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

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓ O.A/T.A No..... 36/2005
R.A/C.P No.....
E.P/M.A No.....

1. Orders Sheet..... Pg..... 1 to..... 2

2. Judgment/Order dtd..... Pg..... 10 to..... 10

3. Judgment & Order dtd..... Received from H.C/Supreme Court

4. O.A..... Pg..... 1 to..... 47

5. E.P/M.P..... Pg..... to.....

6. R.A/C.P..... Pg..... to.....

7. W.S..... Pg..... to.....

8. Rejoinder..... Pg..... to.....

9. Reply..... Pg..... to.....

10. Any other Papers..... Pg..... to.....

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

15. Amendment Reply filed by the Applicant.....

16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 36/05

OF 199

Applicant(s)

S. Roy Choudhury

Respondent(s)

U. O. I & OY.

Advocate for Applicant(s) Paria Chakraborty, G. Deka, Mallika Deb

Advocate for Respondent(s) G.G.S.C

Notes of the Registry	Date	Order of the Tribunal
	16.2.2005	<p>Present : The Hon'ble Mr. M.K. Gupta Judicial Member.</p> <p>The Hon'ble Mr. K.V. Prahladan, Administrative Member.</p> <p>Heard learned counsel for the applicant in detail. The claim of the applicant for SDA can be bifurcated in the two parts, namely dated 13.10.1986 to May 1996 and since 27.12.2000 till date, when he was reposted to the N.E. Region from Central India Region. It is the contention of the learned counsel for the applicant that despite various representation made to the concerned authority, no final decision has been taken. The Respondent No. 2 & 3 are instead of taking any final action, are avoiding to take final decision though under the O.M. issued on the said subject, he is entitled to the said allowance.</p>

OA. 36/05

Notes of the Registry	Date	Order of the Tribunal
<p><u>7.3.05</u></p> <p>Copy of the order has been sent to the Dpeo for taking the due to the applicant as well as to the Respnd No. 2 by P82.</p> <p>H.P</p>	<p>contd.</p> <p>16.2.2005</p>	<p>As far as the claim of the applicant for the period from 13.10.1986 to May 1996 is concerned, we are of the view that Section 21 of the Administrative Tribunals Act comes into play and the said claim is barred by limitation. As far as the claim of the applicant for the period from 27.12.2000 till date onwards is concerned, since the applicant's representation on the said subject remain pending with the respondent Nos. 2 and 3 and as no final decision has been taken, we deem it fit to dispose of the present O.A. by issuing direction to the respondents to take final decision thereon and pass a speaking and reasoned order within a period of three months from the date of receipt of this order. Accordingly, we direct the respondents to take final decision on the subject as directed hereinabove.</p> <p>Accordingly, the O.A. is disposed of under Section 19(3) of the Administrative Tribunals Act 1985.</p>


Member (A)


Member (J)

LIST OF DATES

PR - 4II
Pg - 2

Applicant appointed as Superintendent
Building/Roads (B/R) Grade-I in Unit GE
869 EWS & M.E.S.

1970-1982, Working in NE Region.

1982-1986 serving outside NE Region.

October 1986 till May 1996 serving in
NE Region.

June 1996 - January, 2001 serving outside
NE Region since January, 2001 till date ser-
ving in NE Region.

PR-4III 14.12.1983 O.M. relating to grant of incentive to
Pg-3 20.4.1987 the Central Govt. employees having All
01.12.1988 India Transfer Liability posted in NE
12.01.1996 Region from outside the Region as SDA
No restriction regarding payment of
allowance between residence of NE
Region with those of outside the NE
Region (Annexure-1)

PR-4IV
Pg-4

4 - 6 - 2003

(ANNEXURE-2)

O.M. issued by the Head Office MES New Delhi
clarifying Group-A Group-B officers entitled
to SDA having All India Transfer Liability and
no restriction to the residents of NE
Region.

PR-4 V
Pg - 4

30.1.2004

(Annexure-3)

O.M. issued by Office of Chief Engineers HQ
Shillong reiterating in above line.

Contd...2.

PR-4 VI

Pg - 5

7.10.2003

(Annexure-4)

Head office at New Delhi informing no ambiguity regarding payment of SDA to Group-A and Group -B officers having All India Transfer Liability - copy forwarded to CDA Ghy. AAO Shillong Eastern Command, Kolkata.

PR-4 VII

Pg - 6

10.8.04

CDA Ghy. requiring necessary guideline/policy in the matter (Annexure-5)

31.8.04

Necessary guideline/policy etc. furnished to CDA Guwahati (Annexure-6)

PR-4 VIII

Pg - 7

15.9.04

CDA Guwahati transferring the matter to be taken up by AAO Shillong (Annexure-7)

27.9.04

Head Quarter 137 Works Engineer 99 APO again taking up the matter with AAO Shillong (Annexure-8)

PR-4 IX

Pg - 8

30.10.04

Reminder by Head Quarter 137 Works Engineer C/O 99 APO for settlement of payment of SDA to the applicant (Annexure-10) The pending representation filed by the applicant (Annexure-9).

PR-4 X

Pg - 8

The clarification provided by the Cabinet Secretariat while settleing the cases of similar claim (Annexure-11).

PR-4 XI

Pg - 9

21.2.03

Similar claim allowed by the Tribunal and subsequently sanction approved by the Govt. of India (Annexure-12).

C O N T E N T I O N

PARA - 5

I)

No confusion regarding the payment of SDA to the applicant, withholding the incentive for such a long time against guideline/ policy formulated by Govt. of India is illegal and arbitrary.

II)

Refusing the entitlement of the applicant inspite of specific guideline is failure on the part of the respondent to perform their obligation is liable to interfered.

III)

Allowing the incentive to other similarly situated person while withholding the claim of the applicant is discriminatory and violative of his Fundamental Rights guaranteed under the Constitution of India.

IV)

Inaction on the part of respondent No. 2 inspite of specific direction by CDA Guwahati and Head Office at New Delhi is not justifiable and liable to be interfered.

V)

The approach of the respondent shifting burden from one to another over these years inspite of specific guidelines/circular/ Govt. clarification in this regard caused unnecessary harassment to the applicant requiring intervention of this Hon'ble Court.

Central Administrative Tribunal

31 JAN 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

(An application Under Section 19 of the Administrative
Tribunal Act, 1985)

ORIGINAL APPLICATION NO 36 OF 2005.

Sri S. Roy Choudhury Applicant.

- Versus -

Union of India & Ors. Respondents.

