

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

1. Original Application NO. \_\_\_\_\_

2. M.P.s Petition No. \_\_\_\_\_

3. Contempt Petition No. \_\_\_\_\_

4. Review Application No. 1 / 2008 in OA 295705

Applicant(s) Shri. ASOK Biswa VS Union of India & Ors

Advocate for the Applicants... Mr. M. Chanda,  
Mr. S. Nath & Mrs. U. Dutta

Advocate for the Respondent(s) Mrs. Manjula Das, Ad Case

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

12.2.08

24.03.2008


Mr. M. Chanda, learned counsel

This Review Petition has been filed by the Applicant No 3 in OA 295705 through the Advocate U/S 22(3) of the Administrative Tribunal Act 1985 read with Rules 1987 praying for stay the impugned judgment and order dated 31.12.07 passed in OA 295705 so far the review applicant is concerned till disposal of the Review Application.

appearing for the Applicant is present. Mrs. R.S. Choudhury, learned counsel appearing for the Respondents in the O.A. is represented by Mr. M. Mahanta. Copy of the R.A. is served to the Respondents' side.

Call this matter on 22.05.2008.


Names of Mr. K. N. Choudhury, Mrs. R.S. Choudhury, and Mr. K. Borthakur, counsels for the Respondents are to be shown in the Cause List.


  
(M.R. Mohanty)  
Vice-Chairman

This may be placed before the Hon'ble Vice-Chairman for his Lordship's kind approval for circulation the same laid before the Hon'ble Vice-Chairman for approval.

22.05.2008

On the prayer of Mr. M. Mohanta, learned counsel for the Respondents, call this matter on 23.6.2008.

  
(Khushiuram)  
Member(A)

  
(M.R. Mohanty)  
Vice-Chairman

*(General) U/S 22(3) of the Administrative Tribunal Act 1985*  
4/2/08

REGISTRAR

lm

*Handwritten notes and signatures at the bottom of the page, including 'H.M. (A) (2/1/08)' and other illegible scribbles.*

23.06.08

Mr M.Chanda, learned counsel for the Applicant is present. None appears for the respondents.

Call this matter on 23.07.2008.

(M.R. Mohanty)  
Vice-Chairman

pg

23.07.2008.

Ms.U.Dutta, learned counsel appearing for the Applicant is present. No steps have been taken by the Respondents to file ~~in reply~~ **to answer their reply.**

Issue notice to the Respondents (in the R.A) to file their reply by 29<sup>th</sup> August, 2008. Mrs. U. Dutta, learned counsel for the Applicant undertakes to file extra copies of the R.A. and required postages for issuance of notices to the Respondents by 25<sup>th</sup> July, 2008.

Call this matter on 29<sup>th</sup> August, 2008.

  
(Khushiram)  
Member(A)  
(M.R. Mohanty)  
Vice-Chairman

29.08.2008

Despite notice, no objection has yet been filed by the Respondents in this case.

Call this matter on 30<sup>th</sup> September, 2008 awaiting response from the Respondents to this R.A.

Send copies of this order to the Respondents; who should take ~~steps~~ **supply** by the date fixed.

  
(Khushiram)  
Member(A)  
(M.R. Mohanty)  
Vice-Chairman

Dt. 23.7.08.  
Pl. issue notices to the Respondents via the RA  
Notice and order dated 23/7/08 send to D/Section for issuing to respondents by regd. A/D post at the cost of learned counsel for applicant.

25/7/08  
D/No-3315 to 3317  
Dt. 30/7/08

W/s not filed.

28.8.08.  
Dt. 29.8.08.

Pl. send copies of this order to the respondents  
Copies of order dt. 29/8/08 send to D/Sec. for issuing to respondents by post.

10/9/08  
D/No-3969-71  
Dt. 11/9/08

Notes of the Registry      Date      Order of the Tribunal

29-9-08

NO Cause has  
shown.

103

2. 11.08

Additional statement  
of fact submitted by the  
Applicant.

*[Signature]*

11.11.08

As mentioned in court  
today & praying to withdraw  
& to listing tomorrow  
on 12-11-08, this RA is  
placed before the Hon'ble  
V.C. for order.

The applicant also  
files Add. Stall. which  
is flagged.

Submitted for order.

*[Signature]*  
11/11/08  
cc.

30.09.2008

This R.A. is to be decided by the Division Bench of Hon'ble Vice-Chairman, Mr. M. R. Mohanty and Hon'ble Member (A), Mr. Khushiram. Hon'ble Mr. Khushiram, Member(A) who has gone on transfer, This matter be <sup>accordingly</sup> placed for circulation. Mr.M.Chanda, learned Counsel appearing for the applicant says that he will produce a Circular of the Government of India to strengthen the case of the Applicant.

*[Signature]*

(S.N.Sukla)  
Member(A)

*[Signature]*

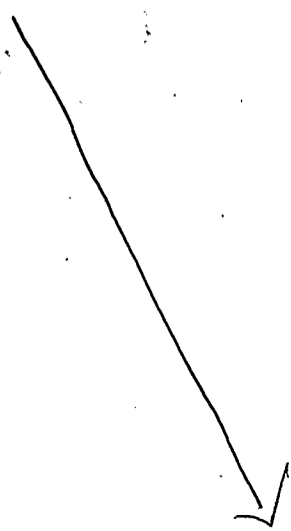
(M.R.Mohanty)  
Vice-Chairman

14.11.08

Mrs. U. Dutta, learned counsel appearing for the Applicant, is present.

(2) The Review Applicant has filed a copy of Clarification dated 26<sup>th</sup> February, 2007 of the Government of India (Ministry of Finance, Department of Expenditure, E-II(B) Branch) with reads as under:-

*[Signature]*  
Contd/-



- 4 -

R.A. 10/08 in O.A. 295/05

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

Contd/-

14.11.08

"Sub: Proposal seeking clarification as to whether the employees posted/transferred in N.E. Region, at their own request from outside the N.E. Region are eligible to get SDA request from outside the N. E. Region are eligible to get SDA.

Reference U.O. No. Admn/(27)/Shillong/06-07/2412 of Office of Pr. Chief Controller of Accounts (Central Excise & Customs) on pre-page.

There is no restriction for grant of Special Duty allowance to Central Govt. Employees if they are posted on their own request and are entitled to SDA as per criteria for payment of the SDA as mentioned in para 5 of Finance Ministry's O.M.No. 11(5)/97-E.II(B) dated 29.5.2005 (copy enclosed). Office of Pr. Chief Controller of Accounts is advised to decide the cases of payment of SDA accordingly."

(3) The Applicant has sought review (of the final order of this Tribunal, rendered in O.A, 295 of 05) on the strength of aforesaid clarification of the Government of India.

(4) It is submitted by Mrs. U. Dutta learned counsel appearing for the Applicant that, despite best efforts, the Applicant could not collect a copy of the aforesaid clarification, for which the same could not be produced (by the Applicant) before the Division Bench at the time of hearing of O.A.No. 295 of 2005 and that is the reason for which, the Applicant has sought review of the final order rendered in O.A.No. 295 of 2005.

(5) Now this Review Applicant is to be disposed of by circulation.

(6) Registry to send a copy of this order and the Memo dated 26.2.2008/31.10.2008 with enclosed document to the Respondents of the Review Application, requiring them to file their reply (if any) in the matter by 10<sup>th</sup>

Contd/ 8

31.11.08

Pl. send a copy of this order and the Memo. dt. 26.2.07/31.12.08 with enclosed documents to the Respondents of the Review Application, requiring them to file their reply in the matter by 10.12.08.

18/11/08

Copies of order dt-14/11/08 along with Memo dt-26/2/07/31/12/07 send to D/Sec. for issuing to respondents, by regd. A/D post.

20/11/08

10.12.2008  
S.O (3) 20/11/08

8-12-08

No order received from CAT/Chandigarh Bench??

lg

/bb/

Contd/-

14.11.2008

December, 2008.

(7) Call this matter on 10<sup>th</sup> December, 2008 for obtaining necessary orders for sending this Review Application to Hon'ble Khushiram, Member (A) now stationed at CAT/Chandigarh.

(S.N.Shukla)

Member(A)

(M.R.Mohanty)

Vice-Chairman

Mr.M.Chanda, learned counsel for the Applicant is present. No one is present for the Respondents.

In this case, order from Hon'ble Member Shri Khushiram, the then Administrative Member of this Bench, now, Administrative Member of Chandigarh Bench has not been received so far.

Call this matter on 08.01.2009.

(S.N.Shukla)

Member (A)

09.01.2009

Send the papers/records to Hon'ble Mr. Khushiram, Administrative Member, C.A.T, Chandigarh Bench, for necessary orders in the R.A.

(M.R.Mohanty)

Vice-Chairman

31.12.09

Pl. send papers/records to Hon'ble Mr. Khushiram M(A) CAT Chandigarh Bench.

24.1.09

lm

4.2.09

25.02.09 Despite direction, this R.A. brief has not yet been sent to Hon'ble Shri Khushiram, Hon'ble Member [A] of Chandigarh Bench by circulation.

It appears the order dated 14.11.08 has also not been sent to the Respondents of this R.A.

Since Hon'ble Shri Khushiram, Member[A] of Chandigarh Bench is coming on Circuit to Guwahati for two weeks commencing from 16<sup>th</sup> March, this matter may be listed before the Division Bench on 19.03.2009.

In the meantime, the Registry should send copies of the order dated 14.11.08 to the Respondents, who should come ready to have their say, if any, in the matter on 19.03.09.

