

FROM NO. 4.
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

Original Application No. 126/06

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) Ashim Kumar Raha

Respondents Dr. O. P. Tomy

Advocate for the Applicant(s) B.C. Pathak; B. Pathak

Advocate for the Respondent(s) Case.....

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed/C. F. No. 10/ is posted on <u>10</u> No. <u>269/324181</u> Dated <u>9-5-06</u>	<u>31.5.2006</u>	<p>Present: The Hon'ble Shri K.V. Sachidanandan Vice-Chairman.</p> <p>The applicant, a resident of West Bengal, was appointed as Technical Assistant in the North East Region on 13.8.1975 and was further promoted as Technical Supervisor. As per the scheme providing payment of Special Duty Allowance (SDA in short) for employees outside North East Region, he was also granted SDA and he had been enjoying the same. While so in 2004, according to the applicant, as per Audit Report that benefit was stopped and large amount of money that had already been granted is being recovered from him without giving him any notice. Applicant has submitted several representations but is of no avail. Therefore, the present O.A. has been filed.</p> <p>Heard Mr. B.C. Pathak, learned counsel for the applicant. Ms. U. Das, learned Addl. C.G.S.C. appeared on behalf of the respondents. Mr. Pathak submits</p>

OA. 126/2006

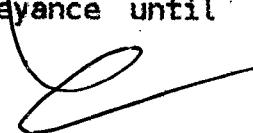
-2-

Contd.

31.5.2006 that that in many cases, this Tribunal has clarified that those persons who are appointed from outside region are entitled to get the SDA. Ms. Das, on the other hand, submits that this matter has been elaborately discussed by the Hon'ble Gauhati High Court in its Judgment and Order dated 4.1.2006 passed in W.P.(C) No.5087/1999 and series in the Regional Director, ESIC & Others - vs- the Secretary, ESIC Employees Union & Others wherein the Hon'ble Court has held that a person initially appointed in N.E. Region is not entitled to such benefit. Counsel for the applicant submits that said judgment and order is under review before the Hon'ble High Court.

Considering the issue involved in this case I am of the view that notice to be issued to the respondents. Issue notice to Respondent Nos. 1, 3 & 4. Ms. U. Das has accepted notice on behalf of Respondent No.2.

Post the matter on 4.7.2006. In the interest of justice this Tribunal directs that further recovery of the SDA amount will be kept in abeyance until further orders.


Vice-Chairman

Received copy of
the order dated 31/5/06

Usha Das
Addl. Chse
1/6/06

Received steps

for R. 2

Usha Das
Addl. Chse
15/6/06

bb

Notice & order sent to
D/Section for issuing
to resp. nos. 1, 3 & 4 day
regd. A/D post.

16/6/06. D/No- 633, 634, 635
DT= 21/06/06

Notes of the Registry	Date	Order of the Tribunal
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04.07.2006 Ms. U. Das, learned Addl. C.G.S.C.

for the respondents submitted that no Review has been filed by the applicant as submitted by the learned counsel for the applicant on 31.05.2006. Therefore, the O.A. has to be dismissed. However, learned counsel for the applicant was not present.

Post on 17.07.2006. Learned counsel for the applicant is directed to present on that day.



U
Vice-Chairman

mb

17.7.2006 Mr. B.C. Pathak, learned counsel for the applicant submits that this case may be taken on 21.7.2006.

Post on 21.7.2006.


Vice-Chairman

bb

21.7.2006 Mr. D. Pathak, learned counsel representing Mr. B.C. Pathak, learned counsel for the applicant submits that he has filed an application for adjournment on personal ground that he is suffering from viral fever. Ms. U. Das, learned Addl. C.G.S.C. submits that there is urgency in the matter and no review has been filed before Hon'ble Gauhati High Court to her knowledge. Counsel for the applicant is directed to take instruction and file detailed statement. Post on 28.7.2006.


Vice-Chairman

bb

28.7.06 Learned counsel for the respondents submits that written statement is being filed today. Written statement may be kept on record. Copy of the same has already been given to learned counsel for the applicant.