I N D E X

<u>Sl. No.</u>	<u>Description of documents</u>	<u>Pages</u>
1.	Application	1 - 14
2.	Verification	15
3.	Annexure-1	16-19
4.	Annexure-2	20-23
5.	Annexure-3	24-25
6.	Annexure-4	26
7.	Annexure-5	27
8.	Annexure-6	28
9.	Annexure-7	29
10.	Annexure-8	30
11.	Annexure-9	31-36
12.	Annexure-10	37
13.	Annexure-11	38-43
14.	Annexure-12	44-47

Date of filing : - 28.1.2005

Registration No : -

Filed by : -
Gutumani Deka
Advocate

Registrar.

8
Filed by the Petitioner
through
Mallika Deka

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
AT GUWAHATI.

ORIGINAL APPLICATION NO. 36 OF 2005

Sri S. Roy Choudhury

Son of late Prof S.K. Roy Choudhury

Working as DCWE B/R

HQ 137 W.K.S. Engineers

C/O 99 A.P.O.

...Applicant

-Versus-

1. Union of India

represented by the Secretary to the
Govt. of India, Ministry of Defence,
New Delhi.

2. The Area Accounts Officer

Shillong - 793001

3. Controller Defence Accounts

Udayan Vihar,

Narangi, Guwahati 781 071

...Respondents

DETAILS OF APPLICATION

1. Particulars of Orders against which the
application is made :/

The application is made against the illegal
and arbitrary withholding the ~~sex~~ special Duty
allowance payable to the Central Govt Employees under
the Government Police vide Govt. of India office

....2.....

5. *Recd/checked/initials*

Memo dated 14/12/83 (in brief hereinafter referred as SDA) and 20.4.1987, 1/12/1988 and 12.1.1996 respectively.

2. Jurisdiction of the Tribunal :

The Applicant declare that the subject matter of the order against which the Applicant went redressal is within the jurisdiction of the Tribunal.

3. Limitation :

The matter is not served by limitation.

4. Facts of the Case :

(i) That the applicant is a citizen of India and is a permanent resident of Lakshmi Charan Road, Karimganj, P.O. and District of Karimganj.

(ii) That the Applicant is serving as Deputy Commander Works Engineer (D.C.W.E) at present working in 1137 Works Engineers C/O 99 A.P.O.

That the applicant was initially appointed as Superintendent Building/Roads (B/R) Grade I in the Unit in February 1970 GE 869 EWS in the Military Engineering Service, the post carried all India Transfer Liability during the same. Since the date of his joining till 1982 he was serving in North Eastern Region, thereafter he was posted to outside North Eastern Region again posted to North Eastern Region during October, 1986 and remained there till May, 1996, he was again posted outside North Eastern Region during 1996 and was serving under Central Command. During January, 2001 he is again transferred to North Eastern Region where he serves till date.

Slope of the theory

(iii) That under the Government Policy vide Departments O.M. No.20014/3/83 EIV dated 14/12/83 and 20/4/1987 and O.M. No.20014/16/86-E IV/E.II(B) dated 1/12/88 and O.M. No.11(3)/95-E.II (B) dated 12/1/1996 certain incentives were granted to the Central Government employees posted in North Eastern Region (Hereinafter referred as N.E. Region) termed as Special Duty Allowance. The incentive so allowed is confined to those Central Government Employees having All India Transfer liability the allowances as referred hereinabove is allowed since 1986-1987 ~~xx~~ by the Govt. of India no restriction whatsoever is made regarding payment of the allowance to those ~~outside~~ who hail from N.E. Region but transferred outside the region and again transferred to N.E. Region with those of who belong/hail from outside the NE Region and ~~the~~ are posted to NE Region. The O.M./Circulars referred to hereinabove had made this position clear on various occasions.

Copies of the O.M. issued by the Govt. of India Ministry of Finance dated 29/5/2002 clarifying the position regarding payment of SDA to those having All India Transfer Liability referring to various office Memorandum dated 14/12/83, 20/4/87, 1/12/88, 12/1/1996 in this regard is enclosed and marked as Annexure-1.

S. Deo Choudhury

12
S. K. Ghoshal
S. K. Ghoshal
S. K. Ghoshal

(iv) That the applicant states that there is hardly any ambiguity or confusion regarding the release of SDA to the officers since the Govt. of India repeatedly had made it clear that no restriction in the regard is made to the residents of NE Region when they actually fulfil the criteria of All India Transfer Liability and are transferred to NE Region from outside the Region. The O.M. No. 90237/7521 ETC (Legal C) dated 4/6/2003 issued by the Head Office Military Engineering Service, New Delhi had reiterated that Group A and B Officers certain other categories are entitled to SDA having All India Transfer Liability. That the applicant states that Assistant Executive Engineer and above are grouped under Group A and Assistant Engineer, BARRACK Stores Officers comes under Group B officers. The applicant having been an officer under Group B since 1986 entitled to the SDA since his transfer to NE Region on 13.10.86 till May 1996 and again from 27/12/2000 till date on his transfer to NE Region from Central India Region.

A copy of the O.M. dated 4/6/2003 issued by the Head Quarters Military Engineering Service New Delhi as referred hereinabove is enclosed herewith and marked as Annexure - 2.

(v) That the applicant states that in consequence with the Government Policy and various office Memo as referred herein above the office of the Chief Engineer Head Quarters Shillong Zone has informed

the matter to all the Units vide office Memo No. 77551/90/Policy/SDA/57/EI Legal dated 30/1/2004 to allow the SDA to the eligible officers/employees who have All India Transfer Liability and posted to NE Region from outside the region very specifically mentioning that no restriction to the payment of the allowance shall be made to the residents of NE Region who are transferred from outside the region.

Copy of the O.M. dated 30/1/2004 is enclosed herewith and marked as Annexure - 3.

(vi) That the applicant states that what has been stated in the foregoing paragraphs, the various office Memorandums referred hereinabove, Government Policy in this context makes it evident that the applicant is entitled to the SDA from 13/10/1986 to May 1996, that is on on his transfer to NE Region from outside the Region from GE Binaguri to GE(AF) Tezpur and from 27/12/2000 till date on his transfer from Central Command (Jhansi) TalBehat, U.P. to Shillong then to some field area in North Eastern Region where he serves now. The applicant being Group A officer and his appointment carrying All India Transfer Liability cannot be discriminated because of the fact that he is a resident of NE Region. But inspite of all this the SDA was not allowed to him as allowable under the Government Policy though repeated request/correspondences has been made with the concerned authorities for release of the same. The matter was thus taken up with the Head Office at New Delhi and the Head Office

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vide its memo dated 7/10/2003 had intimated that there is hardly any ambiguity regarding the entitlement of SDA as regards Group A and Group B officers and certain other categories since their promotion and seniority is on the ALL India basis having All India Transfer Liability and in this context referred to the O.M. dated 4/6/2002 (Annexure - 2). A copy of the said letter was also forwarded to the Eastern Command at Kolkata, CDA Guwahati (Respondent No. 3), AAO Shillong (Respondent No. 2) for their information.