Send copies of this order and the order dated 14.11.08 to the Applicant and the Respondents.

Free copies of both of the orders be also supplied to the Advocates appearing for the parties.

Call on 19.03.09.

*Yao*  
[M.R. Mohanty]  
Vice-Chairman

*Copies of order dt. 25/2/09 along with order dt 14/11/08 send to D/Sec. for issuing the same to the applicant and the respondents by post.*

*Free copies of this order handed over to counsel appearing for both the parties.*

*(copy) 25/2/09 S.O (1) 25/2/09  
D/No-631 to 636  
Dt= 25/2/09.*

*Add. Statement filed*

*18.3.09*

*19.3.09*

cm

*M. Das, Counsel for the respondent ~~has~~ name may be listed in the cause list.*

*19/3/09*

19.03.2009

This R.A. is to be decided by the Division Bench comprising of Hon'ble Vice-Chairman Mr.M.R.Mohanty and Hon'ble Member (A) Mr.Khushiram. The matter be placed before the Hon'ble Member (A) Mr.Khushiram

*for circulation on 26.03.2009 in his chamber. Later on this M. Das, Counsel for respondents (CIFRI) appeared & prayed that her name be listed & printed in the cause list. The prayer is allowed.* *Amjann*  
(A.K.Gaur)  
Member (J)

26.03.2009

Mr M. Chanda, learned Counsel appearing for the Applicant, is present. Mrs M. Das, learned Counsel for the Respondent Organisation is also present.

For the reasons recorded separately, the R.A. stands disposed of.

(Khushiram)  
Member(A)

(M.R. Mohanty)  
Vice-Chairman

nkmm

Received copy for  
Mrs. M. Das,  
Addl. CGSC.  
Nimshin Vishnu  
(Advocate)  
31/03/09.  
Received  
Mutha  
06/04/09

185.09  
Sum total  
D/NO 2339 to  
2342 d. 12.5.09.  
AS  
18/5/09

8

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI**

RA No.1/2008  
Arising out of OA No.295/2005

26<sup>th</sup> day of March 2009

Shri Asok Biswas

Applicant

Versus

The UOI & others

Respondents

**CORAM**

The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman  
The Hon'ble Mr. Khushiram, Member [Administrative]

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 their Lordships wish to see the fair copy of the Judgment? ✓ Yes/No
- ~~4. Whether their Lordships wish to see the fair copy of the judgment? ✓ Yes/No~~

26/03/09  
Vice-Chairman/Member

9

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI**

R.A. No. 1 of 2008

Arising out of O.A.No.295 of 2005

26th day of March 2009

The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman  
The Hon'ble Mr. Khushiram Member [Administrative]

Shri Asok Biswas,  
Technical Officer, T-6,  
Son of Late Haridas Biswas,  
CIFR [Central Inland Fisheries  
Research Institute], [ICAR],  
NER Centre, HOUSEFED, Complex,  
Dispur, Guwahati – 781 006

Applicant/Review Applicant

By Advocate Mr. M. Chanda

-versus-

1. The Union of India,  
represented by the Secretary to the  
Government of India,  
Ministry of Agriculture,  
Krishi Bhawan, New Delhi – 110 001
  2. The Director,  
Central Inland Fisheries Research  
Institute [CIFRI]  
I.C.A.R. Barrackpore,  
Kolkata – 700 120
  3. Senior Administrative Officer,  
Central Inland Fisheries Research  
Institute [CIFRI]  
I.C.A.R. Barrackpore,  
Kolkata – 700 120
- By Advocate Mrs. Manjula Das

Respondents

R.A.No.1/2008


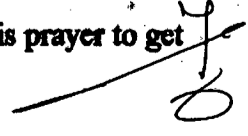
ORDER

26/03/2009

**KHUSHIRAM MEMBER[A]:-**

Seeking Special Duty Allowances [in short SDA] three Applicants approached this Tribunal by way of filing O.A. No. 295 of 2005; which was disposed of on 31<sup>st</sup> December 2007.

2. Applicant No. 3 [ Ashok Biswas] in the said O.A. No.295 of 2005 came on transfer to N.E. Region, apparently, on his own request; for which his prayer to get

SDA was turned down by this Tribunal by its order dated 31.12.2007.

3. By way of filing the present R.A. No.1 of 2008, the above-said Applicant No.3 has placed on record a Governmental Clarification dated 28.02.2007 to say that even on request transfer to N.E. Region, one is to get SDA. The text of the said Governmental Clarification dated 28.02.2007 reads as under,-

**“Sub: Proposal seeking clarification as to whether the employees posted/ transferred in N.E Region, at their own request from outside the N.E. Region are eligible to get SDA.**

Reference to U.O. No.Admn./1[27]/Shillong/06-07/2412 of Office of Pr. Chief Controller of Accounts [Central Excise & Customs] on pre-page.

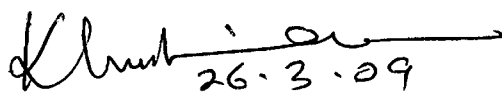
There is no restriction for grant of Special Duty Allowance to Central Govt. Employees if they are posted on their own request and are entitled to SDA as per criteria for payment of SDA as mentioned in para 5 of Finance Ministry's O.M. No.11[5]/97-E.II[B] dated 29.5.2005 [copy enclosed]. Office of Pr. Chief Controller of Accounts is advised to decide the cases of payment of SDA accordingly.”

4. It is stated that despite his best effort, the Applicant No.3 [ Ashok Biswas] of the disposed of O.A. No. 295 of 2005 could not lay his hand on the aforesaid Governmental Clarification dated 28.02.2007 during the pendency of the Original Case and that only after disposal of the Original Case, he could obtain a copy of the same and, on the strength of the same, he has filed the present Review Application No.1 of 2008.

5. Having perused the Governmental Clarification dated 28.02.2007, this Review Application is allowed. The Applicant No.3 [ Ashok Biswas] of the O.A.No.205 of 2005 [the present Review Applicant] was, thus, entitled to get SDA with effect from the date of his joining in N.E. Region [on transfer from outside N.E. Region] even though he came on request transfer. Therefore, the Respondents should grant SDA to the said Applicant No.3 [ Ashok Biswas] with effect from the date of his joining [on transfer] to N.E. Region. The payments on the said count need be made to the Applicant [by the Respondents] within 120 days from the date of receipt of a copy of this order.

6. Send copies of this order to the Applicant and to all the Respondents

7. Free copies of this order be also given to the Advocates for both parties.

  
26.3.09  
[Khushiram]  
Mwember[A]

  
22/03/09  
[Manorajan Mohanty]  
Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

JAN 2008  
गुवाहाटी न्यायपीठ  
Guwahati Bench

Review application No. 1 /2008  
Arising out of O.A.No. 295 of 2005.

Shri Asok Biswas.

-Vs-

Union of India & Ors.

SYNOPSIS

Review applicant had approached the Hon'ble Tribunal along with two other applicants through O.A No. 295/2005 (Sri B.K. Bhattacharjee & Ors. -Vs- U.O.I & Ors.) claiming continuation of payment of Special Duty Allowance (for short SDA) in terms of Govt. of India, Ministry of Finance O.M dated 14.12.1983, 01.12.1988, 22.07.1998 and also in terms of clarificatory O.M dated 29.05.2002. At the same time the review applicant also challenged the impugned order bearing letter dated 17.08.2005 as well as impugned order dated 05.11.2005 so far the review applicant is concerned. However the O.A No. 295/2005 was finally decided by this Hon'ble Tribunal on 31.12.2007. In the impugned judgment and order dated 31.12.2007 the learned Tribunal while declared the applicant No. 1 and 2 are eligible for SDA but at the same time, it is held by the learned Tribunal that the applicant No. 3 does not qualify for grant of SDA on the basis of presumption. Hence this Review Application praying for review of the impugned judgment and order dated 31.12.2007 passed in O.A. No. 295/2005 so far the review applicant (applicant No. 3 of the O.A. No. 295/05) is concerned.

LISTS OF DATES

- 18.12.1993- Review applicant was initially appointed on the basis of open selection on all India basis with the clause of all India transfer liability is specifically mentioned therein. His promotion is granted under Career Advancement Scheme based on time bound 5 yearly assessment of merit which does not require vacancy/berth for promotion and after promotion, his designation does not changes but his grade number changes.
- 20.11.2003, 17.02.2004- Review applicant applied twice through representation dated 20.11.03 and 17.02.04 for inter-institutional transfer from KVK of CIFRI, Kakdwip to Eastern Region Station of Indian Veterinary Research Institute (IVRI), ICAR, Kolkata. (Annexure- A)