Post on 17.8.06 for order. The applicant may file rejoinder, if any.

Vice-Chairman

31.7.06
W/s filed by the
Respondents.

17.8.06

pg

When the matter came up for hearing the learned counsel for the applicant has submitted that he would like to improve the pleadings.

Post the matter on 4.9.06.

Vice-Chairman

28.8.06
W/s submitted
by Report No. 4.

04.09.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Considering the issue involved, I am of the view that the O.A. is to be admitted. Admit.

Post on 17.10.2006 for hearing. In the meantime, the Applicant is at liberty to file rejoinder, if any.

Vice-Chairman

No rejoinder has
been filed.

/mb/

24.10.2005

Mr. B.C. Pathak, learned counsel for the applicant submitted a letter of absence on account of his son's marriage. Let the case be posted on 4.12.2006.

Vice-Chairman

bb

4.12.2006 post the matter on 2.1.2007
granting time to the applicant as a
last chance to file M.P.

① W.O. has been filed.
② No rejoinder has
been filed.


Vice-Chairman

bb

23
17.1.07

18.1.2007 Mr. B. C. Pathak, learned counsel for the
Applicant has submitted a letter of absence
and prayed for adjournment. Hence
adjourned.

Post on 02.02.2007.


Vice-Chairman

/bb/

No rejoinder has
been filed.

23
23.3.07.

07.03.07 Counsel for the applicant
prays for adjournment. Let the case be
listed on 26.3.07.


Vice-Chairman

lm

26.3.2007

It appears that counsel for the
applicant has been granted so many adjou-
rnment on the ground of personal incon-
venience. To day also adjournment is sou-
ght.

post on 27.4.2007. It is made clear
no further adjournment will be granted
thereafter for personal inconvenience.


Vice-Chairman

bb

07A.126/06-6-

3.5.2007

Learned counsel for the Applicant submitted that Applicant has no rejoinder. Since pleadings are complete, let the case be posted for hearing.

Post on 29.05.2007 for hearing.

No rejoinder has been filed.

22
10.5.07.

Vice-Chairman

/bb/

11.5.07.

At the request of learned counsel for the applicant case is adjourned to 5.6.07.

✓
Vice-Chairman

1m

29.5.07xxxx Post the matter before the next available Division Bench.

✓
Vice-Chairman

No rejoinder has been filed.

1m

22
11.6.07.
29.5.07. Post the matter alongwith other SDA matter on 5.6.07.

✓
Vice-Chairman

1m

No rejoinder has been filed.

22
12.6.07.

5.6.2007

This is a SDA matter. At the request of the learned counsel for the Respondents post the case on 13.6.2007 for hearing.

✓
Vice-Chairman

/bb/

- 7 -

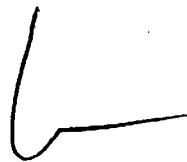
Notes of the Registry	Date	Order of the Tribunal
	13.06.2007	At the request for the Applicant the case is adjourned and posted on 2.7.2007 for hearing.
		✓ Vice-Chairman
	/bb/	
Rejoinder not filed. <i>16.7.07.</i>	02.07.07.	Post the matter on 17.7.07. for hearing.
		✓ Vice-Chairman
Rejoinder not filed. <i>31.7.07.</i>	17.7.2007	At the request made by Mr.B.C.Pathak, learned counsel for the Applicant the matter is delinked from the other connected case and posted on 1.8.2007.
		✓ Vice-Chairman
/bb/		
Rejoinder not filed. <i>24.8.07.</i>	1.8.07	At the request of the counsel for the parties post on 27.8.07 for hearing
		✓ Vice-Chairman
pg	27.8.2007	Heard Mr.B.C.Pathak, learned counsel for the Applicant and Ms.U.D. learned Addl.C.G.S.C. for the Respondents. Reserved for orders.
		✓ Vice-Chairman

Received 2 copies
of Judgment
of Alsho Das
Add: CSC
10/9/07

31.8.2007

Order pronounced in open court,
typed in separate sheets.

The O.A. is dismissed in terms of the
order. No costs.



