03
22.05.05

CENTRAL INLAND FISHERIES RESEARCH INSTITUTE
I. C. A. R. : BARRACKPOE : WEST BENGAL

No.2/1/05/Adm-III/2005/6842

Dated 05/11/2005

Office Order

As per this Office Order No.2/1/05/Adm.-III/2005 dated 17/08/2005 the payment of Special Duty Allowance to the ineligible persons posted at Guwahati Research Centre has been stopped w.e.f. 01/08/2005. The amount paid on account of Special Duty Allowance to the following ineligible persons after 05/10/2001 to 31/07/2005 are being recovered in suitable instalments effective from the salary of November, 2005 onwards.

This Order is issued with the approval of the competent authority

Name & Designation	Period of Deduction	Amount of overpayment made	Amount to be recovered per instalment	No.of inst. to be recovered	Remarks
Dr. M. Chowdhury P. Scientist	06-10-2001 31-07-2005	Rs.126717/-	Rs.4224/- p.m.	30 inst.	Rs.4221/- (Last Inst.)
Dr. B.K. Bhattacharyya Scientist	06-10-2001 31-07-2005	Rs. 71892/-	Rs. 2396/- p.m.	30 inst.	Rs.2408/- (Last Inst.)
Dr. Ashok Biswas T-6	02-07-2004 31-07-2005	Rs. 37367/-	Rs.1868/- p.m.	20 inst.	Rs.1875/- (Last Inst.)
Shri Rajendra Ram SSGr.III	06-10-2001 31-07-2005	Rs. 29248/-	Rs. 812/- p.m.	36 inst.	Rs. 828/- (Last Inst.)


Sr. Administrative Officer

Distribution :-

- 1) Dr. M. Chowdhury, Principal Scientist,) (Through the Officer-in-charge,
- ✓ 2) Dr. B. K. Bhattacharyya, Scientist,) (Guwahati Centre C.I.F.R.I.,
- 3) Dr. Ashok Biswas, T-6) (Guwahati, Assam for
- 4) Shri Rajendra Ram, SSGr.-III) (information.
- 5) The Head, Floodplain Wetland Divn., CIFRI, Barrackpore) (
- 6) The Officer-in-charge, Guwahati Centre, CIFRI, Guwahati) (For information.
- 7) The Drawing & Disbursing Officer, CIFRI, Barrackpore) (
- 8) The Finance & Accounts Officer, CIFRI, Barrackpore) (
- 9) The P.S. to the Director, CIFRI, Barrackpore) (

*Attested
Sr. Administrative*

CENTRAL INLAND FISHERIES RESEARCH INSTITUTE
I. C. A. R. : BARRACKPOE : WEST BENGAL

No.2/1/05/Adm-III/2005/ 6841

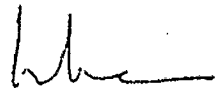
Dated 05/11/2005

Office Order

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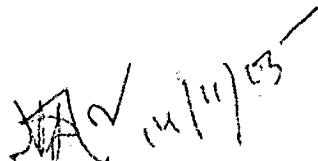
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Dr. Ashok Biswas T-6	02-07-2004 31-07-2005	Rs. 37367/-	Rs. 1868/- p.m.	20 inst.	Rs. 1875/- (Last Inst.)
Shri Rajendra Ram SSGr.III	06-10-2001 31-07-2005	Rs. 29248/-	Rs. 812/- p.m.	36 inst.	Rs. 828/- (Last Inst.)


Sr. Administrative Officer

Distribution :-

- 1) Dr. M. Chowdhury, Principal Scientist,)(Through the Officer-in-charge,
- 2) Dr. B. K. Bhattacharyya, Scientist,)(Guwahati Centre C.I.F.R.I.,
- 3) Dr. Ashok Biswas, T-6)(Guwahati, Assam for
- 4) Shri Rajendra Ram, SSGr.-III)(information.
- 5) The Head, Floodplain Wetland Divn., CIFRI, Barrackpore)(
- 6) The Officer-in-charge, Guwahati Centre, CIFRI, Guwahati)(For information
- 7) The Drawing & Disbursing Officer, CIFRI, Barrackpore)(
- 8) The Finance & Accounts Officer, CIFRI, Barrackpore)(
- 9) The P.S. to the Director, CIFRI, Barrackpore)(


14/11/05


Advocate

CENTRAL INLAND FISHERIES RESEARCH INSTITUTE
I. C. A. R. : BARRACKPOE : WEST BENGAL

No.2/1/05/Adm-III/2005/684.3

Dated 05/11/2005

Office Order

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This Order is issued with the approval of the competent authority.

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Shri Rajendra Ram SSGr.III	06-10-2001 31-07-2005	Rs. 29248/-	Rs. 812/- p.m.	36 inst.	Rs. 828/- (Last Inst.)


Sr. Administrative Officer

Distribution :-

- 1) Dr. M. Chowdhury, Principal Scientist,)(Through the Officer-in-charge,
- 2) Dr. B. K. Bhattacharyya, Scientist,)(Guwahati Centre C.I.F.R.I.,
- 3) Dr. Ashok Biswas, T-6)(Guwahati, Assam for
- 4) Shri Rajendra Ram, SSGr. III)(information
- 5) The Head, Floodplain Wetland Divn., CIFRI, Barrackpore)(
- 6) The Officer-in-charge, Guwahati Centre, CIFRI, Guwahati)(For information
- 7) The Drawing & Disbursing Officer, CIFRI, Barrackpore)(
- 8) The Finance & Accounts Officer, CIFRI, Barrackpore)(
- 9) The P.S. to the Director, CIFRI, Barrackpore)(

Shri Advocate

CENTRAL INLAND FISHERIES RESEARCH INSTITUTE
(I.C.A.R.)
BARRACKPORE, WEST BENGAL.

No. 95-C/16119

The 23rd October, 1972.

MEMORANDUM

Sub : Recruitment to the post of Senior Research Assistant (Statistics)
in the Central Inland Fisheries Research Institute, Barrackpore.

On the recommendation of the Selection Committee, the undersigned is pleased to approve of the offer of appointment of Dr./Shri Mahadev Choudhury to the post of Sr. Research Assistant (Statistics) in the scale of Rs. 325-15-475-EB-20-575 at the Central Inland Fisheries Research Institute, Barrackpore (Non-Government side) on the following terms and conditions :-

1. The post is permanent but ~~lia~~ vacancy/temporary but likely to continue and carries the pay scale of Rs. 325-15-475-EB-20-575. He will be entitled to draw such allowances (dearness allowance and house rent allowance etc.) as are admissible to other staff of the corresponding grade and status under Indian Council of Agricultural Research. The pay of Dr./Shri Choudhury will be fixed according to the Rules.
2. Grant of pay, leave, travelling and other allowances is regulated by the Indian Council of Agricultural Research, mutatis-mutandis, in accordance with the principles of F.R. and S.R. and such other rules and orders as are issued by the Government of India, as amended, clarified or modified from time to time. No T.A. will be given for joining the post.
3. The post is Non-Government but pensionable. He will be governed by the Indian Council of Agricultural Research Pension Rules which are based mutatis-mutandis on the liberalised pension rules of the Government of India, as amended, clarified or modified from time to time.
4. His headquarters will be at Brahmaputra Survey Unit of CIFRI, House No. 75, Word No. 14, Matunsarania, Gauhati-3, for the present. But he will be liable to serve in any Institute or office of the Indian Council of Agricultural Research, located any where in India.
5. He will be on probation for a period of two years from the date of his joining the duty, which may be extended at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him liable to reversion to the lower post at the Institute, provided the lower post is in existence and person junior to his is also continuing.
6. On appointment, he will be required to take an oath of allegiance to the Constitution of India or make a solemn affirmation to that effect, if this has not already been taken.
7. He will submit a declaration regarding his marital status, if not already given. In the event of his having more than one wife living, the appointment will be subject to his being exempted from the enforcement of the requirement in this behalf.
8. His appointment will be subject to the condition that he is or has been declared medically fit by the prescribed Medical Authority, before he joins duty. /i.e. Civil Surgeon/D.M.C.

Attest
for
Advised

10 If any declaration of such information furnished by him prove to be false or if he is found to have willfully suppressed any material information, he will be liable to removal from service and such other action as may be deemed necessary.

In case the post is acceptable to Mr./Shri Choudhury on the terms and conditions mentioned above, he should intimate his acceptance to the undersigned immediately and report himself for duty to the Officer-in-Charge, Brahmaputra Survey Unit, CIFRI, House No.75, Ward No.14, Natunsarania, Gauhati-3, immediately but not later than 13-11-1972.

Administrative Officer
for Director

TO: Shri Mahadev Choudhury,
Department of Statistics,
J.B. College, Jorhat,
Jorhat-1, Assam.

Encl. No. 95-C/

dated 23/10/72.

Copy to:

1. The Officer-in-Charge, Brahmaputra Survey Unit of CIFRI, House No.75, Ward No.14, Natunsarania, Gauhati-3, for information & necessary action.
2. The Accounts Officer, | Central Inland Fisheries Research Institute,
| Barrackpore for information.
3. The Supdt. (Accounts), |
4. Guard file.
5. The Officer-in-Charge, CIFR Sub-Station, 24-Pannalal Road, Allahabad for information.

~~for Director~~

sk
9272

SM
for Director



भारतीय कृषि अनुसंधान परिषद का नया 10-152 प्लॉट 118, नई दिल्ली-110 01

INDIAN COUNCIL OF AGRICULTURAL RESEARCH KRISHI BHAVAN, Dr. RAJENDRA PRASAD ROAD, NEW DELHI-110001

No. 21-1/76-Par (I)

Dated the 24 JUL 1976

MEMORANDUM

On the recommendation of the Agricultural Scientists Recruitment Board regarding the induction of the existing Scientists of the Council at the initial constitution of the Agricultural Research Service, the President of I.C.A.R. Society is pleased to offer an appointment in the Service as Scientist Grade ~~SB-1/1-1~~ ~~SB-1/1-1~~ with effect from the 1st October, 1975 on the following terms :- **to Shri Mahadev Choudhury**

(i) The appointment is subject to the rules of Agricultural Research Service and the rules, bye-laws and regulations of the I.C.A.R. Society.

(ii) He/She will be on probation for a period of 2 years from the date of appointment which may be extended or curtailed at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him/her liable to discharge from service/reversion to his/her substantive post on which his/her lien may have been retained.

(iii) The scale of pay of the Grade is Rs. ~~550-25-750-EB-30-900~~ and his/her initial pay will be fixed in accordance with the rules applicable to the I.C.A.R. Scientists.

(iv) His/Her Headquarters will ~~be~~ ~~be~~ **remain unchanged** for the present, but as a member of the Service, he/she will be liable to transfer anywhere in India.

(v) He/She may be required to serve in a backward or less developed areas of the country for such period as may be decided by the Controlling Authority.

(vi) It will be open to the I.C.A.R. to depute him/her to work in the post under the Central or State Governments, Agricultural Universities or elsewhere (including assignments abroad) for specific periods.