30 JAN 2007

गुवाहाटी न्यायपीठ  
Guwahati Bench

- 18.02.2004- Representation dated 17.02.04 of the review applicant was forwarded to the Director, CIFRI, Barrackpore. (Annexure- A Series)
- 18.06.2004- Review applicant did not get inter-institutional transfer from CIFRI to IVRI, Kolkata due to non-availability of vacant post. Thereafter the review applicant was redeployed/transferred to Guwahati from Kakdwip Centre of CIFRI, consequent upon the closure of Krishi Vigyan Kendrya of CIFRI Kakdwip, in "public interest". (Annexure- C)
- 01.10.2004- Director (P), New Delhi advised that on the basis of direction of the HQ Office, ICAR, New Delhi, Special Duty Allowance is admissible to the employee on posting from outside the NER in spite of the employees saddled with all India transfer liability. (Annexure- D)
- 19.01.2005- One Sri A.K. Goswami (T-2), who was initially posted at KVK of CIFRI, Kakdwip was transferred and posted at Barrackpore office at CIFRI by the same office order dated 18.06.2004. However, subsequently said Sri A.K. Goswami (T-2), vide office order dated 19.01.2005, again transferred and posted at Guwahati in public interest. He got SDA after joining at Guwahati. (Annexure- E)
- 27.11.2007- Review applicant has applied for transfer to Headquarter, CIFRI, Barrackpore, Kolkata or Kolkata Centre of CIFRI, Salt Lake, Kolkata on completion of his tenure of three years at NE Region. (Annexure- F)
- 28.09.2007- Hon'ble Tribunal allowed O.A. No. 230/06 with the direction to the respondents in O.A. No. 230/06 for payment of SDA to those applicants who were transferred and posted at Guwahati from Kolkata. (Annexure- F)
- 31.12.2007- Hon'ble Tribunal in the impugned judgment and order in O.A. No. 295/05, on the basis of presumption held that review applicant (applicant No. 3 in O.A. No. 295/05) has apparently opted for posting in the N.E. Region with no possibility of being transferred outside the N.E. Region as such he does not qualify for grant of SDA. (Annexure- F)

#### PRAYERS

1. Hon'ble Tribunal be pleased to review the order dated 31.12.2007 passed in O.A. No. 295/2005 so far the review applicant (applicant No. 3 of the O.A. No. 295/2005) is concerned.
2. During pendency of the Review Application the Hon'ble Tribunal be pleased to stay the impugned judgment and order dated 31.12.2007 passed in O.A. No. 295/2005 so far the review applicant (applicant No. 3 of the O.A. No. 295/05) is concerned till disposal of the Review Application.

30 JAN 2008

गुवाहाटी न्यायपीठ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

Review application No. 1 /2008

Arising out of O.A.No. 295 of 2005.

Shri Asok Biswas.

-Vs-

Union of India & Ors.

INDEX

Sl. No.	Annexure	Particulars	Page No.
1.		Application	1-14
2.		Affidavit	-15-
3.	A	Copy of representation dated 17.02.04.	-16-
4.	A (Series)	Copy of and letter dated 18.02.2004.	-17-
5.	B	Copy of the letter dated 26.02.2004.	-18-
6.	C	Copy of letter dated 18.06.2004.	19 - 21 .
7.	D	Copy of office letter dated 01.10.04	22 - 23 .
8.	E	Copy of office order dated 19.01.05.	- 24 -
9.	F	Copy of representation dated 27.11.07.	- 25 -
10.	G	Copy of the judgment dated 28.09.07.	26 - 29 -
11.	H	Copy of the impugned judgment and order dated 31.12.2007 in OA. No. 295/05.	30 - 41 .

Date: 30.01.08

Filed by:

*U. Dutta*  
Advocate.

30 JAN 2008 1

गुवाहाटी न्यायपीठ  
Guwahati Bench

14  
Filed by the applicant  
through M. Dutta, advocate  
on 30.01.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

Review application No. 1 /2008

Arising out of O.A. No. 295 of 2005.

In the matter of:

Shri Asok Biswas.

-Vs-

Union of India and others.

-And-

In the matter of:-

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

-And-

In the matter of:-

Original Application No. 295 of 2005 (Dr. Birendra Kumar Bhattacharjya & Ors -Vs- Union of India and Others.)

-And-

In the matter of:-

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

---Applicant/Review

Applicant.

Asok Biswas

30 JAN 2008

गुवाहाटी न्यायपीठ  
Guwahati Bench

-Vs-

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

--- Respondents.

The above named review applicant

Most Respectfully Sheweth:-

1. That your review applicant being highly aggrieved with the impugned judgment and order dated 31.12.2007 passed in O.A. No. 295/2005 begs to prefer this instant review application with the prayer for review of the order dated 31.12.2007 passed in the Original Application No. 295/2005 so far it relates to the applicant No. 3 of the O.A. No. 295/2005.
2. That your review applicant begs to say that he had approached the Hon'ble Tribunal through O.A No. 295/2005 along with two other applicants claiming continuation of payment of Special Duty Allowance (for short SDA) in terms of Govt. of India, Ministry of Finance O.M dated 14.12.1983, 01.12.1988, 22.07.1998 and also in terms of clarificatory O.M dated 29.05.2002. At the same time the review applicant also challenged the impugned order bearing letter dated 17.08.2005 as well as impugned order dated 05.11.2005 so far the review applicant is concerned. The Original Application No. 295/2005 was contested by the respondents Union of India by filing a written statement and the matter was finally decided by this Hon'ble Tribunal on 31.12.2007. In the impugned

30 JAN 2008

गुवाहाटी न्यायपीठ

judgment and order dated 31.12.2007 the learned Tribunal while declared the applicant No. 1 and 2 are eligible for SDA but at the same time, it is held by the learned Tribunal that the applicant No. 3 does not qualify for grant of SDA on the basis of presumption, as because the learned Tribunal while declared the review applicant ineligible for payment of SDA has held as follows:

"14..... 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."

On a mere reading of the impugned decision of the learned Tribunal, it appears that the learned Tribunal proceeded with the notion that due to winding up of the office at West Bengal, the applicant No. 3 has "apparently opted for posting in the N.E. Region with no possibility of being transferred outside of the N.E. Region." The said decision of the learned Tribunal is erroneous on the face of the materials/records available with the Original Application.

It is categorically submitted that the review applicant never opted for posting in any place including N.E Region, rather the review applicant applied twice through representation dated 20.11.2003 and dated 17.02.2004 addressed to the Director, CIFRI, Barrackpore for inter-institutional transfer from KVK of CIFRI, Kakdwip to Eastern Region Station of Indian Veterinary Research Institute (IVRI), ICAR, Kolkata, said representation dated 17.02.04 was forwarded by the authority vide letter dated 18.02.2004 to the Director, CIFRI Barrackpore. The review applicant did not get inter-institutional transfer from CIFRI to IVRI as the authority expressed their inability to accommodate the review applicant at IVRI, Kolkata due to non-availability of vacant post. Thereafter the review applicant was redeployed/transferred to Guwahati from Kakdwip Centre of CIFRI, consequent upon the closure of Krishi Vigyan Kendra of CIFRI, Kakdwip, in "public interest". Therefore, by no stretch of imagination it can be said that the review applicant had opted for posting at N.E. Region.

30 JAN 2008

गुवाहाटी न्यायपीठ  
Guwahati Bench

Discontinuation or closure of a centre under the respondents does not mean the closure of the CIFRL. Discontinuation or closure of a centre is an administrative decision of the ICAR which depends on various factors. But the transfer and posting or redeployment in other offices of the institution does not depend upon the 'option' of the review applicant but the decision of transfer and posting or redeployment, entirely depend upon the administrative authority of the ICAR institution. On a mere reading of the Annexure- XVI of the O.A. No. 295/05 i.e. the office order dated 18.06.04 it appears that the transfer and posting order was issued in public interest and the review applicant has been granted joining time pay and TA as per rules. By the same order another Scientist Sri Ganesh Chandra, who was also transferred and posted to Guwahati upon closure of the CIFRL KVK Centre at Kakdwip in fact enjoying the SDA. Moreover, it is further evident from the office order dated 18.06.04 that Sri S.K. Sadhu Khan T-8, was redeployed/transferred in public interest at CIFRL Bangalore Centre.

The further observation of the learned Tribunal that there is no possibility of any transfer of the review applicant outside the N.E. Region on the part is also not factually correct, as because the Central Inland Fisheries Research Institute under ICAR has got offices in different parts of the Country, namely: Bangalore, Allahabad, Vadodara, Barrackpore, Guwahati etc. Therefore there is every possibility of transfer and posting of the review applicant in any of the above mentioned places.

It is pertinent to mention here that one Sri A.K. Goswami (T-2), who was initially posted at KVK of CIFRL Kakdwip was transferred and posted at Barrackpore office at CIFRL during the year 2004 by the same office order dated 18.06.2004. However, subsequently said Sri A.K. Goswami (T-2), vide office order bearing letter No. 307-E/11508 dated 19.01.2005, again transferred and posted at Guwahati in public interest. Therefore, presumption of the learned Tribunal that review applicant has been permanently posted with his option by order dated 18.06.2004 is not factually correct. It is also relevant to mention here that the review applicant has applied through representation dated 27.11.2007 for transfer to Headquarter, CIFRL Barrackpore, Kolkata or Kolkata Centre of CIFRL.

30 JAN 2008

गुवाहाटी न्यायाधीश  
Guwahati Bench

Salt Lake, Kolkata on completion of his tenure of three years at NE Region.

In view of the factual position as explained above the impugned decision of the learned Tribunal is erroneous on the face of the record and as such the impugned order dated 31.12.2007 passed in O.A. No. 295/2005 is liable to be reviewed so far the applicant No. 3 is concerned.

3. That it is stated that so far the question of entitlement of SDA in respect of review applicant, in fact there is no discussion in the judgment and order dated 31.12.2007, except the following observation and decision:

"14..... 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."

Whereas the review applicant was appointed through open selection on all India basis which is very much evident from Annexure-XIII of the O.A. No. 295/2005 i.e. the copy of the advertisement dated 18.12.1993 where the clause of all India transfer liability is specifically mentioned therein. Moreover, promotion is also granted under Career Advancement Scheme based on time bound 5 yearly assessment of merit which does not require vacancy/berth for promotion and after promotion, their designation does not changes but their grade number changes. There is a common recruitment system made on all India basis and promotion are made on merit on all India common seniority under the Institute. The review applicant has been assessed for promotion to next higher grade i.e. T (7-8) in the month of September 2006 and it is under official process.