A copy of the letter dated 7/10/2003 as aforesaid is enclosed herewith and marked as Annexure - 4.

(vii) That the applicant states that the Head Quarters 137 Works Engineers 99 APO, where the applicant is working at present had taken up the matter with the Area Account officer, Shillong (hereinafter referred as AAO Shillong) and also with the Controller of Defence Account at Guwahati (hereinafter referred as CDA) for payment of SDA to the applicant. In response to one such communication made by the Head Quarter 137 Works Engineers C/O 99 APO the office of the Respondent No. 3 required the O.M. dated 30/1/2004 issued by the Head Quarter Chief Engineer, Shillong (Annexure-3) for examination of the claim of the applicant. That the same was immediately furnished to the office of CDA Guwahati vide letter dated 31/8/2004 along with all the necessary

guidelines in this regard dated 30/1/2004 (Annexure-3) 4/6/2003(Annexure-2) the clarification in this regard to the Cabinet Secretariate along with letter dated 17/5/2000 issued by the Directorate General of Security New Delhi which leave hardly any doubt regarding entitlement of the applicant.

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A copy of the letter dated 10/8/2004 issued by the CDA Guwahati requiring the necessary guideline/Policy in the matter along with a copy of the letter dated 31/8/2004 furnishing the same to the CDA Guwahati are enclosed herewith and marked as Annexures 5 and 6 respectively.

(viii) That the applicant states that on examination of the relevant policy/guideline/circulars in this regard the office of the CDA Guwahati had referred the matter to be ^{again} taken up with the AAO Shillong, Respondent No. 2 regarding payment of SDA to the applicant. The matter was thus taken up with the Respondent No. 2 by the Head quarters 137 Works Engineer, ((APO for release of the SDA to the applicant vide letter dated 27/9/2004.

Copies of relevant communication dated 15/9/2004 and 27/9/2004 are enclosed herewith and marked as Annexures 7 and 8 respectively.

15
S. Jayachandru

(ix) That the applicant states that since then there is complete standstill in the matter and the grievance of the applicant still remains unattended by the respondents authorities. The applicant himself has made series of representation in order to redress his grievances but no action whatsoever has been taken by the respondent authorities to meet the same. That even the Head Quarters ^{137 works engines} APO had also issued successive reminders in the matter to the concerned respondents ^{but} no action has been taken by them to release the SDA to the applicant as per his entitlement.

Copy of the representation remaining pending before the respondents along with a copy of the reminder dated 30/10/2004 are enclosed herewith and marked as Annexures 9 and 10 respectively.

(x) That the applicant states that in some other cases the payment of SDA a confusion arose as to the entitlement of the allowance to those who hails from NE Region or are residents of NE Region as such they approach the Court of law for a direction for payment of the allowance and in this context clarification was ~~sought~~ sought from the Government. The clarification provided by the Cabinet Secretariat in this connection had also reiterated that an employee having All India Transfer Liability hailing from NE Region posted to NE Region initially subsequently transferred out of the region and reposted to the

NE Region would be entitle to the allowance.

A copy of the clarification as referred to hereinabove is enclosed herewith and marked as Annexure -1A.

(xi) That the applicant states that while adjudicating the similar claim by other incumbants this Hon'ble Tribunal had allowed there prayer and subsequently the same was sanctioned approved by the Govt. of India.

Copies of the communication dated 21.2.2003 allowing the incentive to Sri B.B.Das ~~engaged~~ and A.K.Bhattacharjee are enclosed herewith and marked as Annexure-12.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

(i) Fbr that under ~~in~~ the O.M. dated 14/12/83 relating to payment of SDA to those Central Govt. employees serving in NE Region, the O.M. dated 20/4/87 in the same line allowing SDA to those having All India Transfer Liability and OM dated 29/5/2002 (Annexure-1) issued by the Ministry of Finance to the exten that SDA shall be admissible to the Central Government employees having All India Transfer Liability on posting to NE Region and the OM dated 4/6/2003(Annexure 2) issued by the Head Office Military Engineer Service New Delhi clarifying that no restriction is made to the effect that the residents of NE Region shall not be entitle to

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SDA when they fulfil the criteria of ALL India Transfer Liability and are transferred to NE Region from outside the region. Therefore withholding such incentive to the applicant by the respondents is violative of the guidelines and policy formulated by the Govt. of India which are in form and guides the payment of ~~xxx~~ of the incentive and in that view of the matter the non payment of SDA to the applicant is illegal arbitrary and as such liable to be set aside and quashed.

(ii) For that the manner in which the respondents has acted in refusing the entitlement of the applicant in spite of specific guideline in this regard is highly malafide and cannot be in any manner sustained in the eye of law. The action of the respondent No. 2, the AAO Shillong in not releasing the allowance to the applicant is a failure on his part to perform his obligation and is highly arbitrary and liable to be interferred by this Hon'ble Court and adjudged as such.

(iii) For that the action of the respondents in allowing the incentive to ~~to~~ other similarly situated persons while withholding the claim of the applicant is highly discriminatory and violative of applicants fundamental Right guaranteed under Article 14 and 16 of the Constitution of India and in that view of the matter the same being illegal is liable to be declared as such and set aside and quashed.

19
Supp. Application

(iv) For that the inaction on the part of the respondent No. 2 in releasing the SDA to the applicant in spite of specific direction from respondent No.3 the CDA Guwahati and as well as the communication made by the Head Office at New Delhi vide letter dated 7/10/2003(Annexure 4) is not justifiable in any manner and as such liable to be interferred by this Hon'ble Court directing and commanding the respondents to release the allowance and incentive to the applicant forthwith.

(v) For that over more than a period of 3 years the respondents are dilly-dallying with the matter and shifting burden from one to another for deciding the entitlement of the applicant in spite of specific guideline/circulars/ Government clarification in this regard which has caused severe harassment to the applicant and as such it is a fit case where this Hon'ble Court intervenes and give specific direction to the respondents to release the SDA to the applicant since 13/10/86 to May 1996 that is on his transfer from Binnaguri to Tezpur till he was posted there and from 27/12/2000 till date that is on his transfer from Jhansi to NE Region again forthwith.