(vii) He/She will be required to produce medical certificate of fitness from the Medical Board if he/she has not been already examined by such a Board while serving in his/her present post or in any other post held earlier under the Council or the Government of India.

(viii) On appointment, he/she will submit a declaration regarding his/her marital status in the prescribed form if not already done. In the event of his having more than one wife living/her having contracted another marriage during the life time of her spouse by the first marriage/her having contracted marriage with a person who has already a wife or more living, his/her appointment will be subject to his/her being exempted from the enforcement of the requirement in this behalf.

(ix) On appointment he/she will be required to take an oath of allegiance/faithfulness to the Constitution of India or make a solemn affirmation to this effect in the prescribed form if he/she has not already done so.

*Affected
for
Advocate*

(iii) If any declaration or information furnished by him/her proves to be false or found to have willfully suppressed, by material information, he/she will be liable to removal from service and such other action as may be deemed necessary.

2. If the offer is acceptable to Shri Mahadev Choudhury on the terms and conditions mentioned above, he/she should intimate his/her acceptance in the enclosed form to the undersigned as early as possible. If, however, the offer is not acceptable and he/she does not desire to be absorbed in the Agricultural Research Service, he/she can continue to hold his/her existing post provided he/she informs the undersigned in writing in the enclosed form within six months of the date of issue of this memorandum.

M. A.
(Mahmood Ali)
Director (Personnel)
~~Secretary~~
Indian Council of Agricultural Research

M. A. Choudhury
Mahadev Choudhury,
Senior Research Assistant,
C/o Director,
Central Inland Fisheries Research Institute,
Barrackpore, West Bengal.

Copy to:

1. The Director,
Central Inland Fisheries Research Institute,
Barrackpore, West Bengal.

2. The Secretary, Agricultural Scientists Recruitment Board, New Delhi.

3. Per. II Section, I.C.A.R., New Delhi-110001

4. Personal file.

M. A.
(Mahmood Ali)
Director (Personnel)
~~Secretary~~
Indian Council of Agricultural Research

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAVAN, NEW DELHI.

No.5(7)/80-AU(5).

Dated the 3rd January, 1983.

OFFICE ORDER

Under the provisions of Rule 19 of the Service Rules for Agricultural Research Service; the President, Indian Council of Agricultural Research is, on the recommendations of the Agricultural Scientists' Recruitment Board pleased to appoint Shri M.Chaudhary a grade S Scientist (Agricultural Statistics) currently posted at Central Inland Fisheries Research Institute, Barrackpore to the next higher grade S-1 of the Service in the scale of pay of Rs.700-40-300-EB-40-1100-50-1300 with effect from the 1st July, 1980.

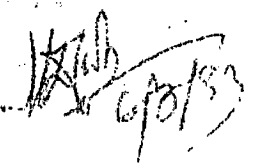
2. In consequence of the above promotion taking effect from 1st July, 1980, the advance increments granted to him earlier on the basis of five yearly assessment shall not be taken into account while fixing his pay on his above appointment in accordance with the instructions contained in the ICAR letter No.6-22/77-Per.IV dated the 9th January, 1978.


(S.R.Rai)
Director(P).

Distribution:

1. Director, Central Inland Fisheries Research Institute, Barrackpore (with six spare copies including one each for the concerned scientist and the Accounts Officer at the Institute).
2. Secretary, ASRB, Nirmal Tower, 26, Barakhamba Road, New Delhi.
3. Additional Secy.(AS), ICAR.
4. Director(Finance), ICAR.
5. Under Secy.(R), ASRB, Nirmal Tower, 26, Barakhamba Road, New Delhi.
6. Per.I/Per.II Section (with one spare copy).
7. DDG(AS), ICAR.
8. SA(R), ICAR.
9. AS(Fisheries) Sec., ICAR.

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CENTRAL INLAND CAPTURE FISHERIES RESEARCH INSTITUTE
(I.C.A.R.)
BARRACKPORE : WEST BENGAL

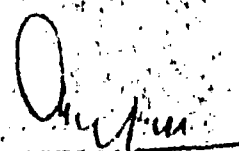
No. 997-P/8/83

Dated : 28th June, 1989.

OFFICE ORDER

Dr. M. Choudhury, Scientist S-1 is hereby transferred from CICFR Centre, Guwahati to the Division of Reservoir Fisheries, Bangalore. He shall be relieved of his duties on a date to be fixed by the Officer-in-Charge, CICFR Centre, Guwahati in the 1st week of September, 1989 so as to enable him to report for duty to the Head, Division of Reservoir Fisheries, Bangalore.

He shall be entitled to 15 days joining time with pay and transfer T.A. as per rule.


DIRECTOR 28/6/89

DISTRIBUTION :-

- 1) The Head, Riverine Division of CICFRI, 24-Pannalal Road, Allahabad.
- 2) The Head, Reservoir Division of CICFRI, Bangalore. The date of joining of Dr. M. Choudhury, Scientist S-1 may please be intimated to this office.
- 3) The Officer-in-Charge, CICFR Centre, Guwahati. The date of relief of Dr. M. Choudhury, Scientist S-1 may please be intimated to this office.
- 4) Dr. M. Choudhury, Scientist S-1, through the Officer-in-Charge, CICFR Centre, Guwahati.
- 5) The Officer-in-Charge, Library & Documentation Section
- 6) The Accounts Officer
- 7) The Superintendent (Per-I)
- 8) The In-Charge (Per.III - Bills)
- 9) The P.A. to the Director
- 10) The Dealing Assistant (CSLS)
- 11) Personal File
- 12) Service Book
- 13) C.I.C.R. Dossier
- 14) ~~UNASS FILE~~

CICFRI, Barrackpore
for information.

Choudhury
informa
6.7.89
1/7/89

Attended
for
Advocate

CENTRAL INLAND CAPTURE FISHERIES RESEARCH CENTRE
(ICAR)

Address: SUMMARI-781003

MC/89- 995

Dated: 20.11.89

OFFICE ORDER

Dr. L. Choudhury, S-1, is hereby relieved of his duties at this centre in the afternoon of 20.11.89. He is requested to report for duty to the Head, Division of Reservoir Fisheries, Bangalore, after availing admissible joining time.

S.P. Singh

20.11.89
OFFICER INCHARGE

To
Dr. L. Choudhury, S-1
Central Fisheries
Summari-3.

MC/89-

Dated: 20.11.89

Copy to :-

1. The Director, Central Inland Capture Fisheries Research Institute, Barrackpore. This has a reference to H.O. letter no. 997-2/8162, dt. 23.6.89 and this office letter No. MC/89-381 dated 5.10.89.
2. The Head of Division (R), CICFRI, Allahabad, for record of information.
3. The Head of Division (Reservoir), CICFRI, Bangalore. Dr. Choudhury has got 2 days' C.D. to his credit.

OFFICER INCHARGE

Affected
for Advocate

No. 307-W/10/58

Dated the 16th November, 1958

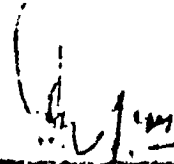
OFFICE ORDER.

The following Scientists are hereby transferred from their present places of posting to the new places as indicated against their names. They shall be relieved of their duties on a date to be fixed by their respective Head/Officer-in-Charge.

Sl. No.	Name and Designation	From	To
1)	Shri K.P. Srivastava, Scientist (SG)	CICFR Centre, Patna	CICFR Centre, Guwahati
2)	Dr. V.R. Chitranshi, Scientist (SG)	CICFR Centre, Patna	CICFR Centre, Kangra
3)	Dr. M. Choudhury, Scientist (SG)	Reservoir Division, Bangalore	CICFR Centre, Guwahati

They shall be entitled to joining time with pay, besides transfer T.A. advance as under :-

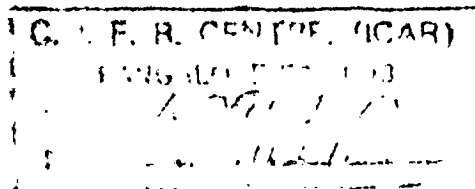
- 1) Shri K.P. Srivastava, Scientist(SG) ... 12 days
- 2) Dr. V. R. Chitranshi, Scientist(SG) ... 12 days
- 3) Dr. M. Choudhury, Scientist(SG) ... 15 days


A. G. JHINGRAN 17/11/58
DIRECTOR

DISTRIBUTION :-

- 1) Shri K.P. Srivastava, Scientist (SG) & Officer-in-Charge, CICFR Centre, Sombay House (Main Road), Kankarbagh, Patna - 800 020, Bihar.
- 2) Dr. V.R. Chitranshi, Scientist (SG), through the Officer-in-Charge, CICFR Centre, Sombay House (Main Road), Kankarbagh, Patna - 800 020, Bihar.
- 3) Dr. M. Choudhury, Scientist (SG), through the Head, Reservoir Division of ICAR, 22(1031), 80 FT Road, 1 Main, IV Block, Deekshabag, Bangalore-560 010, Karnataka.

Contd..



V. H. S. S.
for Advance

- 42 -
(Translated Copy)

Annexure-XIII

63

CENTRAL INLAND CAPTURE FISHERIES RESEARCH INSTITUTE
Indian Council of Agricultural Research
Barrackpore-743101(West Bengal)

Advertisement No. 2/93

The Director, Central Inland Capture Fisheries Research Institute, P.O. Barrackpore-743101, District- 24 Parganas(North), West Bengal invites application for following posts:-

1. **Technical Officer-T-6(Computer Programmer)** - 1 Post(Unreserved)- at Barrackpore (West Bengal).
Essential Qualification: i) Three years diploma/degree (approved by Govt of India) in Computer Science/Computer Applications. ii) Five years experience in computer programming and applications in Government/Government sector/ reputed private firm. **Desirable Qualification:** i) Masters' degree in statistics/mathematics/computer applications/computer applications in agriculture ii) Experience in main frame, micro, mini and personal computer iii) Knowledge in computer programme development in common computer language iv) Experience in information storage and retrieval and data base management system.
2. **Technical Officer-T-6(Soil Chemistry)**- 1 Post(Reserved for SC)- at Bangalore (Karnataka).
Essential Qualification: i) Bachelors' degree with chemistry as major subject/Bachelors' degree in agriculture. ii) Five years experience in soil analysis.
3. **Senior Training Assistant-T-6(Animal Science)**- 1 Post(Unreserved)- at Kakdwip (West Bengal)
Essential Qualification: i) Bachelors' degree/three year's diploma in veterinary and animal husbandry/animal science. ii) Five years experience in management/care of domestic animal including small animal. **Desirable Qualification:** i) Masters' degree in animal science.
 - a) **Pay scale:**(Above mentioned post of Sl. No. 1, 2, 3): Rs.2200-75-2800-100-4000/-. Allowances as per Central Government rate.
 - b) **The services have got all-India transfer liability.**
 - c) **Age limit:** 35 years on the closing date of receipt of application. 5 years relaxation for SC/ST. No age bar for Council employees.
4. **Boat Driver(Auxiliary):** 3 Post: at Allahabad(Uttar Pradesh), Coimbatore(Tamilnadu) and Hosangabad(Madya Pradesh) 1 post each.
Sequence of reservation: 1 post is reserved for SC and 2 posts are unreserved.
Essential Qualification: Good general eligibility and appropriate proficiency certificate. Competency certificate from Marine Mercantile Department will get preference. **Desirable Qualification:** i) Higher certificate/diploma from Marine Mercantile Department. ii) 2 years experience in boat driving.
 - a) **Pay scale:** Rs.950-20-1150-25-1500/-. Allowances as per Central Government rate.
 - b) **The service has got all-India transfer liability.**
 - c) **Age limit:** 18-25 years on the closing date of receipt of application. 5 years relaxation for SC/ST. No age bar for Council employees.