It is stated that promotion scheme of the review applicant as well as applicant No. 1 and 2 of the O.A. No. 295/2005 are similar. It is further submitted that direct recruitment to the post of T-6 i.e. group- A service is made through the Agricultural Scientists Recruitment Board on all India

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

गुवाहाटी न्यायपीठ  
Guwahati Bench

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 review applicant eligible for grant of SDA and accordingly he was also paid SDA from the date of joining at Guwahati (02.07.2004) as per decision of the authority. Therefore, rejection of claim of the review applicant for continuation of payment of SDA by the learned Tribunal merely on the basis of "presumption" that he had opted for posting at NE Region with no possibility of transfer outside the NE Region is an erroneous decision contrary to the records.

20  
Central Administrative Tribunal  
बुनाहाती न. २५/०४  
dated. 18.02.2004

Copy of representation dated 17.02.04 and letter dated 18.02.2004 are enclosed herewith and marked as Annexure-A and A (Series) respectively.

4. That the review applicant further begs to say that he was assessed for the period from July 1996 to July 2001 and got 3 advance increment now he has assessed for promotion for the period from July 1997 to July 2002 and the same is under process by the respondents.

It is relevant to mention here at this stage that only the KVK, Kakdwip was closed and not the Institute (CIFRI) as evident from CIFRI order No. 381-E/13750 dated 26.02.2004. Moreover, other colleagues of the review applicant who were working at that relevant point of time at KVK, Kakdwip were also transferred at different Centre of the Institute vide order dated 18.06.2004 (Annexure- XVI of the O.A.) and the existence of the said order neither denied nor disputed by the respondents at any point of time. Moreover, even today when the review applicant is posted at Guwahati in fact his promotion, posting, transfer, posting for training are being governed by the office of the Director, CIFRI, ICAR, Barrackpore, West Bengal. Moreover, the Director of the Institute are governed by the HQ office, ICAR, New Delhi which is also evident from the Director (P), New Delhi's letter No. F. No. 26 (2)/2004-Per.IV dated 01.10.2004 wherein it has been advised by the HQ Office, ICAR, New Delhi that in terms of Ministry of Finance information Special Duty Allowance is admissible to the employee on posting from outside the NER in spite of the employees saddled with all India transfer liability. Therefore the said clarification of HQ office dated 01.10.2004 also support the case of the review applicant which was not within the knowledge of the review applicant but the said letter dated 01.10.2004 has been procured by the review applicant only on 28.01.2008 from the local office. As such in view of the clarification given by the HQ office, New Delhi the review applicant is entitled to payment of SDA and the impugned judgment and order dated 31.12.2007 in O.A. No. 295/2005 is liable to be reviewed so far the applicant No. 3 is concerned and the O.A. No. 295/2005 deserves to be allowed so far the applicant No. 3 is concerned.

Asok Biswas

गुवाहाटी न्यायपीठ

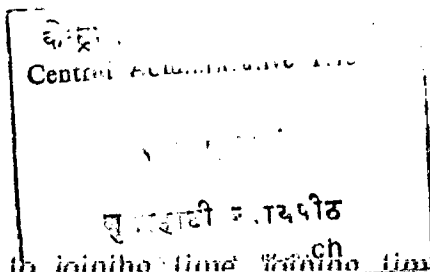
Copy of the letter dated 26.02.2004, 18.06.04, ~~01.10.04~~ office order dated 19.01.05 and representation dated 27.11.07 are enclosed herewith and marked as Annexure- B, C, D, E, and F respectively.

5. That it is stated that on a mere reading of the impugned judgment and order dated 31.12.2007 passed in O.A. No. 295/05, it appears that the learned Tribunal has passed the impugned order on the basis of "presumption" from the following words in para 14 of the impugned order dated 31.12.2007:

"14..... 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."

Therefore it appears that the learned Tribunal has passed the order dated 31.12.2007 merely on the basis of "presumption" whereas it is a settled position of law that on the basis of "presumption" an order cannot be passed rejecting the legitimate claim of the review applicant. More so when the learned Tribunal in paragraph 9 of the impugned judgment and order dated 31.12.2007 has referred the decision rendered by the Hon'ble Gauhati High Court in the case of Employees State Insurance Corporation and others -Vs- Secretary Employees State Insurance Corporation and Ors. [reported in (2006) 1 GLT 599] which supports the case of the review applicant. The Cabinet Secretariat letter dated 02.05.2000 referred in para 13 of the impugned judgment dated 31.12.2007 also supports the case of the review applicant. As such the impugned decision of the learned Tribunal contained in the order dated 31.12.2007 is contrary to the decision rendered by the Hon'ble Gauhati High Court as well as the decision rendered by this Hon'ble Tribunal on 28.09.2007 in O.A. No. 230/2006 (Shri Asish Ranjan Poddar & Ors. -Vs- U.O.I & Ors.)

In the office order dated 18.06.2004 the order of redeployment/transfer in respect of the applicant from Kakdwip to Guwahati has been passed in "public interest" with the following benefits:



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

They may join the new place of posting after availing of admissible joining time."

Therefore, decision of the learned Tribunal that the review applicant has opted for posting at NER with no possibility of posting from outside NER is an erroneous decision on the face of the record, as such the impugned judgment and order dated 31.12.2007 in O.A. No. 295/2005 is liable to be reviewed so far the applicant No. 3 is concerned and the O.A. No. 295/2005 deserves to be allowed so far the applicant No. 3 is concerned.

Copy of the judgment dated 28.09.07 and impugned judgment and order dated 31.12.2007 in OA. No. 295/05 is enclosed herewith as Annexure- G and H respectively.

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

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

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

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

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

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

"19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law of courts and the statues lean strongly in favour of finality of decision legally carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed

के. टी. ...  
Central Administrative Tribunal  
30 JAN 1988  
गुवाहाटी न्यायपीठ  
Guwahati Bench

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

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

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

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.
- (b) By a decree or order from which no appeal is allowed, or
- (c) By a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any sufficient reason, desires to obtain a review of the decree passed or order made

3

गुवाहाटी न्यायपीठ

against him, may apply for a review of judgment to the court which passed the decree or made the order."

In the instant case of the review applicant in fact filed for reviewing the inconsistencies with a view for correction of the same. It is needless to mention here that the impugned judgment and order is contrary to the law laid down in the series of cases by the coordinating Division Bench as well as by the Hon'ble Gauhati High Court.

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

7. That it is a fit case for the Hon'ble Tribunal to review the impugned judgment and order dated 31.12.2007 passed in O.A No. 295/2005, so far the applicant No. 3 is concerned otherwise it will be a miscarriage of justice.
8. That this application is made bonafide and for the ends of justice.

GROUND FOR REVIEW

1. For that the decisions rendered by the Learned Tribunal in the impugned judgment and order dated 31.12.2007 so far the review applicant (applicant No. 3 of the O.A) is based on "presumption" whereas it is a settled position of law that on the basis of "presumption" an order cannot be passed rejecting the legitimate claim of the review applicant.
2. For that even the modified or revised policy on the question of admissibility of SDA issued by the Govt. of India, Ministry of Finance following the O.M dated 12.1.1996, which was "reiterated" in O.M dated 29.5.2002, after the judgment of the Supreme Court in S. Vijoy Kumar's case, as well as in the civil appeal No. 7000/2001 cannot be made applicable as held by the all coordinating division benches of CAT as well as by the Hon'ble High Court in series of cases, number of judgments. As such decision of the learned Tribunal rendered in the impugned judgment dated 31.12.2007 in O.A. No. 295/05 exactly ran counter to the series of decision indicated above so far the review applicant is concerned.

30 JAN 2008

गुवाहाटी न्यायपीठ

Guwahati Bench

3. For that the impugned decision of the learned Tribunal rejecting the claim of entitlement of SDA of the review applicant solely on the ground of his posting in N.E. Region in terms of his option is absolutely contrary on the face of the record, which warrant review of the decision rendered in judgment and order dated 31.12.2007 in OA No. 295/05 so far the review applicant is concerned.
4. For that the question involved for adjudication of the entitlement of SDA of the review applicant has no relevancy if the posting order is passed with the option of the applicant or without the option of the applicant.
5. For that the Original respondents in their written statement never pleaded that the review applicant has permanently posted in N.E Region on the basis of his option. As such rejection of the claim of the applicant for entitlement of SDA on the alleged ground that the review applicant has posted permanently on the basis of option is not factually correct and the said decision of the learned Tribunal is erroneous on the face of the record. Hence the impugned order is liable to be reviewed.
6. For that judicial order cannot be passed on the basis of 'presumption' when the record speaks contrary to the said presumption.
7. For that the KVK, Kakdwip Centre was closed does not mean that the Central Inland Fisheries Research Institute has been closed.
8. For that re-deployment/transfer of the applicant at Guwahati has been made in "public interest", as such presumption of the learned Tribunal that the review applicant had "apparently" opted for N.E Region on permanent basis, such decision of the learned Tribunal is erroneous on the face of the record. As such the impugned order dated 31.12.2007 passed in OA No. 295/2005 so far the applicant No. 3 (review applicant) is liable to be reviewed.
9. That this review application is made bonafide and for the ends of justice.