6. DETAILS OF REMEDIES EXHAUSTED

(i) That the applicant states that he is no other alternative and efficacious remedy available to redress his grievance of the applicant since the CDA Guwahati had directed the matter to take up with the AAO Shillong again and his representation before the AAO Shillong is pending for disposal, letter dated 27/9/2004(Annexure 8) and letter dated 30/10/2004 issued by the Head Quarters 137 Works Engineers 99 APO to the respondent No. 2 and 3

respectively for allowing the claim of the applicant. The necessary guidelines, circular etc referred to hereinabove in this connection also forwarded to the respondents to avoid any confusion in the matter, the successive representation by the applicant as well as the communication of the Head quarters are remaining pending before the respondents which has virtually failed to evoke any response from their side. That in addition the applicant has also served Notice giving one month time to settle his claim regarding payment of SDA vide Notice dated 22.12.2004 giving intimation to all concerned including Ministry of Defence, Ministry of Finance, Controller of Defence Accounts and all the concerned Higher Officials that is the Head quarter Military Engineering Service Shillong and the Head quarter 137 Works Engineer C/O 99 APO but till date he has not received any communication from them. The applicant is highly satisfied that nothing fruitful will result if he persists to peruse the matter with the respondents.

7. MATTER PENDING WITH ANY OTHER COURT :

That the applicant states that since he has exhausted the remedies available to him by taking up the matter with the respondents and other various Head quarters since the matter can be adjudicated by this Hon'ble Court he files the instant application before this Hon'ble Court and no other application or petition is preferred/pending before any Court in the same matter.

8. RELIEFS SOUGHT

In view of the facts and circumstances states in paragraph 4 of this application the applicant prayed for the following reliefs :

2
S. K. Ghoshadhury

(a) Declaration that the inaction on the part of the respondents in releasing the SDA to the applicant ever since 1986 to May 1996 and since 27.11.2000 to is against the circulars/policy/guideline/Government inforce and as such illegal arbitrary and malafide and therefore liable to be set aside and quashed by this Hon'ble Court.

(b) Declaration that the action of the respondents in allowing the incentive to the other similarly situated person while denying the same to the applicant without any justifiable reason is arbitrary and discriminatory and violative of applicants fundamental Rights guaranteed under Part III of the Constitution of India.

(c) Direction to the Respondents to release the SDA to the applicant from 13/10/1986 to May 1996 that is on his transfer to NE Region from GE Binnaguri till he served in the NE Region and again from 27/12/2000 to till date on his transfer from the Central Region (Jhansi)Telbhedit U.P. to NE Region where he serves till date he being a Group 'A' officer having All India Transfer Liability.

(d) Direction for payment of SDA to the applicant since 13/10/1986 to May 1996 and 27/12/2000 till date.

(e) For any other relief or reliefs as this Court may fit deem and proper under the facts and circumstances of the case.

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9. INTERIM PRAYER

Pending disposal of this application an observation may be made that pendency of this application shall not be a bar to decide/release the incentive to the applicant and the instant application may be disposed off expeditiously.

10. PARTICULARS OF I.P.O.

- (i) I.P.O. No. 204-117889
- (ii) Date 25-1-05
- (iii) Payable at Guwahati

11. LIST OF ENVELOPES

As indicated in the Index.

VERIFICATION

I, Sri S. Roy Choudhury, son of late Professor S.K. Roy Choudhury, aged about 59 years, working as Deputy Commander Works Engineer (D.C.W.E) Head Quarter 137 Works Engineer, C/O 99 A.P.O. do hereby verify the statements made in paragraphs 1, 2, 3, 4 (i & ii), 5, 6, 7 are true to my knowledge and those made in paragraphs 4 (iii to vi) are true to my information derived from records and I have not suppressed any material facts.

And I sign this Verification on this day of January, 2005 at Guwahati.

S. Roy Choudhury

SIGNATURE

Annexure-1

F.No. 11(5)/97-E-11(B)

Government of India

Ministry of Finance

Department of Expenditure

New Delhi dtd the 29 May,03

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 ~~8~~ Sikkim.

The undersigned is directed to refer to this Department's OM No. 20014/3/83 E.IV dated 14.12.83 and 20014/3/86-EIV/E II(B) dated 1.12.88 read with OM No. 20014/16/86-EIV/E II(B) date 1.12.88 and OM No. II(3)/95/95-EII(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 ~~xxxxxxxxxxxxxxOMdtxxxxxx20x4x87~~ 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.

Contd. . . 2.

Certified to be true Copy

to be true Copy
Gutumani Deka

Advocate

3. Some employees working in NE region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued ~~xxxxxx~~ time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in Judgment delivered on 20.9.94 (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 Judgment of this Court in the case of UOI & Ors. Vs. S. Vijayakumar & Ors, reported as 1994 (Supp.3) 649 and followed in the case of UOI & Ors. Vs. Executive Officers' Association Group-C 1995 (Supp.1) SCC 757, Therefore, this appeal is to be allowed in favour of the UOI, Hon'ble Supreme Court further ordered that whether amount has been paid to employees by way of SDA will not in any event, be recovered from them inspite of the fact that the appeal has been allowed.

Contd...3.

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

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

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

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

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

(ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5.10.2001 will be recovered.

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

- 4 -

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

Sd/- Illegible,

(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.

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-I-1799 dated 2.5.2000.

Annexure-2

Dte Gen of Pers EIC (Legal)
Military Engineer Service
Engineer in Chief's Branch
Army Headquarters
Kashmir House
DHQ PO New Delhi - 110001

No. 90237-7521 EIC (Legal-C) 04 Jun 2003

CE Eastern Command
Kolkata-21.

DISPOSAL OF ALL COURT CASES ON PAYMENT
OF SDA TO MES EMPLOYEES

1. Reference this HQ letter of even number dated 24 Feb 2003.
2. We had vide our above mentioned letter forwarded copies of four MOD letters No. PO-90237/7521/EIC (Legal-C) ~~894~~ 89 LC/D(Civ-1)/2003 dated 21 Feb 2003 containing MOD decision regarding grant of SDA to applicant of OA No. 238/2000 filed by Shri PM Kitan and two others in CAT Guwahati. The decision of MOD in the ibid case arrived in consultation with Ministry of Finance will apply to all cases relating to grant of SDA. It is, accordingly advise that eligibility of all individuals including applicants of the various Court CAT cases on SDA filed in different CATs/higher Courts may be examined based on the following ~~criteria~~ as reproduced from Min of Finance (D/Exp) OM No. 11(5)97E-11(B) Dated 29 May 02(copy enclosed) : -

"SDA is admissible to the Central Govt employee who have All India Transfer Liability on their posting to NE region from outside the region. No restriction is made to the effect that the residents of NE region shall not be entitled to SDA where they fulfil the criteria of All India Transfer Liability and are transferred posted in NE region from outside the region."

- 2 -

The Ministry of Finance vide para 2 of their OM No. 11 (5)/97-E-11(B) dated 29 May 2002 referred above has clarified the concept of all India Transfer Liability. Particular attention may be given to this para 2 of Ministry of Finance OM ibid while deciding the eligibility of applicants for grant of SDA. Going by the stipulations laid down in ibid para 2, the following categories of MES employees are covered by the criteria of all India Transfer Liability and hence may be considered for grant of SDA : -

(a) Basic Subordinate Categories -Erstwhile Supdt Gde I (now re-designated(E) Supvr B.S.I. D'Man Gde & and Asstts.