Conditions:

Application form for Post of Sl. No. 1, 2 and 3 will be available from the Senior Administrative Officer, Central Inland Capture Fisheries Research Institute, P.O. Barrackpore-743101, Dist. 24 Parganas(North), West Bengal mentioning Advertisement No. and Post. Write for application form with self-addressed envelop(23x10 cm size) without postage stamp. Properly filled-in application form accompanied with crossed postal order(not necessary for SC/ST candidate and Sl. No. 2 & 4 Post) of Rs.8/- in favour of ICAR-Unit, CCFRI should reach to the Senior Administrative Officer, Central Inland Capture Fisheries Research Institute, P.O. Barrackpore-743101, Dist. 24 Parganas(North), West Bengal. For post of Sl. No. 4 apply in plain paper with bio-data along with copy of certificate.

Applicants serving in Central Government/Autonomous body/State Government should apply through proper channel. **Last date of receipt of application:** Thirty(30th) days from date of publication of advertisement. Applicants of Andaman & Nicobar Islands, Lakkhadwip, Ladak Division of Jammu & Kashmir, North-eastern states and Sikim will get relaxation of 7(seven) days.

Persons not having requisite qualification and experiences need not to apply.

Incomplete applications will be rejected. Correspondences from candidates not selected for interview/appointment will not be entertained.

.....davp892(3) 93.....

Published in the Ananda Bazar Patrika, 18th December, 1993.

Approved
for
advertisement

CENTRAL INLAND
INSTITUTE

INSTITUTE OF AGRICULTURE AND FISHERIES
743 10, WEST BENGAL

No. 1/2/95/12

384/

Dated : 07.06.1995

MEMORANDUM

The Director, Central Inland Capture Fisheries Research Institute, Barrackpore is pleased to offer a temporary post of Senior Training Assistant - 6 (Animal Science) sanctioned under RVR 123456

to Dr. Asok Biswas

on the following terms and conditions :-

1. The post carries a scale of pay of Rs. 2200-75-2900 ~~Rs. 100-4000/-~~. His/Her pay will be fixed as per rules in force. He/She will, however, be entitled to draw such allowances as are admissible to other employees of corresponding grade and status under the ICAR at the station of his/her posting.
2. The post is non-Government, but pensionable. He/She will be governed by the ICAR pension rules which are based mutatis mutandis on the pension rules of the Government of India as amended, clarified or modified from time to time. His/Her headquarters will be at Krichi Vigyan Kendra of CIPRI, Kakowri for the present, but he/she will be liable to serve in any Institute and/or office of the ICAR located anywhere in India.
3. He/She will be on probation for a period of two years from the date of his/her joining the post which may be extended at the discretion of the competent Authority. Failure to complete the probationary period to the satisfaction of the competent Authority will render him/her liable to discharge from service.
4. His/Her appointment is subject to the condition that he/she is declared medically fit for service by the prescribed Medical Authority. Before joining the post, he/she has to produce (i) a certificate of physical fitness from the competent medical authority (i.e. Civil Surgeon, or District Medical Officer) in the prescribed form together with (ii) the certificate form as enclosed, duly signed in the presence of such medical authority.

*Asst. Dir.
In-charge
Admin.*

He/She will be allowed to join only after he/she produces the following :

- i. An attestation form duly filled in with/with the Identity Certificate.
 - ii. A certificate of character from a Gazetted Officer in the form prescribed duly attested by a District Magistrate or a Sub-Divisional Magistrate or their superior officers.
6. He/She will submit a declaration regarding his/her marital status in the form enclosed. In the event of hi /her having more than one spouse living, his/hers appointment will be subject to his/hers being exempted from the enforcement of the requirement in this behalf.
7. On appointment he/she will be required to take an oath of allegiance/faithfulness to the Constitution of India or make a solemn affirmation to this effect in the prescribed form enclosed.
8. He/She should produce the original certificates in respect of his/hers educational qualifications, age and caste.
9. He/She should state whether he/she is serving or is under obligation to serve any Central Government/State Government/Public Sector Undertaking/Autonomous Body. He/She should state whether he/she applied or is being considered for posts elsewhere.
10. He/She will not be entitled to Travelling Allowances for joining his/hers assignment.
11. His/Her appointment may be terminated without assigning any reason by one month's notice on either side under Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, as applicable mutatis mutandis to the employees of the Council.
12. If any declaration given or information furnished by him/hers proves to be false or he/she is found to have wilfully suppressed any material information, he/she will be liable to removal from service and such other action as may be deemed necessary.
13. He/She shall be required to surrender his/her Employment Exchange Registration Card to the undersigned through the concerned officer at the time of joining.

22 4 22

5. The Dy. Secretary to the Govt. of West Bengal, A.R. Development Department, A.R. Branch, Writers' Building, Calcutta with reference to his letter No. 2094-AR/5P-6/94 dated 11th July, 1994 for information and necessary action.

HEAD OF OFFICE

Director, Central Inland Capture Fisheries Research Institute, West Bengal

KVK/KAK/22-P/

11/08/1995

OFFICE ORDER

The Director, Central Inland Capture Fisheries Research Institute is pleased to appoint Dr. Asok Biswas at Krishi Vigyan Kendra, Kakdwip to the post of Senior Training Assistant T-6 (Animal Science) in the scale of pay of Rs.2200-75-2800-DB-100-4000/- with the usual allowances as admissible according to the rules of ICAR at the place of posting on the terms and conditions contained in Memorandum No.1/3/95/Adm/KVK/KAK/3041 dated 7th June, 1995 with effect from the forenoon of 21st July, 1995.

He will be on probation for a period of 2 (two) years.

(Handwritten signature)

(A.C. GHOSH)

SENIOR ADMINISTRATIVE OFFICER

To
Dr. Asok Biswas,
Senior Training Assistant T-6 (Animal Science),
Through the Officer-in-Charge,
Krishi Vigyan Kendra of CIFRI,
Kakdwip, West Bengal.

Endt.No. KVK/KAK/22-P/ dated the 4th August, 1995

Copy to :-

- 1. The Officer-in-Charge, Krishi Vigyan Kendra of CIFRI, Kakdwip, West Bengal.
- 2. The Officer-in-Charge, Library & Documentation Section
- 3. The Finance & Accounts Officer
- 4. The Drawing & Disbursing Officer
- 5. The Superintendent (Adm.I)
- 6. The Dealing Assistant (GSLIS)
- 7. Medical Cell
- 8. Assessment Cell
- 9. The Superintendent (Adm.III - Bills), CIFRI, Barrackpore for information. Dr. Asok Biswas, Senior Training Assistant T-6 (Animal Science) has been medically examined and found fit. He has been appointed against a post under KVK, Kakdwip.
- 10. Service Book
- 11. C.C.R. Dossier
- 12. Guard File

C.I.F.R.I.,
Barrackpore

(Handwritten signature)

(Handwritten signature)
Advocate

CENTRAL INLAND FISHERIES RESEARCH INSTITUTE
(Indian Council of Agricultural Research)
Barrackpore : Kolkata-700 120 : West Bengal : India

No 381-E

23rd June 2004

OFFICE ORDER

Consequent upon the closure of Krishi Vigyan Kendra of CIFRI, Kakdwip, communicated vide ICAF letter No 902/2004/VI (Part III) dated 17th February 2004 and this Office Order No 381-E dated 23rd February 2004, the following Scientist, Technical, Administrative and Supporting Officials are hereby redeployed/transferred from Kakdwip Centre of CIFRI to the new places of posting as mentioned against each in public interest.

A3

Sl. No.	Name and designation.	New place of posting
1	Shri Ganesh Chandra, Scientist	Guwahati Centre of CIFRI
2	Ms. Mira Sen, T-9	HRD Division, CIFRI, Barrackpore
3	Dr. A.K. Chattopadhyay, T-8	Kolkata Centre of CIFRI
4	Shri S.K. Sadhukhan, T-8	Reservoir Division of CIFRI, Bangalore
5	Dr. Asoke Biswas, T-6	Guwahati Centre of CIFRI
6	Shri C.N. Mukherjee, T-5	Estuarine Division, CIFRI, Barrackpore
7	Shri A.K. Goswami, T-2 (Driver)	Vehicles Section, CIFRI, Barrackpore
8	Ms. Arati Rani Parigrahi, Senior Clerk	Stores Section, CIFRI, Barrackpore
9	Shri B.P. Mishra, SSG II	Frazerganj Survey Centre of CIFRI
10	Shri Gour Gharami, SSG II	HRD Division, CIFRI, Barrackpore
11	Shri M.C. Gharami, SSG II	Pension Cell under Audit Section, CIFRI Barrackpore
12	Shri R.P. Halder, SSG II	Garden Unit, CIFRI, Barrackpore
13	Shri Basudev Gharami, SSG II	Kolkata Centre of CIFRI
14	Shri N.T. Dalui, SSG II	Estate Management Section, CIFRI, Barrackpore
15	Shri B.P. Samanta, SSG II	Estate Management Section, CIFRI Barrackpore

The above mentioned officials will be relieved of their duties on a suitable date(s) to be fixed by the Officer-in-Charge, Kakdwip Centre of CIFRI so as to enable them to report for duty to their respective Head/Officer-in-Charge.

The Officials at Sl. No 9 and 15 will remain at the Center till handing over all immovable assets and after completing all the formalities of winding up of the Centre.

They shall be entitled to joining time, leave time pay and Transfer T.A. as per rules.

They may prefer to avail leave for the period at the place of their posting.

In terms of Rules 6 of the ICAR/IF Rules, 1972, the stipulated joining time shall not be credited to their leave account unless they proceed to the new place of posting and join the post without availing full joining time and take their family later, within the permissible period of time for claiming T.A. for the family.

(D NATH)

DEPUTY DIRECTOR (ADMN)

Attested
Advocate

KAKDWIP CENTRE OF CENTRAL INLAND FISHERIES
RESEARCH INSTITUTE
(INDIAN COUNCIL AGRICULTURAL RESEARCH)
Kakdwip- 743347, South 24 Parganas, West Bengal

No. CIFRI/KAK/145

Dated: 30.06.2004

OFFICE ORDER

In pursuance of CIFRI's Office Order No. 307-E/2655-2670 dated 18th June 2004, the following Scientist, Technical, Administrative and Supporting Officials of the Kakdwip Centre of CIFRI, Kakdwip are hereby relieved from their duties on the afternoon of 30.06.2004 with the instruction to report for duty at new places of posting as indicated against their names in public interest.