30 JAN 2008  
गुवाहाटी न्यायपीठ

Upon the premises aforesaid it is humbly prayed that the Hon'ble Tribunal be pleased to consider this petition, admit the same and issue notice to the opposite parties/respondents to show cause as to why the order dated 31.12.2007 passed in O.A. No. 295/2005 should not be reviewed so far the review applicant (applicant No. 3 of the O.A. No. 295/05) as prayed for in this petition and cause or causes being shown and upon hearing the parties be pleased to review the order dated 31.12.2007 passed in O.A. No. 295/2005 so far the review applicant (applicant No. 3 of the O.A. No. 295/2005) and further be pleased to set aside the same and grant the relief as prayed for in the Original application with regard to the grant of Special Duty Allowance to the applicant/review applicant and/or pass such other order(s) as this Hon'ble Tribunal may deem fit and proper.

-AND-

During pendency of the Review Application the Hon'ble Tribunal be pleased to stay the impugned judgment and order dated 31.12.2007 passed in O.A. No. 295/2005 so far the review applicant (applicant No. 3 of the O.A. No. 295/05) is concerned till disposal of the Review Application.

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

Asou Bisim

Central Inland Fisheries Research Institute  
 30 JAN 2007  
 गुवाहाटी - त्रयीठ  
 C. C. Ch

AFFIDAVIT

I, Dr. Asok Biswas, Son of Late Haridas Biswas, aged about 46 years, working as Technical Officer, T-6, in the office of CIFRI (Central Inland Fisheries Research Institute), (ICAR), NER Centre, HOUSEFED Complex, Dispur, Guwahati- 781006., do hereby solemnly affirm and declare as follows:

1. That I am the petitioner in the instant review petition and as such conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the statements made in paragraphs 1, 2, 6, 7 and 8 in the accompanying petition are true to my knowledge and those made in paragraphs 3, 4 and 5 are being matter of records and true to my information derived there from and the rest are my humble submission before this Hon'ble Tribunal and I have not suppressed any material fact.

And I sign this affidavit on 29<sup>th</sup> day of January, 2007.

Identified by:  
*Subrata Nath*  
 Advocate

*ASOK BISWAS*  
 Deponent

The above named deponent solemnly affirmed and declared on the 29<sup>th</sup> day of January, 2007 before Mrs. U. Dutta, Advocate -

*U. Dutta*  
 Advocate.

No KVK/KAK/Est/1732

Dated 18.02.04

ANNEXURE-A

From:  
Dr. Asok Biswas  
Technical Officer, T-6  
(Animal Science)  
KVK of CIFRI (ICAR)  
Kakdwip-743347, W.B.

केन्द्रीय प्रशासकीय अधिकरण  
Central Administrative Tribunal  
30 JAN 2004  
गुवाहाटी न्यायपीठ  
Guwahati Bench

To  
The Director,  
Central Inland Fisheries Research Institute,  
Barrackpore, Kolkata-700120

*(Through Proper Channel)*

Sub: Prayer for inter-institutional transfer from KVK of CIFRI (ICAR), Kakdwip to Eastern Regional Station of IVRI (ICAR), Kolkata

Ref: My letter dated 20.11.2003 & Letter of AAO (Adm), CIFRI, Barrackpore No. 2/99/Adm.II/11860 dated 21.01.2004

Respected Sir,

In reference to the above, this is to state that I applied to the Director, IVRI, Izatnagar, U.P. through your good self for inter-institutional transfer to Eastern Regional Station of IVRI, Kolkata (vide my letter dated 20.11.2003). However, IVRI has expressed their inability to accommodate me at ERS of IVRI, Kolkata due to non-availability of vacant post (vide letter no. 2/99/Adm.II/11860 dated 21.01.2004).

Under the circumstances, I would request your honour to reconsider my appeal for inter-institutional transfer and kindly make necessary alternate arrangement so that I could be able to accommodate at Eastern Regional Station of Indian Veterinary Research Institute, Belgachia, Kolkata-700037 where I will get more opportunity to utilize my knowledge and experience in the field of Veterinary Pathology for the interest of public service.

Hope, you will be kind enough to consider my prayer and oblige me for ever.  
With regards,

Yours faithfully,

Asok Biswas  
(Asok Biswas)

Dated, 17.02.04

Attested  
Advocate

20.02.04  
*[Signature]*

INDIAN VETERINARY RESEARCH INSTITUTE  
BELGACHIA, KOLKATA-700037  
INDIAN VETERINARY RESEARCH INSTITUTE  
BELGACHIA, KOLKATA-700037

**भारतीय पशु चिकित्सा अनुसंधान संस्थान**  
**INDIAN VETERINARY RESEARCH INSTITUTE**  
(भारतीय कृषि अनुसंधान परिषद) (INDIAN COUNCIL OF AGRICULTURAL RESEARCH)

39, बेल्गाचिया रोड, कोलकाता - 700 037 (भारत)  
37, BELGACHIA ROAD, KOLKATA - 700 037 (INDIA)

Ref. No. F. 55-ERS/KOL/03-04/583 (Vol-II) के.टी. न्यायपीठ 18/02/2004  
Central Administrative Tribunal

30 JAN 2004  
गुवाहाटी न्यायपीठ  
Guwahati Bench

To  
The Director,  
Indian Veterinary Research Institute,  
Izafnagar-213122, U.P.

Sir,

As you are aware that this Regional Station is primarily engaged with the diagnosis of animal diseases in thirteen states of Eastern India. The investigating team from this center, off and on, visits to different states of this vast region whenever called for with limited scientific and technical manpower. At present, there is no Veterinary Pathologist at this Regional Station. As Pathology is one of the most important components of the diagnosis and research systems, the posting of one Veterinary Pathologist at this Regional Station will be of immense help for disease diagnostic activities in various states of Eastern India, research projects and routine diagnostic work.

In this connection, I am enclosing a copy of application of Dr. Asok Biswas, Technical Officer, T-6(Animal Science), KVK, Kakdwip of Central Inland Fisheries Research Institute(CIFRI), Barrackpore, Kolkata-700120 who already applied through proper channel to your good self for inter-institutional transfer to ERS of IVRI, Kolkata. Dr. Biswas is a Veterinary Pathologist having Masters' Degree in Veterinary Pathology with experience in diagnosis of animal diseases. It is learnt that IVRI has expressed his inability to accommodate Dr. Biswas at IVRI, Kolkata due to non availability of vacant post.

Under these circumstances, I would request your honour to reconsider his transfer and if agreed, a letter may kindly be issued to the Director, CIFRI, Barrackpore for transfer of Dr. Biswas along with post.

Thanking you,  
Encl. As stated

Yours faithfully,

*(Signature)*  
18/2/2004  
(S. K. Das)

Principal Scientist & In-charge  
Principal Scientist & In-charge,  
Indian Veterinary Research Institute,  
Eastern Regional Section,  
B7, Belgachia Road, Kolkata-700037

Attested  
Dr. Advocate

ANNEXURE- B

*Kakdwip*  
**CENTRAL INLAND FISHERIES RESEARCH INSTITUTE**

(Indian Council of Agricultural Research)  
Barrackpore : Kolkata-700 120 : West Bengal

बिंदी, प्रशासनिक अविचरण  
Central Administrative Tribunal  
30 JAN 2004  
26th February 2004  
वाहटी न्यायपीठ  
Central Bench

No.381-E/

26<sup>th</sup> February 2004

**OFFICE ORDER**

As per decision taken by the Competent Authority, Krishi Vigyan Kendra of this Institute at Kakdwip will be phased out with effect from 01.04.2004

[Authority : Council's letter No.9(21)/03-IA.VI(Per.II) dated 11.02 2004]

*D. Nath*  
(D.NATH) 26.2.04  
DIRECTOR(ACTG.)

Endt.No.381-E/13750

26<sup>th</sup> February, 2004

Copy to :

1. The Officer-in-Charge, Krishi Vigyan Kendra of CIFRI, Kakdwip for information and necessary action alongwith a copy of letter referred above. Necessary further instruction(s) will be communicated in due course
2. All Heads of Division/Officers-in-Charge, Sectional heads at Headquarters for information and necessary action.
3. Notice Board

*D. Nath*  
(D.NATH) 26.2.04  
DIRECTOR(ACTG.)

*Attested  
Asok Biswas*

*Attested  
Advocate*

# CENTRAL INLAND FISHERIES RESEARCH INSTITUTE

(Indian Council of Agricultural Research)

Barrackpore : Kolkata-700 120 : West Bengal : India

No.307-EI <sup>2659</sup>

18<sup>th</sup> June, 2004

## OFFICE ORDER

Consequent upon the closure of Krishi Vigyan Kendra of CIFRI, Kakdwip, communicated vide ICAR letter No.9(21)/03-IA.VI (Part-II) dated 17<sup>th</sup> February, 2004 and this Office Order No.381-E dated 26<sup>th</sup> 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 indicated against each in public interest:

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-6	Estuarine Division, CIFRI, Barrackpore
7	Shri A.K. Goswami, T-2 (Driver)	Vehicles Section, CIFRI, Barrackpore
8	Ms. Arati Rani Panigrahi, 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, joining time pay, and Transfer T.A. as per rules.

They may join the new place of posting after availing of admissible joining time.

In terms of Rules 6 of the CCS(JT) Rules, 1979 unavailed joining time shall not be credited to their leave account unless they proceed along 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.