Vice-Chairman

/bb/

Recd
3/10
Bachman

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
OA No.126 of 2006

Date of order 31.8.2007

Sri Ashim Kumar Raha..
By Advocate: Mr. B.C. Pathak

Applicant

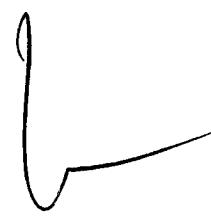
versus

The Union of India & others..
By Advocate :Ms. U.Das, Addl.C.G.S.C.

Respondents

CORAM: The Hon'ble Shri K.V.Sachidanandan, Vice-Chairman

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


Vice-Chairman

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
O.A. No. 126 of 2006**

Date of order: This is the 31st day of August, 2007
CORAM: The Hon'ble Shri K.V. Sachidanandan, Vice-Chairman

Sri Ashim Kumar Raha
Son of late Maniklal Raha
Village- Narayanpur, P.O. Lakshmipool
District North Parganas, West Bengal.....
By Advocate: Mr.B.C.Pathak

Applicant

Versus

1. Union of India
Represented by the Development
Commissioner [Handicrafts]
Government of India, Ministry of Textiles
Office of the Development commissioner
[Handicraft]
West Block VII, R.K.Puram
New Delhi 110 066
2. The Regional Director, North Eastern Region
Office of the Development Commissioner
[Handicrafts], Housefed Complex, Dispur
Guwahati-6
3. Officer-in-Charge
Bamboo & Cane Development Commissioner
[Handicrafts], Khejur Bagan, P.O. Kathal
Bagan, Agartala
4. The Accountant General [Audit],
Tripura, Agartala

Respondents

By Advocate: Ms. U.Das, Addl. C.G.S.C.

ORDER

K.V. Sachidanandan, Vice-Chairman:

The applicant was working in the Bamboo & Cane Institute Development Institute and originally selected as Technical Assistant in the recruitment test held on 13.8.1975 on all India basis and was posted at



Jorhat and joined service on 19.8.1975 and in his appointment letter, terms and conditions were laid down that the applicant will be liable to serve in any part of India and, therefore, he has all India transfer liability. The applicant is a resident of West Bengal and had been posted at Jorhat in N.E Region and promoted as Technical supervisor vide order dated 4.9.1994 and posted at Guwahati and again posted at Agartala and joined there on 29.11.1984. The applicant retired on 31.3.2007.

2. The Government of India, Ministry of Finance, Department of Expenditure brought out a Scheme dated 14.12.1983 by which SDA was granted for the civilian employees of the Central Government serving in the N.E. Region. A mere reading of the Scheme will show that it is only available to those who are posted in the Region from outside. The applicant being posted from outside, the authorities granted SDA to the applicant and he did not opt to go out from the said Region. Subsequently, another notification dated 20.4.1987 was issued from where it is clear that a person liable to be transferred anywhere in India does not make him eligible for the grant of SDA [Annexure-6]. The Government of India issued another notification dated 1.12.1988 [Annexure-7] continuing the SDA. Several cases were filed by different employees in the Court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of Union of India vs. S.Vijoykumar & others [C.A. No. 3251/93] upheld the provisions of the O.M. dated 20.4.1987 and also made it clear that only those employees who were posted on transfer from outside to the N.E. Region were entitled to grant of SDA on fulfilling the criteria as in O.M.



dated 20.4.1987. Such SDA was not available to the local residents of the N.E. Region [Annexure-8]. The Government of India brought out another O.M. dated 12.1.1996 directing the Departments to recover the amount paid to the ineligible employees after 20.9.1994, as held by the Hon'ble Supreme Court. The applicant would contend that the employees posted in N.E. Region from outside are entitled to get the benefit of SDA. Respondent no.4 conducted audit and as per the audit report dated 6.2.2004, it is stated that the applicant is not eligible person for the SDA and, therefore, the amount already paid to the applicant from 6.10.2001 to 30.11.2003 to be recovered. The respondents initiated action for recovery of the same. But the contention of the applicant is that he is entitled for the benefit and denial of the SDA and recovery thereafter is not justified. He has filed the O.A. for the following reliefs:

“8.1 To restrain the respondents immediately from making any further recovery of the installments of SDA from the salaries of the applicant;

8.2 To direct the respondents to continue to pay the SDA and refund the amount so recovered from the salary of the applicant;

8.3 To pay the cost of the application and any other relief to which the applicant is found to entitled and or pass such other order that this Hon'ble Tribunal may deem fit and proper.”