The Officials have availed casual leave and restricted holidays during the period from January to June 2004 also indicated against each.

Sl. No.	Name & designation	Availed Casual Leave & Restricted holiday		New place of posting
		Casual Leave	Restricted holiday	
1.	Mr. Ganesh Chandra, Scientist	03	-	Guwahati Centre of CIFRI, Guwahati
2.	Ms. Mira Sen, T-9	02	-	HRD Division, CIFRI, Barrackpore
3.	Dr. A.K. Chattopadhyay, T-8	05	-	Kolkata Centre of CIFRI, Kolkata
4.	Mr. S.K. Sadhukhan, T-8	01	-	Reservoir Division of CIFRI, Hessarghatta, Lake Post, Bangalore
5.	Dr. Asok Biswas, T-6	04	-	Guwahati Centre of CIFRI, Guwahati
6.	Mr. C.N. Mukherjee, T-6	03	-	Estuarine Division of CIFRI, Barrackpore
7.	Mr. A.K. Goswami, T-2(Driver)	-	-	Vehicle Section, CIFRI, Barrackpore
8.	Ms. Arati Rani Panigrahi, Senior Clerk	02	-	Stores Section, CIFRI, Barrackpore
9.	Mr. B.P. Mishra, SSG-II	02	-	Frazerganj Survey Centre of CIFRI
10.	Mr. Gour Gharami, SSG-II	-	-	HRD Division, CIFRI, Barrackpore
11.	Mr. M.C. Gharami, SSG-II	04	-	Pension Cell under Audit Section, CIFRI, Barrackpore
12.	Mr. R.P. Halder, SSG-II	-	-	Garden Unit, CIFRI, Barrackpore
13.	Mr. Basudev Gharami, SSG-II	-	-	Kolkata Centre of CIFRI, Kolkata
14.	Mr. N. I. Dalui, SSG-II	-	-	Estate Management Section, CIFRI, Barrackpore
15.	Mr. B.P. Samanta, SSG-II	-	01	Estate Management Section, CIFRI, Barrackpore

Attested
for
Advocate

As per the Office Order mentioned as above, the Officials at Sl.No.9 and 15 will remain at the Kakdwip Centre of CIFRI till handing over all immovable assets and after completing all the formalities of winding up of the Centre.

R. L. Sagar
30/06/04

(R.L. Sagar)

Officer-in-Charge

Kakdwip Centre of CIFRI, Kakdwip

Copy to:

1. Mr. Ganesh Chandra, Scientist
2. Ms. Mira Sen, T-9
3. Dr. A.K. Chattopadhyay, T-8
4. Mr. S.K. Sadhukhan, T-8
- ✓ 5. Dr. Asok Biswas, T-6
6. Mr. C.N. Mukherjee, T-6
7. Mr. A.K. Goswami, T-2(Driver)
8. Ms. Arati Rani Panigrahi, Senior Clerk
9. Mr. B.P. Mishra, SSG-II
10. Mr. Gour Gharami, SSG-II
11. Mr. M.C. Gharami, SSG-II
12. Mr. R.P. Halder, SSG-II
13. Mr. Basudev Gharami, SSG-II
14. Mr. N.T. Dalui, SSG-II
15. Mr. B.P. Samanta, SSG-II
16. The Director, CIFRI, Barrackpore for his kind information.
17. The Officer-in-Charge, Guwahati Centre of CIFRI, Guwahati for information.
18. The Head, HRD Division, CIFRI, Barrackpore for information.
19. The Officer-in-Charge, Kolkata Centre of CIFRI, Kolkata for information.
20. The Head, Reservoir Division of CIFRI, Hessarghatta, Lake Post, Bangalore for information.
21. The Head, Estuarine Division of CIFRI, Barrackpore for information.
22. The Officer-in-Charge, Vehicle Section, CIFRI, Barrackpore for information.
23. The Assistant Administrative Officer(Store), CIFRI, Barrackpore for information.
24. The Officer-in-Charge, Frazerganj Survey Centre of CIFRI for information.
25. The Finance & Accounts Officer, CIFRI, Barrackpore for information.
26. The Officer-in-Charge, Garden Unit, CIFRI, Barrackpore for information.
27. The Officer-in-Charge, Estate Management Section, CIFRI, Barrackpore for information.
28. The Assistant Administrative Officer(Adm.I), CIFRI, Barrackpore for information.
29. The Drawing & Disbursing Officer, CIFRI, Barrackpore for information.

R. L. Sagar
30/06/04

(R.L. Sagar)

Officer-in-Charge

Kakdwip Centre of CIFRI, Kakdwip

COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(EA. I 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 of doubt is given under for information, guidance and necessary action :

- i) The Hon'ble Supreme Court in their Judgement 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.
 - 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

Contd - 2/

*Alleged
for
Aelwade*

ii) An employee belongs to NE Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were local rules for the post (prior to grant of SDA vide Ministry of Finance OM No. 20014/2/83 - E. IV dated 14.12.83 and 20.4.87 read with OM 20014/16/86 E.II (B) dated 1.12.88) 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.

NO

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 NE 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 re-posted 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 Service/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 in the case of SSB/ DGS, there is a common recruitment system made on All India basis and promotions are also done on the basis of All India Common Seniority basis. 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 NE Region or posted to NE Region from outside the NE 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 the employees hailing from NE Region and posted within the NE Region while in the case of others, the DACS have objected payment of SDA 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 be the norm for payment of SDA i.e. on fulfilling the criterial. 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.

It has already been clarified by MOF that clause in the appointment order regarding All India 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.

Contd 3/-

3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No.1349 dated 11.10.99 and Ministry of Finance (Expenditure)'s I.D. No.1204/E.II(B) dated 30.3.2000.

Sd/-

(P.N. THAKUR)
DIRECTOR(SR)

1. Shri R.S. Bedi, Director ARC
2. Shri R.P. Kureel, Director, SSB
3. Brig (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

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

The action taken by the Administration in the case considered by the Privilege Committee cannot be considered to be in accordance with the instructions in the matter. All Ministries/Departments are requested to ensure that the basic principles and instructions regarding observance of proper procedure are followed by all concerned in letter and spirit and avoid recurrence of such incidents as reported by the Privilege Committee by careful approach and restraint on such occasions.

[66]

Copy of O.M. No. 3/46/2000-JCA, dated 9.7.2001, Government of India (Department of Personnel and Training).

Subject: Setting up of Ad-hoc Departmental Anomaly Committees to settle the anomalies arising out of the implementation of the 5th Pay Commission's recommendations.

The undersigned is directed to refer the instructions issued by this Department vide their O.M. No. 19/197-JCA dated 5.11.1998, (Published in Services Law Journal of Feb. 1999 as Sl. No. 18), wherein it was inter-alia provided that the Departmental Anomaly Committees may be constituted by nominating staff side representatives on such Committees by the Secretary, Staff Side of the respective councils from amongst the members of the Departmental Council only as it existed as on 4.5.1995. In terms of Rule 4 of the CCS (RSA) Rules, 1963, Service Associations or Federations which were recognised before commencement of these rules were allowed to continue to be so recognised for a period of one year, later extended by six months upto 4.5.1995 to enable them to seek recognition afresh under the said rules. Pending the said process to be completed, the Departmental Councils were allowed to function on the basis of nominations as on 4.5.1995.

2. It has come to notice that Departmental Councils in certain Departments where not functioning as on 4.5.1995 for various reasons and hence the Departmental Anomaly Committees could not be constituted. In such cases it has been decided as per decision in the meeting of the Standing Committee of the National Council (JCM) held on 6.2.2001 that ad-hoc Departmental Anomaly Committees may be set up to look into the pay related anomalies in terms of this Department's O.M. No. 19/197-JCA dated 6.2.1998 (Published in Services Law Journal of March, 1998 as Sl. No. 38) by co-opting Financial Advisor, representatives of Ministry of Finance and Department of Personnel and Training and six Staff Side members to be nominated by Secretary, Staff Side National Council (JCM), Shri U.M. Purohit, 13-C, Ferozeshah Road, New Delhi, from amongst members of the National Council (JCM).

3. Ministries/Departments may take action accordingly.

[67]

Copy of O.M. F. No. 11(3)/2000-E-III(B), dated 13.6.2001, Government of India, Ministry of Finance (Department of Expenditure).

Subject: Admissibility of Special Duty Allowance of Postal Employees on their posting in NE region.

The undersigned is directed to refer to your D.O. letter No. 5-2/98-PAP III dated 10.4.2001 and D.O. letter No. 5-2/98-Vol. III dated 17.4.2001 and to say that Special Duty Allowance is granted to the Central Government Employees having 'All India Transfer Liability' as clarified in Finance Ministry O.M. No. 11(3)/98-E. III(B), dated 12.1.1996 on their posting to N.E. Region from outside the region. Since Special Duty Allowance is given as an incentive to attract talented officers to serve in N.E. Region from outside the region. It cannot be granted to Group A&B officers belonging to NE and posted in NE

Region.

As regards judgment dated 22.12.2000 which directs the respondents of Ordnance Depot worker and Postal employees and 16 OAs from other departments for waiving the recovery of Special Duty Allowance till 31.1.1989. Since the issue of waiving of Special Duty Allowance has already been settled by the Supreme Court Judgment dated 30.9.1994, the decision of CAT Guwahati Bench for its further waiving have an error. In case of Department of Posts, it is seen that the payment of Special Duty Allowance from December, 1985 to November, 1993 has not been made to their employees. It seems that the payment of Special Duty Allowance to ineligible employees have been made from December, 1988 onwards. If so, it is totally against the orders issued by Ministry of Finance on 12.1.1996, and the directions of the Apex Court in Judgment dated 20.9.1994. It is further seen the Department of Posts have already advised their regional office in file an appeal in the High Court of Guwahati against the CAT Judgment dated 22.12.2000. Therefore, Department of Posts is advised to vigorously follow up the appeal case in Guwahati High Court, wherein attention of the Court may be drawn to the Supreme Court judgment dated 20.9.1994 and the orders issued by Ministry of Finance on 12.1.1996 based on that judgment of Supreme Court.

It is further clarified that there is no bar in eligibility of Special Duty Allowance for the officers belonging to the NE Region. If they satisfy the criteria that their appointment in service/post is made on All India basis and the promotion is also done on the basis of All India Common Seniority. However, it will be admissible when they are posted in NE Region from outside the region.

[68]

Copy of O.M. No. 36035/4/2000-Estt. (Res.), dated 13.6.2001, Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training).

Subject: Designating the competent authority for interchange of reserved vacancies between sub-categories of persons with disabilities in posts/services under the Central Government.

The undersigned is directed to invite a reference to this Department's O.M. No. 36035/17/85-Estt. (SCT) dated 1.4.1986 and No. 36035/16/91-Estt. (SCT) dated 18.2.1997 (Published in Services Law Journal of August, 1997 as Sl. No. 59), wherein the procedure for maintaining a separate 100 point register for implementation of 3% reservation for persons with disabilities has been prescribed.