*Dr. Asoke Biswas*

*D. NATH*  
(D. NATH)  
DIRECTOR (ACTING)  
18.6.04

Contd... 2

*W. B. B. B.*  
21/06/04

Attested  
*[Signature]*  
Advocate

48/06/04  
21/06/04

केन्द्रीय प्रशासनिक अपील बोर्ड  
Central Administrative Tribunal  
30 JAN 2005  
गुवाहाटी न्यायपीठ

Endt. No.307-E/

Copy to :

1. Shri Ganesh Chandra, Scientist
2. Ms. Mira Sen, T-9
3. Dr. A.K. Chattopadhyay, T-8
4. Shri S.K. Sadhukhan, T-8
5. Dr. Asoke Biswas, T-6
6. Shri C.N. Mukherjee, T-6
7. Shri A.K. Goswami, T-2 (Driver)
8. Ms. Arati Rani Panigrahi, Senior Clerk
9. Shri B.P. Mishra, SSG.II
10. Shri Gour Gharami, SSG.II
11. Shri M.C. Gharami, SSG.II
12. Shri R.P. Halder, SSG.II
13. Shri Basudev Gharami, SSG.II
14. Shri N.T. Dalui, SSG.II
15. Shri B.P. Samanta, SSG.II

Through the Officer-in-Charge,  
Kakdwip Centre of CIFRI

15a. The Officer-in-Charge, Kakdwip Centre of CIFRI for information and necessary action.

16. The Head, Estuarine Division, CIFRI, Barrackpore for information. He is requested to intimate the date of joining of Shri C.N. Mukherjee, T-6 to this Office in due course.

17. The Head, Reservoir Division of CIFRI, Hessarghata Lake Post, Bangalore for information. He is requested to intimate the date of joining of Shri S.K. Sadhukhan, T-8 to this Office in due course.

18. The Head, Human Resource Division, CIFRI, Barrackpore for information. He is requested to intimate the date(s) of joining of Ms. Mira Sen, T-9 and Shri Gour Gharami, SSG.II to this Office in due course.

19. The Officer-in-Charge, Guwahati Centre of CIFRI for information. He is requested to intimate the date(s) of joining of Shri Ganesh Chandra, Scientist and Dr. Asoke Biswas, T-6 to this Office in due course.

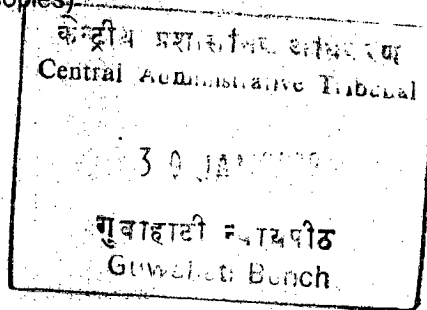
20. The Officer-in-Charge, Kolkata Centre of CIFRI for information. He is requested to intimate the date(s) of joining of Dr. A.K. Chattopadhyay, T-8 and Shri Basudev Gharami, SSG.II to this Office in due course.

21. The Officer-in-Charge, Frazerganj Survey Centre of CIFRI for information. He is requested to intimate the date of joining of Shri B.P. Mishra, SSG.II to this Office in due course.

22. The Finance & Accounts Officer, CIFRI, Barrackpore for information and necessary action. He is requested to intimate the date of joining of Shri M.C. Gharami, SSG.II to this Office in due course.

Condt. 3

23. The Assistant Administrative Officer (Adm.I), CIFRI, Barrackpore for information and necessary action.
24. The Drawing & Disbursing Officer, CIFRI, Barrackpore for information and necessary action.
25. The Officer-in-Charge, Estate Management Section, CIFRI, Barrackpore for information and necessary action. He is requested to intimate the date(s) of joining of Shri N.T. Dalui, SSG.II and Shri B.P. Samanta, SSG.II to this Office in due course.
26. The Officer-in-Charge, Vehicles Section, CIFRI, Barrackpore for information. He is requested to intimate the date of joining of Shri A.K. Goswami, T-2(Driver) to this Office in due course.
27. The Assistant Administrative Officer (Stores), CIFRI, Barrackpore for information. He is requested to intimate the date of joining of Ms. Arati Rani Panigrahi, Senior Clerk to this Office in due course.
28. The In-Charge, Garden Unit, CIFRI, Barrackpore for information. He is requested to intimate the date of joining of Shri R.P. Halder, SSG.II to this Office in due course.
29. Service Book (15 copies)
30. CCR Dossier (15 copies)
31. Personal File (15 copies)
32. Guard File



*D. NATH*  
(D. NATH) 18.6.04  
DIRECTOR (ACTING)

S No 4(I) -22-

TELEPHONE : 3388991 EXTN/.....  
TELEX : 0-31-82249 ICAR IN  
FAX : 011-3387293  
TELEGRAM : AGRIBEC

35

ANNEXURE - D

भारतीय कृषि अनुसंधान परिषद  
कृषि भवन, डा० राजेन्द्र प्रसाद मार्ग, नई दिल्ली-110 001  
**INDIAN COUNCIL OF AGRICULTURAL RESEARCH**  
Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi-110 001

F.No.26(2)/2004-Per.IV

Dated, the 1<sup>st</sup> October, 2004

To

The Director,

Post Bag No. 181,  
Port Blair - 744 101

केन्द्रीय प्रशासनिक न्यायाधीश  
केन्द्रीय प्रशासनिक न्यायाधीश  
Central Administrative Tribunal

30/10/2004  
गुवाहाटी न्यायपीठ  
Branch

Sub.: Grant of Special Duty Allowance and Island Duty Allowance -  
clarification regarding

Sir,

I am to refer to your Institute's letter No. F&AO/CARI/2002-03 dated 30.4.2002 on the above cited subject and to state that clarification was sought from Ministry of Finance on grant of Special Duty Allowance and Island (Special) Duty Allowance to Scientists posted in North East Region and the Union Territory of Andaman & Nicobar Islands.

The Ministry of Finance has informed as under :

"It is stated that Special Duty Allowance / ISDA is admissible to Central Government employees on posting from out side to North Eastern region (including Sikkim)/A&N Islands, Lakshadweep Group of Islands. This allowance is not admissible unless the appointment in the Region as mentioned above is from outside even though the Individual has All India transfer Liability. The conditions prescribed by Ministry of Finance are applicable to all Ministries / Department and any special dispensation in respect of employees of ICAR cannot be agreed."

...2/-

Attested  
Asok Bisim

Attested  
Advocate

- 23 -

27

... dated 29.5.2002 which was endorsed by the Council vide No. 9-3/98 Cdn(A&A) dated 18.6.02. The subject payments are to

Yours faithfully.

*[Handwritten Signature]*

DIRECTOR (P)

... dated 30.4.2002 forwarded to Directors of all ICAR institutes located in NEH

01

केन्द्रीय प्रशासनिक अदालत  
 Central Administrative Tribunal  
 30/04/2002  
 गुवाहाटी न्यायपीठ  
 Guwahati Bench



From: Dr. Asok Biswas,  
Technical Officer, T-6 (Animal Sc.)  
NERC of CIFRI, Dispur, Guwahati-781006

25  
ANNEXURE-F  
3  
গুৱাহাটী ন্যায়পীঠ  
Guwahati Bench

To  
The Director,  
Central Inland Fisheries Research Institute  
Barrackpore, Kolkata-700120

(Through proper channel)

Sub: Prayer for transfer from CIFRI, Guwahati Centre to CIFRI HQ/CIFRI Kolkata Centre - regarding

Respected Sir,

I humbly want to submit some recent medical documents of my family members and I in continuation to my earlier prayer dated 31.07.2007. My only child is suffering from moderate degree of Attention Deficit Disorder with hyperactivity (ADD-H), as assessed by a Consultant Clinical Psychologist and diagnosed by a Consultant Psychiatrist of Kolkata. He has significant restlessness, constantly fidgeting, temper tantrums, poor attention etc. For the interest of improvement of my son's mental health it is very necessary to visit the Consultant Clinical Psychologist and Consultant Psychiatrist frequently, which facility is available in metropolis like Kolkata. Due to deterioration of mental health of son we, the parents, are passing through an anxious phase of our life, my wife has also significant depression, both my wife and myself getting antidepressant medicine as per advice of Consultant Psychiatrist and Physician. My old mother is also experiencing high blood sugar due to anxiety and lack of nursing and care, as she resides at Bongaon, North 24 Parganas and does not want to stay with us outside the state at verge of her life.

Therefore, I request you kindly to consider my prayer for transfer to CIFRI HQ / CIFRI Kolkata Centre on compassionate and humanitarian ground at your earliest.

Encl: Copies of: -

Yours faithfully,

- i) Five recent medical advices
- ii) One assessment report of counselor
- iii) Two One pathological report
- iv) One outdoor Reg. card etc
- v) One certificate of *কেন্দ্রীয় মনঃরোগ বিশেষজ্ঞের মতামত প্রদান (সংক্রান্ত)*  
of Psychiatrist *Central Inland Fisheries Research Institute*

Asok Biswas  
(Asok Biswas) 27.11.2007

North Eastern Regional Centre  
Houseled Complex  
Dispur, Guwahati - 781006

Emdt. No *Adm/1/207/8/Dispur, Guwahati-781006*  
~~NA/1/207/8/Dispur, Guwahati-781006~~ Dt. 28.11.07

Forwarded to the Director, CIFRI, through the Head, FWD, CIFRI, Barrackpore for favour of information and necessary. His case may be considered sympathetically and a suitable reliever may please be provided.

Received  
21/11/07

Assisted  
Advocate

*N. Kom*  
Officer-in-Charge  
Central Fisheries, Guwahati

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 230/2006.

Date of Order : This the 28<sup>th</sup> Day of September, 2007.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Shri Asish Ranjan Poddar
2. Shri Janardhan Chakraborty
3. Shri Ranjit Sarkar
4. Mrs Sampa Hazra
5. Shri Debabrata Sarkar
6. Shri Manik Kumar Mandal

केन्द्रीय प्रसारण आयोग  
Central Administrative Tribunal

31/09/2007

गुवाहाटी न्यायपीठ  
Guwahati Bench

Applicants No.1 to 5 are Engineering Assistant  
and Applicant No.6 is Senior Engineering Assistant of  
All India Radio, Guwahati.