3. Respondent nos. 1, 2, 3 and 4 have filed separate detailed reply statements contending that for grant of SDA, clarification was issued on 10.4.2000, wherein it was said that “Special duty Allowance is admissible only in cases where the Govt. servant is transferred from a station outside the region to a station in the North Eastern Region and the same is not applicable for transfer from one station to another station within the region.”



Further, the Hon'ble supreme Court in the judgment delivered on 20.9.1994 [Civil appeal No.3251 of 1993] has upheld the dictum that Government civilian employees who have All India Transfer Liability are entitled to the grant of Special duty allowance on being posted to any station in the North Eastern Region from the outside region and special duty allowance would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The applicant was first appointed in the N.E. Region at Jorhat and he was not transferred to N.E. Region from a station outside the N.E. Region. His subsequent transfer was also within the N.E. Region, from Jorhat to Guwahati and Guwahati to Agartala. Grant of SDA to the applicant is, therefore, irregular. Even after the judgment of the Hon'ble Supreme Court dated 20.9.1994 and the Government of India's Memo dated 12.1.1996 regarding recovery of the amount of SDA already paid to ineligible employees after 20.9.1994, shows non-adherence to Government of India's orders and irregular payment of SDA to ineligible employees. The Hon'ble Supreme Court made it clear that such amount already paid to such ineligible employees up to 5.10.2001 will not be recovered. The Audit recommended that SDA paid from 6.10.2001 till it is paid, is to be recovered. O.M. dated 29th May, 2002 was issued by the Govt. of India, Ministry of Finance, Department of Expenditure on the basis of the judgment of the Hon'ble Supreme Court and action has been taken as per the judgment of the Hon'ble Supreme Court. This was reiterated in the reply statement filed on behalf of respondent no.4 as well.

4. Mr. B.C.Pathak, learned counsel appeared for the applicant and Ms.U.Das, learned C.G.S.C. appeared for the respondents. The learned



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counsel appearing for the parties taken me to various pleadings, materials and evidence placed on record. The learned counsel for the applicant would argue that the applicant belongs to West Bengal and he was initially appointed to N.E. Region. He is an outsider and not belongs to N.E. Region and, therefore, he is entitled to get the SDA benefit. The counsel for the respondents argued that the dictum as laid down by the Hon'ble Supreme Court in the case of Union of India vs. S.Vijaykumar and others and in view of the decisions of this Tribunal and High Court, Special Duty Allowance is admissible only in cases where the Govt. servant is transferred from a station outside the region to a station in the North Eastern Region and the same is not applicable for transfer from one station to another station within the region and those who have been initially appointed in the N.E. Region are also not entitled for the said benefit.

5. I have given due consideration to the arguments advanced by the learned counsel for the parties. The extract of the Audit report dated 6th February, 2004, is reproduced as follows:-

“Para 2:- Payment of Special Duty Allowance [SDA] to an ineligible person-Recoverable Amount stood at Rs.29,085/- up to November 2003.

Eligibility for entitlement of SDA in respect of a Central Government employee serving in the North Eastern Region is required to be regulated in terms of Govt. of India, Ministry of Finance Office Memorandum No.F. 11[5]/97-E11[B] issued on 29th May 2002 as the follow up of the judgment delivered by the Hon'ble Supreme Court of India determining the criteria for eligibility.

In its judgment dated 5.10.2001 the Hon'ble Supreme Court observes that mere All India Transfer Liability will not entitle a person for Special Duty Allowance [SDA] and determines that “The Special Duty Allowance [SDA] shall be admissible to Central



Civilian Employees having All India Transfer Liability on posting to North Eastern Region [including Sikkim] from outside the Region."