2. It may be noted that according to the above instructions, the recruitment authorities have to ensure that there is proper rotation of reservation amongst the categories of disabilities consistent with identification of posts suitable for different categories of persons with disabilities. This Department's O.M. dated 1.4.1986 also provided that powers would vest in the Head of Department with regard to deciding which category of the handicapped should be accommodated first if the number of vacancies is such as to cover only one block or two. Although the instructions also provided for mutual exchange in the event of non-availability of candidates in the specific category for which the reserved point occurred, the authority competent to allow such an exchange had not been specified in the aforesaid instructions. The Committee on Petitions, Rajya Sabha, while reviewing the implementation of the reservation policy for persons with disability has pointed to the need for a clarification on this point.

3. The matter has been examined and it has been decided that...

Annexure- XX

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 civilian employees of the Central Government serving in 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 State 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 Control 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 :-

i) Tenure of posting/deputation :-

There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years of less and of 2 years at a time for officers with more than 10 years of service, Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, 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 States/Union Territories of the North Eastern Region, will generally be for 3

*Attested
for
Advocate*

years which can be extended in exceptional cases in exigencies of public service 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.

ii) Weightage for Central deputation/training abroad and Special mention in confidential Records:

XX

ii) 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 per cent 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 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/ S.C. MAHALIK

Joint Secretary to the Government of India

Annexure- XXI

No. 11(3)/95-E.II (B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 12th Jan 1996

OFFICE ORDER

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

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

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

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

*Attested
by
Admn. Secy*

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

5. In some cases, the directions of the Central Administrative Tribunal were implemented. Meanwhile, a few Special Leave Petitions were filed in the Hon'ble Supreme Court by some Ministries/Departments against the orders of the CAT.

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

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

- i. the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &

- ii. the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94 but payments were made after this date i.e. 20.9.94) will be recovered.
8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.
9. In their application to employees of India Audit and Accounts Department, these orders issue in consultation with the comptroller and Auditor General of India.
10. Hindi version of this OM is enclosed.

Sd/- xxxxxx

(C. Balachandran)

Under Secy to the Govt. of India

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

ANNEXURE 'A' TO CSD ORDER NO. 11/2002 DATED 10 JULY 2002

(R)

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

New Delhi, dated the 29th May, 2002.

OFFICE MEMORANDUM

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

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) dt 12.1.1996 on the subject mentioned above

J. P. Ab
A. Z. M. A.

2. Certain incentives were granted to Central Government employees posted in NE region vide OM dt. 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 dt.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 recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in 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. S. 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.

4. In a recent appeal filed by Telecom Department (Civil Appeal No.7000 of 2001 - arising out of SLP No.5455 of 1999). Supreme Court of India has ordered on 5.10.2001 that this appeal is covered by the judgement of this Court in the case of UOI & Ors. vs. S. Vijayakumar & Ors. reported as 1994 (Supp.3) SCC, 649 and followed in the case of UOI & Ors vs. Executive Officers' Association 'Group C' 1995

B-1
A. K. S. Advocate

(Supp.1) SCC, 757 Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

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

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

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

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

(i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.2001, which is the date of 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.

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

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

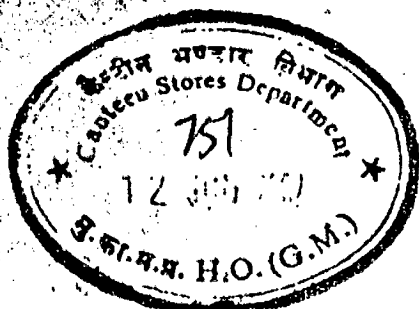
N.P.S.

(N.P. Singh)

Under Secretary to the Government of India.

All Ministries/Departments of the Government of India, etc.

Copy(with spare copies) to C&AG, UPSC etc. as per standard endorsement list.



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7000 OF 2001

(Arising out of S.L.P.(C) No. 5455 of 1999)

Union of India & Anr. Appellants

- Versus -

National Union of Telecom Engineering
Employees Union & Ors.

... Respondents

O R D E R

Leave granted.

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

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

Sd/- & N. SANTOSH HEGDE

New Delhi
October 05, 2001

Sd/- K.G. BALAKRISHNAN

*Alfred
for
Advocate*

- 233 -
- 64 -
Annexure - XXIV

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GENERAL BENCH

ORIGINAL APPLICATION NO. 237 OF 2000.

Date of decision - December 22, 2000.

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN.
THE HON'BLE MR. M.P. SINGH, ADMINISTRATIVE MEMBER.

Sri Paban Chandra Paul,
Son of Late Santosh Ch. Paul,
aged about 43 years,
Resident of Dewal Road, Jorhat.

Working as JE (Presently Survey and
Contract) in the office GE (1) (P)
Teliamura, C/O Ex-GE (P) Agartala,
MES No. 238713,
P.O. Salbagan, Agartala - 12.

- APPLICANT



By Advocates Mr. M. Chanda, Mr. V.D. Goswami
& Mr. G.N. Chakraborty.

- Versus -

1. Union of India,
Through the Secretary to the
Government of India, Ministry
of Defence, New Delhi.
2. The Headquarter Chief Engineer,
Eastern Command, Fort William,
Calcutta.
3. The Chief Engineer,
MES, Shillong Zone,
S.E. Falls, Shillong.
4. The Area Accounts Officer,
MES Shillong Zone, Shillong.
5. The Garrison Engineer (1) (P),
Teliamura, C/O Ex-GE (P)
Agartala, P.O. Salbagan,
Agartala-12.

- RESPONDENTS

By Advocate Mr. B.S. Dasgupta, Addl. C.C.S.C.

Page 2 ...

*Attested
by
Advocate*

JUDGMENT

M. P. SINGH, MEMBER (ADJG.) -

By filing the original application, the applicant has challenged the Office Memorandum dated 12th January, 1996 circulated by the Ministry of Defence under letter No.1(19)/83-D(Civ.I)Vol:II dated 18.1.1996. He has sought relief by praying for a direction to the respondents not to make any recovery of Special (Duty) Allowance (S.D.A. in short) already paid to the applicant and also for a direction to continue to pay S.D.A. to the applicant in terms of the Office Memorandum (O.M. in short) dated 14th December, 1983, 1st December, 1988 and 22nd July, 1990.



The facts of the case as stated by the applicant are that the applicant was initially appointed as a Surveyor Assistant Grade-II during the year 1980 in the department of M.E.S. The recruitment to the post of Surveyor Assistant Grade-II (S.A.II in short) is being made on All India basis and the seniority of the applicant in the cadre of S.A.II is being maintained on All India basis. As per condition laid down in the appointment order/recruitment rules, the applicant is liable to be transferred on all India basis.

4. The applicant was promoted to the post of Surveyor Grade-I in 1983. On his promotion, he was transferred to Mumbai under Southern Command, M.E.S. He stayed in Mumbai for about 3 years in the cadre of S.A. Gr.1. He was again

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transferred ...

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transferred to Jorhat in the year 1992 in the office of the C.W.E. Both the transfer and posting of the applicant were made in the public interest. He is presently posted as J.E. Quantity Survey and Contract in the office of the G.E. (1) (p) Teliamura, Agartala. The Government of India granted certain allowances and facilities to civilian Central Government employees vide Office Memorandum dated 14th December, 1983. One of such allowances granted vide the above stated O.M. to the civilian Central Government employees is called "Special Duty Allowance" (S.D.A. in short). The applicant was found eligible by the respondents for payment of S.D.A. in terms of the said O.M. and accordingly, they have started paying S.D.A. to the applicant since 1983 as per O.M. dated 14th December, 1983 except for the period during his stay at Bombay. However, in the month of May, 2000, the respondents stopped the payment of S.D.A. as well as recovered an amount at the rate of Rs.1,000/- from the pay bill of the applicant for the months of May and June, 2000. The applicant came to know that the stoppage and recovery of S.D.A. has been made following the order/direction contained in O.M. dated 12th January, 1996 circulated by the Ministry of Defence vide their letter dated 18th January, 1996 whereby it is directed that the locally recruited employees are not entitled to S.D.A. as such whatever payment is made after 20th September, 1994 should be recovered from the employees concerned. It is also mentioned therein that these instructions have been issued in pursuance of the decision of the Supreme Court dated 20th September, 1994 in Civil Appeal No.3251/1993. According to the judgment of the Hon'ble Supreme Court, the Central Government employees who have all India transfer

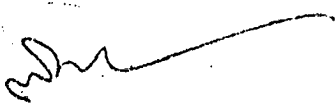


liability...

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liability are entitled to payment of S.D.A. on being posted to any station in the North Eastern Region from outside the region. A mere reading of the circular dated 12th January, 1996 makes it abundantly clear that the applicant fulfilled all the conditions laid down therein for grant of S.D.A. The applicant's recruitment zone, promotion zone and seniority of the cadre are being maintained on all India basis and the question of all India transfer liability is evident from his transfer and posting to Bombay during the year 1988 and as such, the applicant is entitled to S.D.A. in terms of the O.M. dated 14th December, 1983. Aggrieved by the action of the respondents to stop the payment of the S.D.A. to the applicant and issuing the order for recovery of the same, he has come before this Tribunal and sought the relief as mentioned in para-2 above.

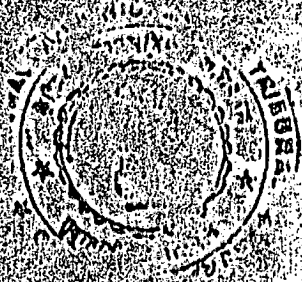
The respondents have contested the case and have stated that as per O.M. dated 12th January, 1996 issued by the Ministry of Finance, more clause in the appointment letter to the effect that persons concerned are liable to be transferred anywhere in India, did not make him eligible for the grant of S.D.A. Thus, the S.D.A. payable to the Central Government employees having all India transfer liability is stopped and recovery on account of S.D.A. paid after 20th September, 1994 was ordered. However, the respondents have not disputed the contention of the applicant made in para-4.2 about his transfer to Mumbai in the year 1988 and thereafter, he was transferred back to Jorhat in the year 1992. On perusal of the O.M. dated 12th January, 1996 issued by the Ministry of Finance, we find that the



Central ...

Central Government civilian employees who have all India transfer liability are entitled to the grant of S.D.A. on being posted to any station in the North Eastern Region from outside the region. Para-6 of the O.M. dated 12th January, 1996 issued by the Ministry of Finance states as follows :-

"The Hon'ble Supreme Court in their judgment delivered on 20.9.94 (in Civil Appeal No.3251 of 1993) upheld the submissions of the Government of India that Central Government Civilian employees who have all India transfer liability are entitled to the grant of S.D.A., on being posted to any station in the NE Region from outside the region and S.D.A. 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 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."



6. Heard both the learned counsel for rival contending parties and perused the records.

7. On perusal of records placed before us, we find that the applicant in this case has the transfer liability on all India basis. He has been recruited to the post of

wh

S.A. Grade 11...