(b) Officers All Gp 'B' & Gp 'A'

For deciding the eligibility of the applicants of various Court/CAT cases, date may be compiled at your HQ separately for each CA as per format enclosed as Appx'A' to this letter. Proof for deciding the eligibility will comprise the following : -

(a) copies of orders regarding recruitment or promotion to one of the grades mentioned at para 3(a) and (b) above and the relevant Part II order regarding assumption of an appointment in that grade.

(b) Copies of orders posting the eligible Officers to an Unit/Establishment in North East and the relevant TOS part I/Order issued by the receiving Unit.

- 3 -

5. After identifying the applicants ~~sum~~ found eligible for grant of SDA, ~~th~~ their cases accompanied with proofs as indicates at Para 4 (a) & (b) above, should be sent to concerned Audit Office for making the payment. In case of Court judgments sanction of competent authority for incurring charged expenditure would be required. It is possible that out of the applicants found eligible for grant of SDA, some might have already been paid the SDA for some time but the same was stopped afterwards. In case of such employees the payment should continue from the date ~~at~~ it was stopped till the period they continued to ~~th~~ be posted in North Eastern Region.

6. In the case of applicants of CAT/Court cases are found ~~is~~ ineligible for payment of SDA, necessary Speaking Orders be issued to them.

7. You are requested to forward a completion report separately from each OA by 30 July 03.

Sd/- Illegible,

(MAM RAJ)

SAO

Offg so I (Legal)

For E-in-C

Encls : - As above.

Copy to : -

Shillong Zone : for info and necessary action.

CGDA (AT) for info and necessary action. You are requested to issue necessary instructions to your subordinate Offices in this matter and forward ~~us~~ a copy for our information and record.

Contd...4.

Min of Def/D (Civ-I) for info wrt Note 34 dtd. 27 May 03
recorded on our PC No. 90237/
7521/EIC (Legal-C).

E-in-C's Br/E-5(Budget) : for info alongwith a copy each
of all relevant enclosures; and the
refs quoted in para 1 above.

E IC. : You are requested to issue appropriate instructions for payment
of SDA to non applicants in the
light of clarifications issued vide
Min of Fin M No. 11(5)/97/E II(B)
dated 29 May 02 and their ID No.
25(4)/E II(B)/2001 dt. 19 Feb 03
(copies enclosed.

Annexure-3

Headquarters
Chief Engineer
Shillong Zone
SE Falls
Shillong - 11

77551/90/Policy/SDA/57/EI(Legal) 30 Jan 2004

Col JK Satpathy
CWL
HQ 137 Works Engrs
C/O 99 APO

Col SK Pathak
CWE Tezpur

Shri GC Jain, SE
CWE Dinjan

Shri RK Pandey, SE
CWE Shillong.

PAYMENT OF SDA TO MES EMPLOYEES

1. Reference is made to the following letters : -
 - (a) Dte Gen of Pers/EIC (Legal), E-in-C's Branch No. 90237/7521/CIC (Legal-C) dt 04 Jan 2003 and dt. 03 Oct 03 (Copies att),
 - (b) This HQ letter No. 77551/90/Policy/SDA/07/ EI (Legal) dt Jul 2003, 77551/90/Policy/SDA/09/ EI (Legal dt 11 Jul 2003, 77551/90/Policy/SDA/ 13/EI (Legal) dt Jul 2003.
2. SDA is admissible to ~~as~~ the Central Govt. employee who have ~~All~~ India Transfer Liability on their posting NE Region from outside the region. No restriction is made to the effect that the residents of NE region shall not be entitled to SDA when they fulfill the criteria of All India Transfer Liability and are transferred/posted in NE Region from outside the region.

- 2 -

3. The following categories of MES employees are covered by the criteria of all India Transfer Liability and hence considered for grant of SDA on their posting to NE Region from outside the region.

"All Gp 'A', 'B' officers, Erstwhile Supdt GdeI (now redesignated JE), Supvr B/S Gde I, D'Man Gde I, Steno Gde I and Asstts."

4. All other categories, such as Supvr B/S II, SK I & II, Steno Gde II & III UDC, LDC, D'Man Gde II, Peon, Chowkidar, all industrial staff are not covered for grant of SDA and hence as per Para 6 (ii) of Govt. of India Ministry of Finance, Department of Expenditure OM NO II(5) /97-EII(B) dt 29 May 02 (copy att), the amount paid on account of SDA to ineligible persons after 05 Oct 2001 is to be recovered.

5. In view of above, you are requested to take all corrective actions stipulated above. Non-adherence of above policy and for any financial irregularities/over-payments, your office will be held responsible.

6. Please also intimate details of ineligible persons who were paid SDA after 05 Oct 2001 alongwith financial effect. In this connection please refer our letter No. 7551/90/Policy/SDA/52/EI (Legal) dt 13 Jan 2004.

(ML Das)

Dy Dir (B/S)

for Chief Engineer

Copy to :-
All GEs/GE(I) & AGE(I) ----

AAO Shillong alongwith above policy letters.

Internal

E7 Sec for information and necessary action please.

Dte: Gen of Pers/EIC (Legal)
Military Engineer Service
Engineer in Chief's Branch
Army Headquarters
Kashmir House
DHQ PO New Delhi-110011.

No: 90

GE 869 EWS
C/O 99 APO

07 Oct 2003

NON-RECEIPT OF SDA : OFFICERS

Reference: CGDA letter No. AT/II/2366/SDA-V dated 23 Sep 2003.

2. CGDA has taken a very serious view in corresponding directly with their Office. You are advised to desist from such direct correspondences in future.
3. As far as this HQ letter No. 90237/7521/EIC (Legal-C) dated 04 Jun 2002, there should not be any ambiguity as regards Gp 'A' & 'B' Officers as their promotion and Seniority is on all India Basis, having all India Transfer Liability. This HQ letter dated 04 Jun 2002 in consultation with Min of Def.
4. However, forward a copy of CGDA's observation at your earliest so that further action can be initiated by this HQ.

Q
(PKR Nair)
AO
SO 3 (Legal)
For E-in-C

N.O.O

Copy to :

1. CGDA, West Block-V
RK Puram, New Delhi-66
2. CEB East
Kolkata
3. CDA, Guwahati
4. AAO, Shillong

The letter dated 04.6.2002 (copy attached has clearly indicated that Gp 'A' & 'B' Officers are entitled for SDA having all India Transfer Liability. which was issued in consultation with Min of Def. However, on receipt of exact nature of obsn, matter will be referred for final orders please.