In compliance with the instructions contained in the aforesaid GIMFOM dated 29th May 2002, the following action may please be taken under intimation to audit.

[a] Payment of SDA to Shri A.K. Raha, Tech Supervisor may henceforth be discontinued.

[b] Recovery of already paid recoverable amount of SDA to the tune of Rs.29,085 up to 30.11.2003 may please be effected."

Audit objection itself cannot be a reason for recovery. Therefore, the Court is to analyse whether the Audit is sustainable in law.

6. The applicant has produced the initial appointment order [Annexure-1] which is as follows:

"No. EB[ER]57[II]/Estt/DCTC[J]/74

August 13, 1975

Shri Ashim Kumar Raha is hereby informed that on the basis of interview held on 13-8-75 he has been selected for appointment to the post of Technical Assistant attached to the Development Centre for Tribal Crafts, Jorhat. The post carries the scale of pay of Rs.425-15-500-EB-15-560-20-700/- plus other allowances as admissible to Central Govt. employees.

He is accordingly advised to report for duty at Development Centre for Tribal Crafts, Nakari Road, Jorhat-I [Assam] in the forenoon of 20-8-75 positively. Failure to report for duty by the scheduled date shall automatically result in cancellation of this offer. Formal appointment letter will be issued in due course if he joins."

7. Obviously, this shows that the applicant belongs to West Bengal but selected for appointment to the post of Technical Assistant for Jorhat. In other words, he was appointed to N.E. Region. The counsel for the respondents would argue that it is not considered as posting and it is an appointment. The selection was made for N.E. Region and appointment was for N.E. Region and this Court is to analyse the benefit to the applicant on the basis of the said facts.



8. The Govt. of India, Ministry of Finance, Department of Expenditure vide memo dated 14.12.1983 brought out a scheme extending certain facilities and allowances including SDA for the civilian employees of the Central Govt. serving in the N.E. Region. Thereafter, a clarification was issued by memo dated 20.4.1987 by the Govt. of India. The relevant portion of the said O.M. is quoted below:

"2. Instances have been brought to the notice of this Ministry where Special [Duty] allowance has been allowed to Central Govt. employees serving in the North East Region without the fulfillment of the condition of all India Transfer liability. This is against the spirit of the orders on the subject. For the purpose of sanctioning Special [Duty] allowance, the all India transfer liability of the members of any service/cadre or incumbents of any posts/group of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all India basis and whether promotion is also done on the basis of the all-India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order [as is done in the case of almost all posts in the Central Secretariat etc.] to the effect that the person concerned is liable to be transferred anywhere in India, does not make him eligible for the grant of Special [Duty] allowance."

9. The Govt. of India brought another O.M. dated 1.12.1988 further continuing the benefit to the employees [Annexure-7]. Some cases went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of Union of India vs. S. Vijaykumar & others, 1994 [Supp.4] SCC 649, upheld the provisions of the O.M. dated 20.4.1987 and made it clear that only those employees who were posted on transfer from outside to the N.E. Region were entitled to grant of SDA fulfilling the criteria as in O.M. dated 20.4.1987. Such SDA was not available to the local residents of the N.E. Region. The operative portion of the judgment is quoted below:-

"4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned

Additional Solicitor General, Shri Tulsi for two reasons. The first is that a close perusal of the two aforesaid memoranda, along with what was stated in the memorandum dated 29.10.1986 which was stated in the memorandum dated 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North Eastern Region to work in that Region.

5. The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in the Reserve Bank of India vs. Reserve Bank of India Staff Officers Association and others to which our attention has been invited by the learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

6. In view of the above, we hold that the respondents were not entitled to the allowance and the impugned judgments of the Tribunal are, therefore, set aside. Even so, in view of the fair stand taken by the Additional Solicitor General, we state that whatever amount has been paid to the respondents, or for that matter to other similarly situated employees, would not be recovered from them in so far as the allowance is concerned.”