S.A. Grade-II on all India basis and his seniority in the cadre is being maintained on all India basis. He has been transferred to North Eastern Region from outside in 1992. Keeping in view the criteria laid down in Ministry of Finance letter dated 12.1.1996, the applicant is entitled to the payment of S.D.A. As regards the recovery of the amount of S.D.A. already paid to the applicant, the Hon'ble Supreme Court in their judgment dated 20th September, 1994 in Union of India and others - Vs. - S. Vijayakumar and others, (reported in 1994 Supp (3) SCC 649) has 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. In this view of the matter, no recovery can be made from the amount of S.D.A. already paid to the applicant. Therefore, the amount already recovered at the rate of Rs. 1,000/- from the pay Bill of the applicant for the months of May and June, 2000 as stated in para-4.5 of the O.A. will have to be refunded to the applicant by the respondents.



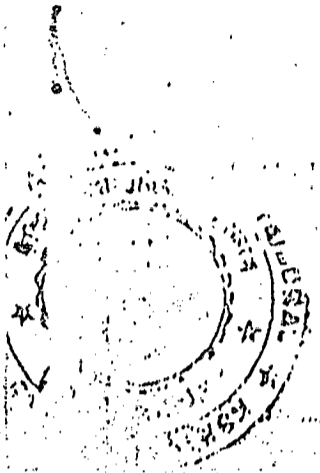
8. In the light of the above discussion, the O.A. is allowed and the respondents are directed to continue to pay the S.D.A. to the applicant in terms of the O.M. dated 11th January, 1996. The respondents are further directed that no recovery would be made from the amount of S.D.A. already paid to the applicant. In case, any amount of S.D.A. already paid has been recovered by the respondents, the same shall be refunded to the applicant immediately. The above direction shall be complied with within a period of 2 (two) months from the date of receipt of a copy of this order.

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9. Application is disposed of with the above directions.
No order as to costs.

Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)



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mk

17/11/2011
Deputy Registrar (D).
Central Administrative Tribunal.
Chandernagore Bench.
17/11/2011

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Office of the Secretary

Serial No.

Date

Office notes, reports orders or proceedings with signature

BEFORE

THE HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE H.D. DEB

5-3-2001

Heard Mr. P.K. Dhar, the learned Senior Central Government Standing Counsel for the petitioners

This writ petition, in our considered view, deserves to be dismissed in limine. The impugned judgment rendered by the Central Administrative Tribunal, Guwahati, on the basis of not only notification but a judgment of the Apex Court. We are in respectful agreement with the view taken by the Tribunal.

Finding no merit in the writ petition, the same is dismissed in limine.

Learned Tribunal in its subsequent decision allowed 2 months time. This would stand extended. The appropriate payment to be made within 2 (two) months from today.

Copy of the order is made available to the learned Senior Central Government Standing Counsel at the earliest.



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Office Superintendent (A-308)
Gauhati High Court,
Agartala Bench.

4.1.02

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Guwahati
12.09.2005

-72-

From: B. K. Bhattacharjya, Scientist
NER Centre, CIFRI
Guwahati -781006.

To: The Director
CIFRI
Barrackpore, Kolkata-700 120.

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Through Proper Channel.

Sir,

Sub: Admissibility of Special (Duty) Allowance - Regarding.
Ref: CIFRI Order No. 2/1/05 Adm. III/2005/5402 dt. 17.08.05

In inviting a reference to the HO order on the subject cited above, I have the honour to place the following facts before you for favour of your kind perusal and sympathetic action.

I have joined as a Scientist of the Agricultural Research Service of the Indian Council of Agricultural Research at the National Academy of Agricultural Research Management, Hyderabad on 15.02.1995 (Encl. 1). On completion of the 50th Foundation Course on Agricultural Research Programme Management at NARM, I was posted on regular basis at the Central Inland Fisheries Research Institute, Barrackpore (Encl. 2), where I joined on 23.07.95.

I was transferred from CIFRI Headquarters, Barrackpore to CIFRI Centre at Guwahati in public interest vide CIFRI order No. 307-E/10042 dt. 01.10.96 (Encl. 3). In compliance to the above order I joined the CIFRI Center at Guwahati on 25.10.96 (Encl. 4). The CIFRI authorities have been kind enough to grant me SDA since joining Guwahati Centre till it was stopped vide office order referred to above.

Sir, the reason cited for discontinuing SDA payment to me is that I belong to the Northeastern region of India. However, as per clause (iii) of Cabinet Secretariat UO No. 20/12/99-EA-1-1799 dt. 02.05.2000 (Encl. 5), a civilian employee of the Central Government belonging to N.E. Region and subsequently posted outside N.E. Region will be eligible for SDA if posted/transferred to N.E. Region.

In the light of the above, I would like to appeal to your esteemed self kindly to consider my case sympathetically and resume payment of SDA to me. I shall remain grateful to you for this act of favour.

Yours faithfully,

Encl.: As stated.

B. K. Bhattacharjya
(B. K. BHATTACHARJYA)

CENTRAL INLAND FISHERIES RESEARCH INSTITUTE (ICAR)
Northeastern Regional Centre
HOUSEFED Complex, Dispur (Last Gate), Guwahati- 781 006

Endt. No. BKBh/2005-

Date: 12.09.2005

Forwarded to the Director through the Head, Floodplain Wetlands Division, CIFRI, Barrackpore for necessary action.

Officer-in-Charge

Advocate
Sri Advocate

EC - 73-

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Central Inland Fisheries Research Institute

Indian Council of Agriculture Research
Northeastern Regional Centre



CENTRAL INLAND FISHERIES RESEARCH INSTITUTE (ICAR)

Northeastern Regional Centre
HOUSEFED Complex, Dispur, Guwahati 781006

No.MC/P/05-06 / 548

DI 12.09.2005

From: Dr. M. Choudhury, Principal Scientist,
NERC, CIFRI, Guwahati.

To: The Director,
CIFRI, Barrackpore
Kolkata-700 120

(Through proper channel)

Ref. No. 2/1/05 Adm III/2005/5402 dated 17.08.05
Sub: Eligibility of SDA

Sir,

Kindly refer to the above Office order issued by SAO. It is stated in the letter that SDA is not admissible to me on the ground that I belong to NEH region. Payment of SDA to me has been stopped and proposed to recover the amount already paid to me.

In this connection, I would like to draw your kind attention to the clarification issued by Cabinet Secretariat (copy enclosed).

The clarification reads as

iv) An employee hailing from NE region, posted to NE region initially but subsequently transferred out of the NE region but reposted to NE region after sometime serving in non-NE region is eligible to get SDA.

The above clarification clearly shows that I am eligible to get SDA because myself, belonging to NE region was initially posted at Guwahati but I was transferred to Bangalore vide letter No. 997-P/8161 dated. 28.06.1989 and later reposted at Guwahati vide letter No. 307-E/10391 dated. 16.11.1990.

I, therefore, request you to take necessary action in this matter.

Enc. As stated

Yours faithfully,

(M. Choudhury)

Final Application for SDA with enclosure.

From: Dr. Asok Biswas
Technical Officer, T-6 (Animal Science)
North Eastern Regional Centre of CIFRI (ICAR)
Housefeal Complex, Central Block, 4th floor, Guwahati-781006, Assam

Date: 12.09.2005

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To: The Director,
Central Inland Fisheries Research Institute (ICAR)
Barrackpore, Kolkata-700120

(Through proper channel)

Encls: 1

Sub: Admissibility of Special (Duty) Allowance- regarding

Sir,

In receipt of CIFRI Office Memorandum (No. 2/1/05/Adm.III/2005/5404 Dated 17.08.2005) on non-admissibility of Special (Duty) Allowance for rendering my services at Guwahati, Assam, I am to state the following facts with an appeal to consider my case sympathetically.

- i) I am serving in the Officer-Group-A of ICAR Technical Service Category III in Central Inland Fisheries Research Institute (ICAR) w.e.f. 21.07.1995. My service is transferable to any Institute of ICAR anywhere in India. In advertisement of my post in leading newspapers done through DAVP, it was clearly indicated that the post has got All India Transfer Liability (Encl. 1). In this context the Note No. V of Cabinet Secretariat (EA I Section) in regard to clarification of All India Transfer Liability may be referred to (Encl. 2).
- ii) While joining at Central Inland Fisheries Research Institute (ICAR) on terms and conditions in offer of appointment vide CIFRI Memorandum No. 1/3/95/Adm/KVK/KAK/3841 Dated 07.06.1995 that "His headquarters will be at Krishi Vigyan Kendra of CIFRI, Kakdwip for the present but he will be liable to serve in any Institute and / or office of the ICAR located anywhere in India" (Encl. 3). It is also mentioned in terms (1) that "He will however be entitled to draw such allowances as are admissible to other employees of corresponding grade and status under the ICAR at the station of his posting."
- iii) I have been transferred from Kakdwip Centre of CIFRI, Kadwip, South 24 Parganas, West Bengal vide Office Order No. 307-E/2659 Dated 18.06.2004 in public interest and such I am entitled to grant of Special (Duty) Allowance on being posted to any station in North Eastern Region from outside the region (Encl. 4).
- iv) As per Office Order No. CIFRI/KAK/145 Dated 30.06.2004 I was released by the Officer-in-charge, Kakdwip Centre of CIFRI, Kadwip, South 24 Parganas, West Bengal (Encl. 5), then after I have joined to the NERC of CIFRI, Guwahati on 02.07.2004 which was duly accepted by the Institute authority (Encl. 6).
- v) On joining at the NERC of CIFRI, Guwahati I was paid Special (Duty) Allowance w.e.f. 02.07.2004 to 31.07.2005 without raising any objection.

While introducing of Technical Service in ICAR it is clearly stated that the Technical Personnel under Category III may be treated at par with the Scientist in ICAR in respect of entitlement of allowances. Above all, it is understood that I may be entitled to draw the Special (Duty) Allowance for rendering my service at NERC of CIFRI, Guwahati, Assam.

Hence, I am earnestly requesting for favour of your due consideration on my admissibility of Special (Duty) Allowance and kindly resume the payment of the Special (Duty) Allowance at the earliest.

With deep regards,

Yours faithfully,

Asok Biswas
(Asok Biswas)

- Encl. Photocopy of i) Newspaper cutting of T-6 post
- ii) Note of Cabinet Secretariat (EA I Section)
- iii) Offer letter of appointment to T-6
- iv) Transfer Order to NERC of CIFRI, Guwahati
- v) Release Order from Kakdwip Centre of CIFRI
- vi) Joining letter at NERC of CIFRI, Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

IN THE MATTER OF :

O.A. NO. 295/2005

Dr. Birendra Kumar Bhattacharya & Ors.

-Vs-

Union of India & Ors.

-AND-

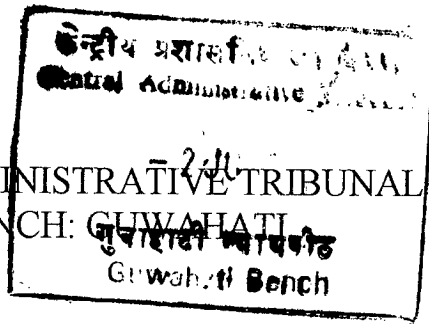
IN THE MATTER OF :

A Written Statement filed on behalf of the
Respondent Nos. 2 and 3 in the aforesaid
Original Application.