..... Applicants

By Advocate Shri Manik Chanda

- Versus -

1. Union of India,  
represented by Secretary to the  
Government of India,  
Shastri Bhawan 'A' Wing,  
New Delhi-110001.
2. Prasar Bharati Broadcasting Corporation of India,  
represented by the Chief Executive Officer,  
Parliament Street, New Delhi - 110001.
3. The Director General,  
Doordarshan, Mandi House,  
Copernicus Marg, New Delhi-110001.
4. The Director General,  
All India Radio,  
Prasar Bharati Broadcasting Corporation of India,  
Akashbani Bhawan,  
Parliament Street, New Delhi - 110001.
5. Director,  
Programme Production Centre (N.E)  
Doordarshan,  
R.G.B.Road, Guwahati-781024.

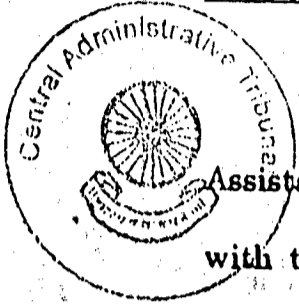
Attested  
Advocate

6. The Deputy Director General (NER),  
Programme Production Centre (N.E)  
Doordarshan,  
R.G.B.Road, Guwahati-781024.

By Advocate Shri G. Baishya, Sr.C.G.S.C

ORDER

KHUSHIRAM (MEMBER(A))



Six Applicants who are now posted as Engineering Assistants in All India Radio, Guwahati have approached this Tribunal with the present Original Application filed under Section 19 of the Administrative Tribunals Act 1985 claiming Special Duty Allowance (in short SDA) for the reason of their posting in North Eastern Region of India.

2. The Applicants were transferred at different times, from Kolkata (in the State of West Bengal) to Guwahati in the North Eastern State of Assam and, as such, claimed to be entitled to SDA (after their posting to North Eastern Region) in terms of Office Memorandum No.11(5)/97-E.II.(B) dated 29.5.2002 of the Government of India, in the Ministry of Finance, but they were denied the benefit on the ground that the personnel employed as Engineering Assistant are appointed on zonal basis and AIR Guwahati and entire North Eastern Region happened to be a part of the East Zone and, as such, they are under obligation to serve anywhere within the East Zone of All India Radio; which includes North Eastern States and that, therefore, they are not entitled to SDA. Admittedly the Applicants are residents of West

.....Respondents

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

30 JAN 2009

गुवाहाटी न्यायपीठ  
Guwahati Bench

*[Handwritten signature]*

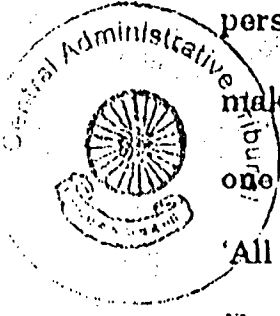
Central Administrative Tribunal  
41

Bengal (outside North East Region of India) and their appointment had a specific clause of "All India Transfer Liability".

3. In their reply, the Respondents have admitted that the Applicants were initially appointed in the department with a clause of "All India Transfer Liability" and as per terms appended in the orders of their appointment, they have been posted to the North East Region and that a mere clause in the appointment letter to the effect that the persons concerned is liable to be transferred anywhere in India did not make him eligible for grant of SDA. It has been pointed out that SDA is one of the incentives granted to Central Government employees having 'All India Transfer Liability' and not merely because they belong to East Zone Cadre and they have been transferred to North East Region in exigencies of service. It has also been stated clearly that East Zone of All India Radio consists of the States of West Bengal, Orissa, Bihar and North East Region States of India (that consists of all the states in North East India including Sikkim) and that mere transfer to North East Zone does not entitle the Applicants for grant of SDA.

4. We heard Mr M.Chanda, learned counsel appearing for the Applicant and Mr G.Baishya, learned Sr.C.G.S.C appearing for the Respondents.

5. The counsel for the Applicant argued that in a similar case that was decided on 5.3.2004 by this Bench of the Tribunal (rendered in O.A. 187/2000) Applicants therein, who were also Engineering Assistants of All India Radio, Guwahati (now they have been posted back at Kolkata) full relief were granted to them and they were paid

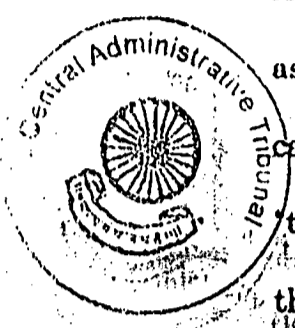


3

SDAs. Learned counsel for the Applicant further submitted that Hon'ble Gauhati High Court in Writ Petition(C) No.7057/2001 decided on 04.01.2006 have already decided the issue involved in the present matter and have granted relief to such categories of employees. The learned counsel appearing for Respondents did not challenge these assertions of the counsel for Applicants, Hon'ble High Court, in that

*on the face of the fact that the*

case (W.P.(C) 7057/2001 & other connected cases) held, on 04.01.2006, that the officers and employees, who belongs to the region other than the N.E. Region, will be entitled to SDA. It may be noted here that admittedly the Applicants are residents of West Bengal (outside North East Region of India) and their initial appointment had a specific clause of "All India Transfer Liability".



6. In view of the foregoing discussions and the settled position of law (the order of the CAT as well as that of Hon'ble High Court, allowing similar claims), the present case is allowed. The Respondents are directed to pay the SDA to the Applicants, for the period they served in the North East Region of States, within a period of three months from the date of receipt a copy of this order.

7. The Original Application is accordingly allowed. There will be, however, no order as to costs.

TRUE  
प्रतिष्ठित

54/VICE CHAIRMAN  
54/REGISTRAR (A)

केन्द्रीय प्रशासनिक आयोग  
Central Administrative Tribunal  
30/1/07  
गुवाहाटी न्यायपीठ  
Gowhattee

शुभम - सिविल  
11/5/10/07

pg

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ANNEXURE-H

Original Application No.295 of 2005

Date of Order: This the 31<sup>st</sup> day of December 2007

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

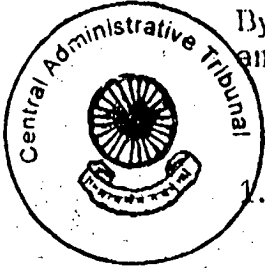
1. Dr Birendra Kumar Bhattacharjya, Scientist,  
Son of Late Ghanashyam Bhattacharjya,  
CIFRI (Central Inland Fisheries Research  
Institute), (ICAR),  
NER Centre, HOUSEFED Complex,  
Dispur, Guwahati-781006.
2. Smt Runu Devi Choudhury  
(Wife of Late Mahadev Choudhury,  
Principal Scientist, CIFRI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

केन्द्रीय प्रशासनिक न्यायालय  
Central Administrative Tribunal  
31  
गुवाहाटी न्यायपीठ  
Guwahati Bench

.....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.

*Attested  
Sub.  
Advocate*

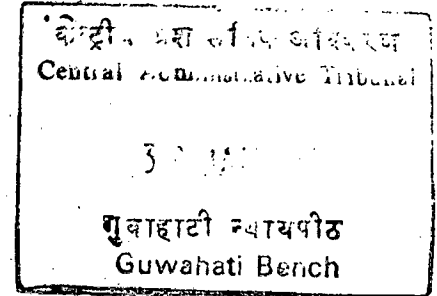
3. Senior Administrative Officer  
Central Inland Fisheries Research Institute (CIFRI),  
I.C.A.R. Barrackpore,  
Kolkata-700120.

.....Respondents

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

.....

ORDER

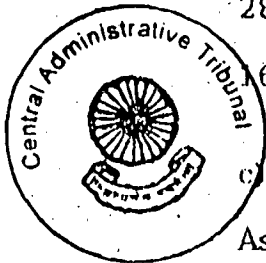


KHUSHIRAM, ADMINISTRATIVE MEMBER

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 6.11.1990.

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.



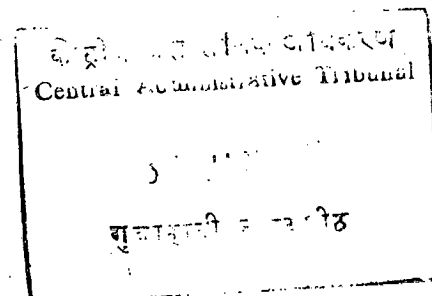
Li —

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.





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

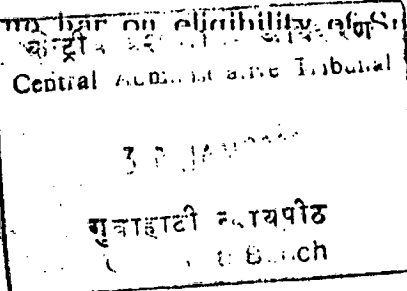
**Applicants.**

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 in spite of the fact that this appeal has been allowed".



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 and others Vs. Secretary, I.A.T.