... direct all lower formation not to correspond directly with CGDA and the channel of correspondences should be strictly adhered to.
for info. Please direct AAO to intimate exact nature of obsn for taking up matter with CGDA.
for info and necessary action pl.

Certified to be true Copy

Gutumari Deka

No. Pay/ Tech/SDA/CA 1/IV
Office of the CDA
Udayan Vihar, Narangi
Guwahati - 781171
Dt. 10/8/04

To

The Commander
HQ 137 Works Engineers
C/O 99 APO

Subject: - Payment of SDA to MES-220215, Shri. S. Roy Choudhury, EE, DCWE, BR
Reference: - Your D.O. No. 1318/19/EIP Dt. 1/8/04

With reference to the above-cited communication it is requested that a copy of Chief Engineer Shillong Zone, Shillong letter No. 77551/Policy/SDA/3.1/6 (Legal) Dt. 30/1/04 may please be forwarded to this office for our examination and further necessary action as the same does not appear to have been received in this office so far.

R. Bora

A.O. (PAY)

27/2/08
17/10/08

1318/

Certified to be true Copy
G. Tumani Deka
DCCAT

Annexure-6

Tele : 6823 (Mil)

Headquarters
137 Works Engineers
C/O 99 APO

No. 1318/25/ELP

31 Aug 2004

CDA
Narangi
Udyan Vihar
Guwahati-71

PAYMENT OF SDA TO MES - 220215 SHRI

S. ROYCHOUDHURY, EE, DCWE B/R

1. Reference your office letter No. Pay/Tech/SDA/CAT/IV dated 10 Aug 2004.
2. The photocopy of the following letters are forwarded ~~with~~ herewith as desired please :
 - (a) HQ CE Shillong Sone letter No. 77551/90/Policy/SDA/57/EI (Legal) dated 30 Jan 2004.
 - (b) Dte Gen of Pers/EIC(Legal), E-ih-C's Branch letter No. 90237/7521/EIC (Legal-C) dated 04 Jun 2003 alongwith enclosures.
 - (c) Clarification from Cabinet Secretariat (EA I Section)
 - (d) Directorate General of Security, Director SSB, New Delhi Memo No. NGE/SDA/31-2700/4645-53 dated 17 May 2000.
3. It is also submitted that the copies of above letters were also forwarded to AAO Shillong.
4. In view of the above necessary directions may please be issued to AAO Shillong for admitting the SDA to aforementioned Officer.

Encl : Ten Pages.

Sd/- Illegible,
(Gopalakrishnan K)
Major
Adjt
for Cdr Wks Engrs

Copy to : -

AAO Shillong - for info and necessary action pl.

Certified to be true Copy

Subumani Deka
Advocate

Annexure-7

No. Pay/Tech/SDA/CAT/v
Office of the CDA Guwahati
Udayan Vihar, Narangi
Guwahati 781171

Dated 15/09/04

To,

HQrs
137 Works Engineer
C/o 99 APO

Subject : - Payment of 'special Duty Allowance' (SDA)
to MES/220215 Shri S. Roy Chowdhuri,
E.E DCWE B/R.

Reference : Your letter No. 1318/25/B1P dated 31.08.04

You are requested to take up the matter with
AAO Shillong.

2914
27/9

sd/- Illegible,
(A.N. GADE)
Asstt. Controller

Certified to be true Copy

Gitumani Deka
Advocate

Annexure-8

Tele : 6042 (Mil)

Head Quarters

137 Works Engineers

C/O 99 APO

No. 1316/SR/39/EIP

27 Sep 2004

AAO Shillong

PAYMENT OF 'SPECIAL DUTY ALLOWANCE' (SDA) TO
MES-220215 SHRI S ROYCHOUDHURY, EE DCWE(B/R)

1. CDA Guwahati vide their letter No. Pay/Tech/SDA/CAT/IV dated 10 Aug 2004 has requested to forward a copy of HQ CE Shillong zone letter No. 77551/Policy/SDA/57/EI (Legal) dated 30 Jan 2004, in reply this HQ has forwarded the copies of required letter to CD. Guwahati vide this HQ letter No. 1318/25/EIP dated 31 Aug 2004 alongwith a copy to your office also.

2. Now CDA vide their letter No. Pay/Tech/SDA/CAT/V dated 15 Sep 2004 has requested this HQ to take up the case with your office (copy of CDA's letter attached).

3. In this connection please also refer regular Pay bill of Jul 2004 in respect of above named Officer, where you have intimated that the case has been referred to CDA, Guwahati.

4. In view of above, it is requested to admit the SDA, as the Officer may take shelter of law for non admitting the SDA.

Sd/- Illegible,
(Gopalakrishnan K)

Major

Adjt

for Cdr Wks Engrs

Encl : (As above)

Copy to : -

CDA Guwahati- 71 for info wrt your 27/9
letter cited above at
para-2 pl.

Sd/- Illegible,

Internal

No. 1318/EIP - for compliance.

Certified to be true Copy

Gurumani Deka
Advocate

To

The Area Accounts Officer,
Shillong, Meghalaya.

Sub : - Non payment of SDA to the applicant.

1. The payment of SDA to MES employees was allowed vide HQ Chief Engineer Zone (here after HQ CESZ) letter No. 77551/90/Policy/SDA/57/EI (Legal) dated 30 Jan 2004 (Copy enclosed at Appx-'A')
2. The modalities of payment of SDA was based on (a) Dte Gen of Pers/EIC (Legal), E-in-C's Br Letter No. 90237/7521/EIC (Legal-C) dated 04 Jun 03 and even No dated 03 Oct 03 (copy attached at Appx-'B').
3. As per Para-2 of HQ CESZ letter, SDA is admissible to the Central Govt. Employees who have All India Transfer Liability on their posting to NE Region from outside region. No restriction is made to the effect that the residents of NE Region shall not be entitled to SDA when they fulfill the criteria of All India Transfer Liability and are transferred/posted in NE Region from outside the region.
4. Para 3 of the aforementioned HQ CESZ letter categorized following official to be covered by the said criterian : -

"All Group 'A' and 'B' Officers, Suptd B/R Gde-I
(now ~~rank~~ redesignated Junior Engineer), supervisor

Certified to be true Copy

Gutumani Deka

Contd...2.

B/S Gde-I, Draughtman Gde-I, Steno Gde-I and
Assts."