WRITTEN STATEMENT

I, Dr. Kamal Malla Bujarbaruah, son of Ananda Malla Bujarbaruah, aged about 54 years, presently working as Director of I.C.A.R, Research Complex for NEH Region, Umroi Road, Umiam, Meghalaya do hereby solemnly affirm and state as follows.

1. That, I have received a copy of the application filed by the Applicants and I have gone through the same and understood the contents thereof. I have made myself fully acquainted with the facts and circumstances of the case and I have been duly authorised by the Respondent Nos. 2 and 3 to verify and file this Written Statement on their behalf. That save and except the statements, which have been specifically admitted herein below, the rest shall be deemed to have been denied by the answering Respondents.
2. That, prior to dealing with the averments made in the various paragraphs of the application, the Deponent proposes to raise certain preliminary objections regarding the maintainability of the Original Application which are as follows:
 - (A) That, the Deponent respectfully begs to state that the Applicants, for reasons best known to them, have not arrayed the North Eastern Regional Centre of Central Inland Fisheries Research Institute where the Applicants are currently serving, as party respondents in the instant application. As such, the Original Application is apparently not maintainable for non-joinder of necessary parties.



Filed BY: The Respondent's
THROUGH: 101

Mr. R.S. Chowdhury
ADVOCATE
02/06/05.

(B) That, the Deponent states that the reasons for withdrawing the special duty allowance in respect of the Petitioner Nos. 1 and 2 are different from that of the Petitioner No.3 and apparently the grounds for moving this application are different for the Applicants and as such, this joint application is misconceived and the Petitioners are not entitled to leave under Section 4(5) of the Central Administrative Tribunal (Procedure) Rules, 1985.

The Deponent humbly begs to submit that in respect of the preliminary objections so raised by the answering Respondents, it is abundantly clear that the Original Application preferred by the Applicants showing the common cause of action is not maintainable and is liable to be dismissed at the very threshold and also for non-joinder of necessary parties. The Hon'ble Supreme Court has categorically laid down in AIR 1971 SC 2451 that once preliminary objections, so raised, are sustained, the Courts should not proceed any further on merits and ought to dismiss the petition.

3. That, notwithstanding the preliminary objections raised herein above, the answering Respondents place the following parawise reply/written statement as a measure of abundant caution.

PARAWISE REPLY :

4. That, with regard to the statements made in paragraph 4.1 of the Original Application, the Deponent has no comments to offer.
5. That, while denying the statements made in paragraph 4.2 of the Original Application, the answering Respondents reiterate the statements made in paragraph 2 herein above and further state that the reasons for withdrawing the Special Duty Allowance of the Applicant Nos. 1 and 2 are different from that of Applicant No. 3. It is also apparent that the grounds for moving the said application are different and are accordingly this joint application is misconceived and the Applicants are not entitled to leave under section 4(5) of the Central Administrative Tribunal (Procedures) Rules, 1985.

6. That, save and except what appears in the records and what has been categorically admitted herein below, all statements made in paragraph 4.3 of the said application shall be deemed to be denied and disputed by the answering Respondents.

It is stated that the Special Duty Allowance in respect of the Applicant No.1 was stopped, as he did not fulfill the criteria laid down for the grant of Special Duty Allowance. The Applicant No.1, as has been admitted by the applicants themselves in para 4.3, hails from the North Eastern region although he was selected on the basis of All India Recruitment Test and also has All India Transfer liability. However, inadvertently the Special Duty Allowance was being paid to the Applicant No.1 and when the said lapse was noticed, it was immediately rectified by issuing the Orders dated 17.08.2005 and 05.11.2005 whereby, the amount paid on account of Special Duty Allowance to the Applicant No.1 after 05.11.2001 was to be recovered in suitable installments in due course of time.

It is further denied that the Respondents did not disclose or specify the reason for such stopping of Special Duty Allowance. In the orders dated 17.08.2005 and 05.11.2005, it has been categorically mentioned that the Special Duty Allowance of the Applicant No.1 is being stopped since he belongs to the North Eastern region.

7. That, save and except what appears in the records and what has been categorically admitted herein below all statements made in paragraph 4.4 of the said application shall be deemed to be denied and disputed by the answering Respondents.

It is stated that the Special Duty Allowance in respect of the Applicant No.2 was stopped as he also did not fulfill the criteria as laid down for the grant of Special Duty Allowance. The Applicant No.2 also hails from the North Eastern region although he was selected on the basis of All India Recruitment Test and also has All India Transfer Liability. However, inadvertently the Special Duty Allowance was being paid to the Applicant No.2 and when the said lapse was noticed, it was immediately rectified by issuing orders dated 17.08.2005 and 05.11.2005, whereby the amount paid on account of Special Duty Allowance to the Applicant No.2 after 05.11.2001 was to be recovered in suitable installments in due course of time.

8. That, save and except what appears in the records and what has been categorically admitted herein below, all statements made in paragraph 4.5 of

the said application shall be deemed to be denied and disputed by the answering Respondents.

It is stated that although the Applicant No.3 is not a permanent resident of the North Eastern region, he is not entitled to Special Duty Allowance, as he does not fall within the ambit of All India Transfer Liability. It is categorically stated 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. The Applicant No.3 has, infact, not been recruited to the service on All India basis. Moreover, promotion also has not been granted on the basis of All India Zone of promotion based on common seniority.

It is categorically stated that the test for determining the All India Transfer Liability depends on several factors including recruitment zone, promotion zone etc. A mere clause in the appointment letter 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.

9. That, the Respondents state that the issue of Special Duty Allowance has been decided by the Apex Court at various points of time and in the year 2001 an appeal was filed by the Telecom Department wherein, the Apex Court held vide Order dated 05.10.2001 that the amount of Special Duty Allowance which has already been paid to employees shall not be recovered from them. In that view of the matter, the Ministry of Finance vide its Office Memorandum No. 11(5)/97-E-II (B) dated 29.05.2002 issued categorical directions and clarifications stating, inter alia, that the amount already paid on account of Special Duty Allowance to ineligible persons on or before 05.10.2001 shall be waived. It was further clarified that the amount paid on account of Special Duty Allowance to ineligible persons after 05.10.2001 will be recovered. In the said Office Memorandum it was further clarified that :

- 1) A mere clause in the appointment letter to the effect that the persons concerned liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance. The test of All India Transfer Liability of the members of any service/cadre/post has to be determined by applying the test of recruitment zone, promotion zone etc., i.e. whether recruitment to the said post/service/cadre has been made on All India Basis and whether promotion is also done on the basis of an All India common seniority list for the post/service/cadre as a whole.

- 2) Further, in para 5 of the said Office Memorandum, the criteria for payment of Special Duty Allowance which was upheld by the Hon'ble Apex Court was 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.”

As such, it is evident that the Office Memorandum dated 29.05.2002 has unambiguously and categorically held that only those persons who are from outside the region and have All India Transfer Liability are eligible for grant of Special Duty Allowance.

A copy of the aforesaid Office Memorandum dated 29.05.2002 issued by the Ministry of Finance is annexed herewith and marked as **ANNEXURE-A.**

10. That, while denying the statements made in paragraph 4.6 of the Original Application, the answering Respondents state that the Hon'ble Apex Court in the recent Telecom Appeal, as has been stated herein above, has decided the issue of Special Duty Allowance. Accordingly, the earlier rules and regulations / Office Memorandums of the Cabinet Secretariat and/or Ministry of Finance stand over ruled and the Office Memorandum dated 29.05.2002 holds the field as regards payment of Special Duty Allowance, as on date.
11. That, save and except the statements which are borne out of records and are categorically admitted herein below, the statements / averments made in paragraphs 4.7, 4.8 and 4.9 of the Original Application shall be deemed to be denied in seriatim. It is categorically stated that as has been stated by the Applicant himself, the Hon'ble Apex Court had rendered its decision on 05.10.2001 and accordingly, the answering Respondents prospectively taking the said judgment into account, decided to recover only that amount of Special Duty Allowance, which has been paid to the Applicants subsequent to 05.10.2001. It is further stated that the Applicants cannot be allowed to take the benefits of administrative lapses, which have occurred inadvertently by the Respondents. The Applicants have themselves stated that the applicability of the Office Memorandum dated 29.05.2002 (Annexure-A herein) and the directions issued by the Office Memorandum are unambiguous and categorical even in so far as the recovery of Special Duty Allowance is concerned.

The answering Respondents further state that the judgment dated 22.12.2000 passed by this Hon'ble Tribunal in Original Application No. 237/2000 and the order dated 05.03.2001 passed by the Hon'ble High Court upholding the same have no bearing in the instant case in hand, since both the judgments have been passed prior to the Apex Court's decision rendered on 05.10.2001. As such, the applicability of the said two judgments to the instant case is disputed, particularly, in view of the fact that the facts of that case are different from the facts of the instant case.

It is further denied that the Applicants have been discriminated in any manner. In fact, the payment of Special Duty Allowance to other ARS Scientists in I.C.A.R. is being made only in strict compliance with the Office Memorandum dated 29.05.2002.

12. That, while denying the statements made in paragraphs 4.10 and 4.11 of the Original Application, the answering Respondents deny that the Application has been filed bonafide. It is categorically stated that none of the grounds averred in the Original Application are legally tenable grounds in view of the facts and circumstances that have been narrated herein above. As such, there is no merit in the instant Application and the same is liable to be dismissed at the threshold

VERIFICATION

I, Dr. Kamal Malla Bujarbaruah, son of Late Ananda Malla Bujarbaruah, aged about 54 years, presently working as Director, I.C.A.R., Research Complex for N.E.H. Region, do hereby verify that the statements made in paragraphs 1 to 7, 8 (partly), 9 (partly) ^{10 to 12} of the Written Statement are true to my knowledge and those made in paragraphs 8 (partly), 9 (partly) are true to my information derived from records and rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact. I have been duly authorised to swear this Written Statement on behalf of the ~~other~~ Respondents.

And I sign this Verification on this day of June, 2006 at Guwahati.

Kamal Malla Bujarbaruah

DEPONENT

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

New Delhi, dated the 29th May, 2002.

OFFICE MEMORANDUM

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

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) dt. 12.1.1996 on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted in NE region vide OM dt. 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 dt.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 recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in 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. S. 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.

4. In a recent appeal filed by Telecom Department (Civil Appeal No.7000 of 2001 - arising out of SLP No.5455 of 1999), Supreme Court of India has ordered on 5.10.2001 that this appeal is covered by the judgement of this Court in the case of UOI & Ors. vs. S. Vijayakumar & Ors. reported as 1994 (Supp.3) SCC, 649 and followed in the case of UOI & Ors vs. Executive Officers' Association 'Group C' 1995

Certified to be true Copy


 Rakhee Sirauthis Chowdhury
 ADVOCATE

(Supp.1) SCC, 757. Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

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

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

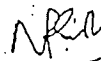
All cases for grant of Special Duty Allowance including those of All India Service Officers may be regulated strictly in accordance with the above mentioned criteria.