Insurance Corporation Employees Union and others, 2006 (1) GLT

599, it was observed as follows:

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



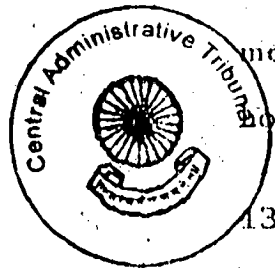
*[Handwritten signature]*

Central Administrative Tribunal  
 गुजरात हाईकोर्ट  
 Gujarat High Court

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. Rajendra 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,

केन्द्रीय प्रशासकीय न्यायालय  
Central Administrative Tribunal  
30/10/2006  
गुवाहाटी न्यायालय

4

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 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:

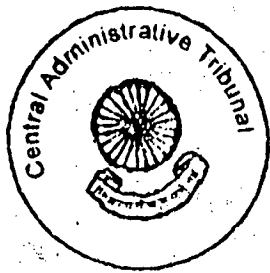
i) The Hon'ble Supreme Court in their Judgment delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region and in the following situation 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.

केन्द्रीय प्रशासनिक न्यायालय  
Central Administrative Tribunal  
मुम्बई न्यायपीठ  
Gewahati Bench

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.

NO

b) An employee hailing from the N.E. Region selection on the basis of an All India recruitment test and borne on the Centralised cadre/service



*Handwritten signature*

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

केन्द्रीय प्रशासनिक आयोग  
Central Administrative Tribunal  
मुम्बई न्यायपीठ  
Mumbai Bench

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.

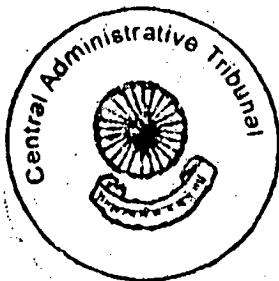
YES

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 Exptt. 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



*[Handwritten mark]*

(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.

केन्द्रीय प्रशासनिक न्यायालय  
Central Administrative Tribunal  
3  
गुवाहाटी न्यायपीठ  
Guwahati Bench

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.

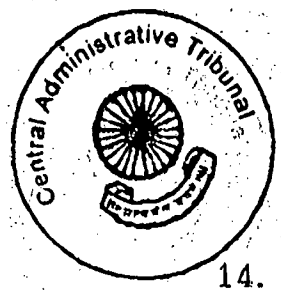
The payment made to employees hailing from NE Region & Posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to



*[Handwritten signature]*

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

केन्द्रीय प्रशासनिक न्यायाधीश  
Central Administrative Tribunal  
3  
गुवाहाटी न्यायपीठ  
Guwahati Bench



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.



Sd/- M.R. Mohanty,  
Vice-Chairman  
  
Sd/- Khushiram,  
Member (A)

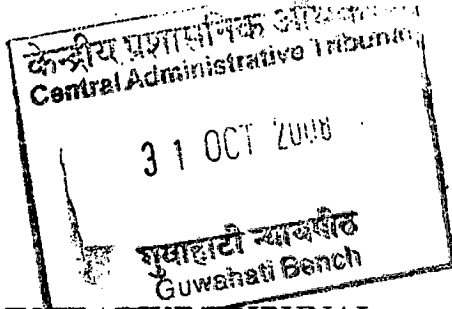
केन्द्रीय प्रशासनिक न्यायालय  
Central Administrative Tribunal  
  
3  
  
गुवाहाटी न्यायपीठ  
Guwahati Bench

Date of Application : 4.1.2008  
 Date on which copy is ready : 4.1.2008  
 Date on which copy is delivered : 4.1.2008  
 Certified to be true copy

(Sd/-)  
 Section (A) (J-II)  
 A. T. Guwahati Bench  
 Guwahati

4/1/2008

Attested  
 Secy.  
 Advocate



55

Filed by the applicant  
through U. Dulla, advocate  
on 30.10.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

In the matter of :-

R.A. No. 01 of 2008

Arising out of O.A.No. 295/2005.

Sri Asok Biswas.

-Vs-

Union of India and Ors.

-And-

In the matter of:-

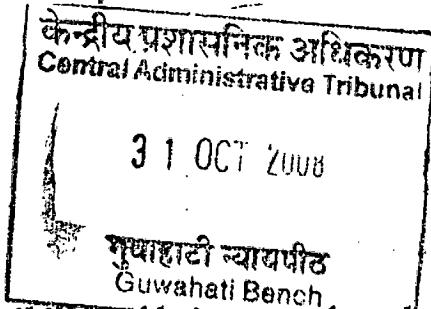
Submission of Additional statement of fact in support of the grounds raised in review application no. 01/2008 pending before the learned Tribunal.

The above named review applicant most humbly and respectfully begs to state as under:-

1. That your review applicant being aggrieved with the impugned judgment and order dated 31.12.2007 passed in O.A No. 295/2005 (Dr. B.K.Bhattacharjee -vs- U.O.I and Ors) preferred a review application before this Hon'ble Tribunal, claiming payment of Special Duty Allowance and the said review application is now pending before this learned Tribunal for further consideration.
2. That it is stated that in the impugned judgment and order dated 31.12.2007 the learned Tribunal rejected the claim of the special duty allowance of the review applicant on the following ground.

"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

Asok Biswas



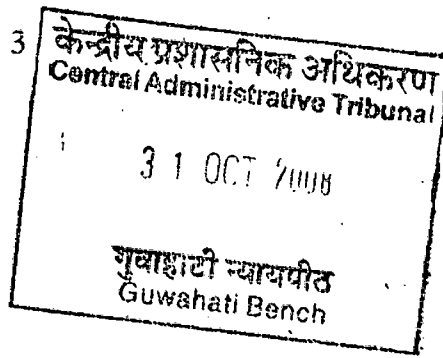
N.E.Region with no possibility of being transferred outside the N.E.Region does not qualify for grant of SDA".

The above observation and findings of the learned Tribunal is also contrary to the order passed by the Govt. of India, Ministry of Finance, Department of Expenditure letter no. U.O No. 11 (1) E. 11 (B)/2007 dated 26.02.2007. wherein Govt. of India has further clarified that there is no restriction for grant of SDA to Central Govt. Employees if they are posted in N.E.Region on their own request. Therefore even assuming if the applicant has opted for posting at N.E.Region even after winding up of the office in West Bengal in that event also the review applicant is entitled to payment of SDA in view of the Govt. of India, Ministry of Finance letter dated 26.02.2007.

Copy of the letter dated 26.02.2007 is annexed as Annexure-A.

3. That your review applicant further beg to say that he has never opted for posting at North Eastern Region but he was transferred and posted in public interest, which is evident from office order dated 18.06.2004 issued by the Director, CIFRI, Barrakpore, Kolkata, since a public order has been passed declaring the transfer and posting of the review applicant in public interest, as such posting of the applicant at Guwahati cannot be declared as per option of the review applicant hence the observation and findings of the learned Tribunal is contrary to the record and there is error apparent on the face of the record, therefore it is a fit case having good grounds for review of the impugned judgment and order dated 31.12.2007.
4. That the Hon'ble Tribunal be pleased to consider the letter dated 26.02.2007 issued by the Ministry of Finance, while considering the review application no. 01/2008 and further be pleased to pass necessary order/orders as deem fit and proper.
5. That this additional statement is made bonafide and for the ends of justice.

Asok Biswas



### VERIFICATION

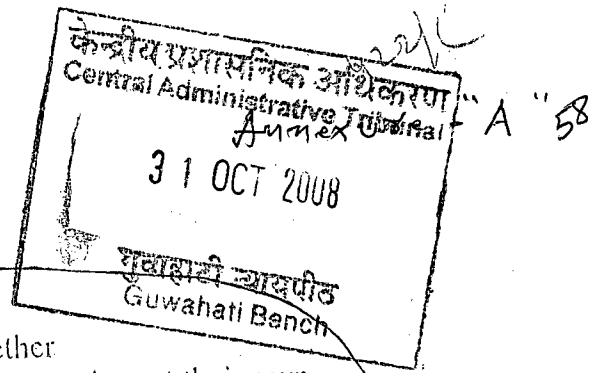
I, Shri Asok Biswas, Son of Late Haridas Biswas, aged about 47 years, working as Technical Officer, T: 7-8 in the office of CIFRI (Central Inland Fisheries Research Institute), (ICAR), Regional Centre, HOUSEFED Complex, Dispur, Guwahati-781006, applicant in the instant additional statement, do hereby verify that the statements made in Paragraph 1 to 5 of the additional statement are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 27<sup>th</sup> day of October 2008.

Asok Biswas

- A -

Ministry of Finance  
Department of Expenditure  
E-II (B) Branch  
\*\*\*\*\*



Sub: proposal seeking clarification as to whether the employees posted/transferred in N.E. Region, at their own request from outside the N.E. Region are eligible to get SDA.

Reference U.O.No.Admn./1(27)/Shillong/06-07/2412 of Office of Pr.Chief Controller of Accounts (Central Excise & Customs) on pre-page.

There is no restriction for grant of Special Duty Allowance to Central Govt. Employees if they are posted on their own request and are entitled to SDA as per criteria for payment of SDAs mentioned in para 5 of Finance Ministry's O.M.No.11(5)/97-E.II(B) dated 29.5.2005(copy enclosed). Office of Pr. Chief Controller of Accounts is advised to decide the cases of payment of SDA accordingly.

Encl. as above

Prem Anand  
(R.Prem Anand)  
Under Secretary to Govt. of India.

Shri Arvind Kumar, Controller of Accounts, O/o Pr. Chief Controller of Accounts, Central Excise & Customs, AIG, C.R. Building, New Delhi.  
(CIST Floor)

M/o Fin.(Expdr.) U.O.No.11(1)E.II(B)/07, dt. 24/2/07

27  
7/07  
30014  
2812  
Sr. AO (Admin)  
D.A. Cyber  
28/2/07  
rebat  
AS  
28/2/07

Attested  
Wata  
Adw

Attested  
Asok Bismay