5. Accordingly Regular Pay Bill in respect of Sh.s Roychoudhury was submitted to Area Accounts Office, Shillong (hereafter AAO, Shillong) including entitlement of SDA for the month of April 04 from HQ 137 Wks Engr bearing voucher No. CV/30/02/WE dt 20 Apr 04. The claim for SDA was not allowed by AAO, Shillong Sh. Sinha, UDC of this HQ 137 Wks Engrs vitiating AAO Shillong for collection of cheque slip of Regular Pay Bill for the month of Apr 04. The concerned officials of AAO Shillong handed over one proforma to Shri Sinha to be submitted duly filled in with certain service particulars of Sh. S. Roychoudhury for consideration of the case for admitting SDA.

6. Accordingly the proforma supplied by the AAO Shillong authorities was submitted vide letter No. PF/SRC/137/27/E2 dated 07 May 04 to HQ 137 Wks Engrs who in turn forwarded the same to AAO, Shillong duly supported with all connected details alongwith regular pay bill for the month of May 04 bearing HQ 137 WE vr No. CV/30/09/WE dated 18 May 04. Again the claim for SDA was disallowed by AAO Shillong.

7. The subsequent regular Pay Bill including SDA were submitted to AAO, Shillong for the month of Jun 04, Jul 04, Aug 04, Sep 04, Oct 04 but the claims of SDA were disallowed on some or the other ground, such as incited recruitment in NE Region, Case referred to CDA etc.

8. As the legitimate SDA was not being admitted by the Audit authorities, on one ground or the other, the clarification of admissibility of SDA issued by Cabinet Secretariat was obtained and forwarded to AAO, Shillong vide HQ 137 Wks Engrs letter No. 1316/SR/27/EIP dt. 09 Jun 04 for consideration and admittance of SDA. But still no positive response has been obtained.

9. Considering the stalemate, Col JK Satpathy, CWE HQ 137 Wks Engrs referred the case to Sh. Pankaj Hazarika ACDA of CDA, Guwahati vide DO letter No. 1318/19/EIP dated 01 Aug 2004. In reply Shri. AN Gade, ACDA vide DO letter No. T/24/137/Engr-IV dt. 10 Aug 04 asked for the details of the case to enable them to deal the case Shri Gade intimated also reference of the case to Pay/Tech section of the office of CDA.

10. With reference to DO letter from CWE HQ 137 Wks Engrs Shri RU Bora, AO (Pay) vide CDA Guwahati letter No. Pay/Tech/SDA/CAT/IV dated 10 Aug 04 intimated, non receipt HQ CESA letter No. 77551/Policy/SDA/57/EI (Legal)dt 30 Jan 04 and asked for the same for their examination and further necessary action.

11. Accordingly, photocopy of the following letters were forwarded to CDA vide HQ 137 Wks Engrs letter No. 1318/25/EIP dt. 31 Aug 04 for issuance of necessary instructions to AAO Shillong for admitting the SDA, endorsing a copy of the same letter to AAO Shillong.

(a) HQ CE Shillong zone letter No. 7551/90/
Policy/SDA/57/57/EI (Legal) dated 30 Jan 2004.

(b) Dte Gen of Pers/EIC(Legal), E-ih-C's Br
letter No. 90237/7521/EIC(Legal-C) dated 04 Jun
2003 alongwith enclosures.

(c) Clarification from Cabinet Secretariat (EAI ~~same~~
Section).

(d) Directorate General of Security, Director SSB,
New Delhi memo No. NGE/SDA/31-2700/4645-53 dated
17 May 2000.

It may not be out of place to mention that the copies of above all letters were also fwd to AAO Shillong vide HQ 137 Wks Engrs letter No. 1316/SR/27/EIP dt 09 Jun 2004.

12. After due consideration at CDA Guwahati wrt HQ 137 Wks Engrs letter No. 1318/25/~~EXXEIP~~ dated 31 Aug 04, Shri AN Gade, ACDA, CDA Guwahati instructed to take up the case with AAO Shillong vide CDA Guwahati letter No. Pay/Tech/SDA/CAT/V dated 15 Sep 04, bringing the whole case to square one. Incidentally Sri AN Gade, ACDA did not endorse the copy of the letter to AAO Shillong.

13. In the meanwhile, right from the month of Apr 04, the claim of SDA was being preferred alongwith all the monthly regular pay bills, the photocopies of these are enclosed for referring to the remarks endorsed at AAO Shillong in support of non admittance of the claim of SDA.

14. As per the instructions by Sh. AN Gade, ACDA, CDA Guwahati the case has again been referred to AAO ~~xxxxxx~~ Shillong vide HQ 137 Wks Engrs letter No. 1316/SR/39/EIP dated 27 Sep 04, but till todate no communication has been received (Copy attached).

15. Due to non receipt of any communication, Col Deepak Singh, Cdr, HQ 137 Wks Engrs again vide DO letter No. 1316/SR/43/EIP dated 30 Oct 04 referred the case to Sh AN Gade, ACDA, CDA Guwahati for passing necessary instruction to AAO Shillong for admitting the legitimate claim of SDA.

16. In the above context, the following justice is requested.: -

(a) CDA should ensure that the legitimate claim of SDA is paid to the grieved Officer at the earliest.

(b) The initial date from which the SDA was made admissible to legitimate Govt. employees ?

(c) All the pay bills from 1986 onwards are available with AAO Shillong CDA should ensure that the claim of the Officer is readily cleared right from the beginning seeking assistance from the respective paying offices.

(d) Audit auth should clearly specify as to why the legitimate claims are not being admitted inspite of clear instructions.

- 6 -

(e) Why the Govt employees are beimg harrased ?
And why no disciplinary action should be initiated
against the erring officials ?

An early disposal in this regard is solicited.

Thanking in anticipation.

Yours sincerely,

S. RoyChoudhury
DCWE B/R HQ 137
Works Engineers ,
C/O. 99 APO.

Copy to : -

- 1) CDA Guwahati
- ii) Ministry of Defence
- iii) Ministry of Finance
- iv) Controller General of Defence Accounts
- v) Head Quarter MES Shillong.
- vi) HQ 137 Works Engineer, C/O. 99 APO.

1316/SR/ 43 /E1P

30 Oct 04

Dear Shri Gade,

1. Please reference your DO letter No T/24/137/Enge-IV dt 10 Aug 04.
2. I am writing this DO letter in connection with non adjustment of SDA in respect of MES 220215 Shri S Roychoudhary, EE, DCWE B/R of my office.
3. The above named offr is entitled for SDA and authority/documents in support of his legitimate entitlement have already been sent to your office vide this office letter 1318/25/E1P dt 31 Aug 04 in response to your letter cited under reference.
4. I regret to inform you that AAO Shillong is not admitting SDA for no reason. May I therefore request you to make use of good office and AAO Shillong be suitably instructed to act upon our letter No 1316/SR/39/E1P dt 27 Sep 04. The offr is under tremendous financial distress.

m/h - Warm regards

J

Shri AN Gade, IDDS
Asst CDA
Udayan Vihar
Guwahati - 781171

30/10
Certified to be true Copy

Gulumani Deka
Advocate

29/10

Annexure-11

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 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 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.11(B) dated 7.5.97.