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

- (i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.2001, which is the date of 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.

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

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



(N.P. Singh)

Under Secretary to the Government of India.

All Ministries/Departments of the Government of India, etc.

Copy (with spare copies) to C&AG, UPSC etc. as per standard endorsement list.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

In the matter of: -

O.A. No. 295 of 2005

Dr. Birendra Kumar Bhattacharjya & Ors.

-Vs-

Union of India and Others.

-And-

In the matter of:-

Rejoinder submitted by the applicants in reply to the written statements submitted by the respondents.

The applicants above named most humbly and respectfully beg to state as under: -

1. That with regard to the statements made in Para 1, 2, and 3 of the written statements, the applicants specifically deny the contention raised by the respondents, more particularly in para 2 (A) and (B) of the written statement and further beg to say that, impugned office order dated 17.08.05 (Annexure- 5 Series of the O.A) has been issued by the office of the Central Inland Fisheries Research Institute (i.e. office of the respondents) and the same were directly communicated to all of the applicants by a common order denying the benefit of SDA. As such question of impleading North Eastern Regional Centre of Central Inland

Filed by the applicants
through: S. Naha
Advocate
15/9/2007

SDA

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Fisheries Research Institute where the applicants are serving does not arise at all. Therefore the plea of non-joinder of necessary parties is totally vague and the same has been raised just for the sake of argument. It is categorically submitted that Original Application is maintainable. So far as the contention raised by the respondents in paragraph 2 (B) of the written statement, it is humbly submitted that the respondents by a common impugned order denied payment of SDA to the applicants as such there is no bar to submit a joint application under Sec 4 (5) (a) of Central Administrative Procedure Rule 1985. Hence the contention of the respondents is wrong and the Original Application is maintainable in its present form and the preliminary objection raised by the respondents is not sustainable in the eye of law. In this connection it is stated that

2. That with regard to the statements made in paragraphs 5, 6, 7 and 8 of the written statement, the applicants deny the correctness of the same and further beg to say that by a common impugned order payment of SDA has been denied to the applicants. As such all the applicants are legally entitled to approach the Hon'ble Tribunal through a common Original Application under Section 19 of the Central Administrative Tribunals Act 1985 and further entitled to move jointly under the provision laid down in Sec 4 (5) (a) of CAT (Procedure) Rules 1985. It is pertinent to mention here that the payment of SDA has been denied to the applicants by a common impugned order dated 17.08.2005 by the office of the respondent No. 2, as such the objection raised in paragraph 5 of the written statement is not maintainable.

That the ground raised in paragraph 6 of the written statement wherein it has been stated that the payment of SDA is discontinued to the applicant No. 1 on the sole ground that the applicant No. 1 belongs to N.E. Region cannot be sustained in the eye of law as because the nodal Ministry i.e. the Ministry of Finance, Govt. of India after pronouncement

of the judgment of S. Vijaykumar and others by the Hon'ble Supreme Court on the question of entitlement of SDA, the Govt. of India, Ministry of Finance subsequently issued the O.M dated 13.06.2001 (Annexure- XIX page 55 of the O.A), clarifying the entitlement of SDA so far the officers belonging to N.E. Region, wherein it has been stated if the officers belonging to N.E. Region and satisfy the criteria that their appointment in service/post is made on all India basis and the promotion is also done in all India common seniority basis. However, the same would be admissible when such officers belonging to N.E. Region are posted in N.E. Region from outside the N.E. Region, and the same O.M neither cancelled, modified nor revoked by the authority and the said O.M is still in force and holding the field. In this connection, it may be stated that a similar clarification is also given by the Ministry of Finance, while clarification was sought by the Cabinet Secretariat on the question of entitlement of SDA to the employees belonging to N.E. Region, but serving under the SSB Directorate, the said clarification would be evident from Cabinet Secretariat letter dated 20.05.2000 (Annexure- XVIII of the O.A). It is relevant to mention here that the said clarification was given by the Ministry of Finance, in connection with pending Court cases. In terms of the said clarification that an employee belonging to N.E. Region is also entitled to payment of SDA, in the event of reposting in N.E. Region. In view of the said clarification of the Ministry of Finance, employees belonging to N.E. Region are also entitled to payment of SDA provided they are posted to N.E. Region from outside the N.E. Region. As such the contention raised by the respondents in the impugned order dated 17.08.2005 and 05.11.2005 are not sustainable in the eye of law, so far as the applicant No. 1 and 2 are concerned.

In paragraph 6 of the written statement it has been stated that SDA was inadvertently being paid to the applicant No. 1 and when the said lapse was noticed it was immediately rectified by issuing the impugned office order dated 17.08.05 and 05.11.05. In this context it is to point out

that the deponent of the written statement (Dr. K.M. Bujarbaruah), who is the Director of the ICAR Research Complex for the North Eastern Hills Region, Umiam, Meghalaya has been currently holding the additional charge of the Officer-on-Special-Duty of the National Research Centre on Pig (ICAR), Guwahati. The deponent is fully aware of disbursement of SDA to Dr. Madan Kumar Tamuli, Principal Scientist of the NRC on Pig (who is also a permanent resident of NE Region like applicant No. 1) in his official capacity as the OSD of the said NRC. Therefore, the argument of the deponent that the applicant No. 1 was inadvertently being paid SDA appears to be dichotomous. The applicant fails to understand as to why the deponent is in favour of paying SDA to an employee who is working under him (Dr. M.K. Tamuli) but is not inclined to give the same benefit to the applicant No. 1 working under the same ICAR system and have the same case as that of the former i.e. belong to NE Region but one will be entitled to SDA and other one deprived of the same benefit. It is pertinent to mention here that Dr. Tamuli initially joined as a Principal Scientist at the Central Sheep & Wool Research Institute (ICAR), Avikanagar, Rajasthan before being transferred to National Research Centre on Pig (ICAR), Guwahati. In this context, it is sought to draw the attention of the Hon'ble Tribunal that the applicant No. 1 (Dr. B.K. Bhattacharjya) was initially posted at CIFRI, Barrackpore and subsequently transferred to NER Centre of CIFRI (ICAR), Guwahati in public interest.

It is also clear from the foregoing that SDA was sanctioned to Dr. Tamuli because he had been transferred from outside the state of NE Region although Dr. Tamuli basically belongs to NE Region. Another instance can also be cited from Ministry of Commerce, GOL, Mr. T. Gohain, Scientist S-2, Rubber Research Institute of India has been granted SDA on re-transfer to Guwahati from West Bengal. On the same analogy Dr. M. Choudhury (applicant No. 2) should also be entitled to get SDA. But unfortunately the respondents put his argument in favour of

discontinuation of payment of SDA to Dr. Choudhury only on the ground that he basically belongs to NE Region.

It is humbly submitted that the grounds advanced by the respondents denying the payment of SDA to the applicant No. 3, it is categorically submitted that since the respondents themselves admitted in paragraph 8 of the written statement that the applicant No. 3 is not a permanent resident of NE Region, but since he is posted to NE Region from outside the NE Region, on that score alone the applicant No. 3 is entitled to payment of SDA, more so in view of the fact that the applicant No. 3 is a permanent resident of West Bengal and there is a specific clause in his appointment letter that he is liable to serve anywhere in India, in any Institute or office of the ICAR. Therefore posting of applicant No. 3 from outside the region is a glaring example of all India transfer liability, even it would be evident from the posting order of the applicant No. 3, i.e. order dated 18.06.04 (Annexure- XVI of the O.A) where transfer has been effected from a different region of the country. As such the contention of the respondents that the applicants are not entitled to payment of SDA on the alleged ground that applicant No. 1 and 2 belong to NE Region and applicant No. 3 is not saddled with all India transfer liability are contrary to the clarification given by the Govt. of India, Ministry of Finance in O.M dated 13.06.2001 as well as Cabinet Secretariat letter dated 02.05.2000 and further contention of the respondents that the applicant No. 3 is not saddled with all India transfer liability is contrary to their own records. In this connection it is relevant to mention here that one Mr. Chandrasekhar, Assistant (Group 'C' staff) transferred to National Research Centre on Pig (ICAR), Guwahati from Indian Veterinary Research Institute, Barielly, UP has been getting SDA from establishment of the Director, National Research Centre on Pig (ICAR), Guwahati. As such the respondents cannot apply different yardstick in case of the applicant for payment of SDA. Be it stated that in reply to the averments made by the respondents that the applicant No. 3 has in fact not been recruited to the service on All

India basis, the same is categorically denied and the applicant No. 3 further begs to state that in the Handbook of Technical Services-Appendix V it is laid down that direct recruitment to T-6 will be through ASRB on all India basis. As such the contention of the respondents that the applicant No. 3 has not been recruited on all India basis is contrary to the policy of the respondents department and the same is not correct.

3. That your applicants further beg to deny the correctness of the statements made in paragraph 9, 10, 11 and 12 of the written statement and beg to state that in the case of the Telecom department by the Hon'ble Supreme Court where all the respondents were locally recruited and never posted outside the region, as such the case of the present applicants cannot be tagged with the cases of the respondents in Civil Appeal No. 7000/2001. However, the said judgment of the Hon'ble Supreme Court in Civil Appeal No. 7000/2001 was enclosed by the applicants to establish the fact that even in this case where employees are not entitled to payment of SDA, if the same has been paid by the respondents of their own, the said amount cannot be recovered by the Union of India, in view of the law laid down by the Hon'ble Supreme Court in the case of the Telecom employees. It is pertinent to mention here that on the basis of the subsequent clarification made on the question of entitlement of SDA, so far employees belonging to NE Region are concerned has already been dealt by the learned Tribunal in a series of cases and some of those cases have already been upheld by the Hon'ble Gauhati High Court. Therefore, the cases of the present applicants are squarely covered by the decision rendered by this Hon'ble Tribunal in similar cases. The applicants urge to produce all the relevant decisions of the Hon'ble Tribunal as well as Hon'ble Gauhati High Court at the time of final hearing of the case.

It is humbly submitted that clause 5 of the O.M dated 29.05.2002, support the case of the present applicants wherein it has been specifically

stated that SDA should be admissible to Central Govt. employees having all India transfer liability on their posting to NE Region from outside the region.

In the facts and circumstances stated above, the Original Application deserves to be allowed with cost.

VERIFICATION

I, Dr. Birendra Kumar Bhattacharya, Son of Late Ghanashyam Bhattacharya, aged about 39 years, working as Scientist in CIFRI, NER Centre, Housefed Complex, Guwahati- 16, Assam, applicant No. 1 in the instant Original Application duly authorized by the others to verify the statements made in the rejoinder, do hereby verify that the statements made in paragraph 1 to 3 are true to my knowledge and I have not suppressed any material facts.

And I sign this verification on the 15th day of September 2006.

Birendra Kumar Bhattacharya