Certified to be true Copy

Gurumani Deka
Advocate

Contd...2.

- 2 -

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

An employee belongs to NE Region was appointed as Group C & D employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM. No. 20014/2/83-E IV dated 14.12.83 and 20.4.87 read with OM 20014/16/86 E.11(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 YES

posted/transferred to NE Region

He is also having a common All India Transfer Liability.

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-E11(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 (c) in the case of SSB/DGS, there is a common recruitment system ~~Made~~ made on All India basis and promotions

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

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.

vi) Based on point (iv) above, some of the units of SSB/DGS have authorised payment of SDA to the employee 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

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 7 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.

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 U.O. No. 1204/E-II(B)/99 dated 30.3.2000.

Sd/- Illegible,

(P.S. THAKUR)
DIRECTOR (SR)

Shri R.S. Bedi, Director , ARC
Shri R.P. Kureel, Director, SSB

Contd...6.

Shri Brig (Retd) G.S. Uban, IG, SFF

Shri S.R. Mehra, JD (P & C), DGS

Shri Ashok Chaturvedi, JS (Pers), R & AW

Shri B.S. Gill, Director of Accounts, DACS

Shri J.M. Menon, Director Finance (S), Cab. Sectt.

Col.K.L. Jaspal, CIOA, CIA

Cao, Sectt. UO. No. 20/12/99-EA-I-1799 Dated 2.5.2000.

52
40

No. PC-90237/7521/EIC(Legal-C)/39-LC/D(Civ.I)/2003

Government of India

Ministry of Defence

New Delhi-110011

21st February, 2003

To

The Chief of the Army Staff

Subject:- Implementation of CAT Guwahati Judgement dated 25th September, 2001 in OA No. 238/2000 filed by Shri P.M. Kittan and 2 Others.

Sir,

I am directed to refer to the Hon'ble CAT Guwahati judgement dated 25th Sept. 2001 in OA No. 238/2000 filed by Shri PM Kittan and 2 others and to say that the question of payment of Special Duty Allowance (SDA) has been examined taking into account the criteria of All India Transfer Liability as prescribed in MOF OM F No. 11(5)/97-E.II(B) dated 29-5-2002 read with their earlier orders. On applying this criteria of eligibility, the following officers have been found to be eligible for grant of SDA from the dates indicated against their names below:-

(a) MES No.242236 Sh. B.B. Das, BSO	From 31-8-93 till the date the officer continues to be posted in NER
(b) MES No. 236465 Sh. A.K.Bhattacharjee, AE	From 28-6-90 to 20-1-94 23-10-97 to 26-5-2001

Accordingly, sanction of the President is hereby conveyed to the payment of Special Duty Allowance as per admissible rates to the above officers from the dates of their reposting in NER from outside as mentioned against their names above. Shri P.M. Kittan, UDC, has however, not been found eligible for grant of SDA as per prescribed criteria.

2. The amount so due as arrears will be paid to the applicants under Charged Expenditure Head for which a separate sanction will be issued.

Certified to be true Copy
Gurumani Deha
Advocate

3. This issues with the concurrence of Ministry of Dcf (Fin) vide their U.O.No.130/AG/PB/2003 dated 21st Febrary,2003.

Yours faithfully,



(Piara Ram)

Under Secretary to the Govt. of India.

Copy to:-

E-in-C's Branch /Army Hqrs.
CE,Eastern Comand, Kolkata
CE,Shillong Zone, Shillong
✓CWE,Tezpur
GE, Tezpur
CGDA New Delhi
CDA Guwahati--- ink signed copy
Area Accounts Office, Shillong
DFA(AG/PB)
AF/Org-4(Civ)(d)
DFA(Works)

No.90237/7521/EIC Legal-C/86-LC/03
Government of India
Ministry of Defence
D(Civ.I)

Dated 21st February, 2003

To

Shri A.K. Bhattacharjee, AE
MES/236465, GE, Allahabad

Subject: OA No.238/2000 filed by Shri P.M. Kitan, UDC and others v/s UOI and
others.

The Hon'ble CAT Guwahati Bench in their order dated 25.9.2001, in OA
No.238/2000 has given the following directions:-

"Admittedly, there is no dispute that a person who are posted from outside to NE Region and reposted to the NE Region is entitled to SDA. No written statement had been filed. In the circumstances we direct the respondents to examine the case of the applicants individually and if it is found that the applicants were posted from outside to NE Region and thereafter transferred and posted in the NE Region, in that event the respondents shall take steps for payment of SDA to the applicants from the date of reporting in the respective places. If any deduction was made from the applicants these are to be refunded to them forthwith on completion of the exercise."

2. In compliance with the orders of CAT, Guwahati, your case has been examined keeping in view the orders contained in the Ministry of Finance, Deptt. of Expenditure OM dated 11(5)/97-E.II(B) dated 29.5.2002 circulated vide Ministry of Defence ID No. Ministry of Defence ID No.4(6)/2002/D(Civ.I) dated 10th October, 2002, read with all the orders issued earlier.

3. You were originally recruited as Supdt. B/R Grade II in the year 1970. Subsequently you were promoted as Supdt. B/R Grade I on 27.1.88 and thus came under All India Transfer Liability, from this date i.e. 27.1.1988. Thereafter, you have served in the NER, coming from outside during the following period:-

- (i) 28.6.1990 to 20.1.1994 in GE(AF) Borjar
- (ii) 23.10.1997 to 26.5.2001 in GE. Tezpur

During the above period, mentioned at (i) & (ii) above you are entitled to the grant of SDA as per the orders of the Ministry of Finance(Deptt. of Exp.) and Ministry of Defence mentioned above.

4. With the issue of this speaking order, the direction of the Hon'ble CAT, Guwahati Bench in OA No. 238/2000 filed by you and others has been complied with. This speaking order is issued in supersession of the earlier speaking order issued by CE Shillong Zone, Shillong vide their letter No. 70222 OA 239/2000/Legal/ 140/E-1 dated 30.10.2002. A Govt. letter for implementation of CAT Guwahati orders will be issued separately.

Piara Ram

(Piara Ram)
Under Secretary to the Govt. of India

Copy to :

- 1) E-in-C Branch (EIC Legal)
- 2)CE, Eastern Command, Kolkata
- 3)CE, Shillong Zone, Shillong
- 4)CWE, Tezpur/GE Borjar.
- 5)GE, Tezpur
- 6) GE, Allahabad
- 7)CGDA, New Delhi
- 8)CDA, Guwahati
- 9)Area Accounts Office, Shillong