The dictum laid down by the Hon’ble supreme Court, as discussed in the above paragraphs, is that mere clause in the appointment letter does not qualify to payment of SDA.

10. In the subsequent decision in the case of Union of India and others vs. Executive Officers Association Group-C, reported in 1995 [Supp.I] SCC 757, the Apex Court held that the spirit of the O.M. dated 14.12.1983 is to attract and retain the services of competent officers from outside and posted in the North Eastern Region which does not apply to the officers belonging to N.E.Region.

11. The Hon’ble Gauhati High Court had occasion to deal with the matter in detail in W.P.[C] No.5087/1999 in the case of Regional Director, Employees State Insurance Corporation vs. Secretary, Employees State



Insurance Corporation and series of cases by order dated 23.2.2006, the operative portion of which is reproduced below:-

"In view of the law laid down by the Apex Court, as discussed above and also in view of the discussion relating to the finality of judgment, we hold that the officers and employees, who belongs to the region other than the N.E. Region, will be entitled to SDA. The persons belonging to the other parts of the country other than the N.E. Region, if initially appointed and posted in N.E. Region shall not be entitled to such allowance. 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 the officers mentioned above, shall not be entitled to SDA and the authorities shall be entitled to recover SDA already paid to them after 5.20.2001 in terms of the office memorandum dated 29.5.2002 and the amount already paid up to 5.10.2001 towards SDA shall not be recovered. However, the recoveries, if any already made, need not be refunded. This is also subject to the inter party judgment and order that have been passed by any competent Court or Tribunal, which have attained its finality."

12. Therefore, it is now settled law that a resident of the North Eastern Region appointed outside the North Eastern Region and then transferred to the North Eastern Region would be entitled to the grant of SDA. This was followed by this Tribunal in O.A. No.116 of 2004 by order dated 12.8.2005.

The operative portion of the said order is reproduced below

"In para 52 we have clearly stated that SDA is admissible to Central Government civilian employees having All India Transfer liability on posting to North Eastern Region from outside the Region. We had not made any distinction in that regard with reference to Central Government Civilian employees transferred from outside the region and those posted for the first time from outside the region. According to us SDA is admissible to both categories of employees mentioned above. Though the applicants have clearly stated that they satisfy all the aforesaid conditions, we are of the view that an opportunity must be given to the respondents to verify as to whether the aforesaid conditions are satisfied. We note that the respondents in the impugned communication did not give any reason as to why the applicants are not entitled to SDA. For the said reason we quash the impugned communication at Annexure-VII series and direct the respondent nos. 2 and 3 to verify as to whether the applicants are permanent residents of outside North Eastern Region,



whether they are posted from outside the North Eastern Region to North Eastern Region on the basis of All India Selection by the Union Public Service Commission, as to whether their promotions are based on All India Common Seniority list. If all the above circumstances are satisfied in view of our decision contained in para 52 of the order dated 31.5.2005 in O.A.No.170/1999 and connected cases extracted hereinabove, the applicants will be entitled to the grant of SDA. In such event the applicants will be entitled to all consequential benefits flowing therefrom. The respondents will pass a reasoned order and communicate the same to the applicants within four months from the date of receipt of this order."

13. The learned counsel for the respondents has taken my attention to the decision of the Hon'ble Gauhati High Court in W.P.[C] No.1965 of 2003 reported in 2007 [1] GLT 931 dated 1.11.2006 in the case of Director General, Indian Council of Agricultural Research vs. Victor Dhkar & others wherein the Hon'ble High Court, in view of the decision of the Hon'ble Supreme Court in the case of S.Vijaykumar[supra], and also the decision of the Hon'ble Apex Court in the case of Reserve Bank of India vs. Reserve Bank of India Staff Officers Assn., reported in [1991] 4 SCC 132 held that grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not violative of Article 14 of the Constitution and finally held that:

"In view of the above discussion and observation, we hold that the respondents are not entitled to the payment of SDA as already paid to them in excess due to mistake/wrong interpretation of the office memorandum. The impugned order of the Tribunal is, therefore, set aside. The excess amount paid to the applicant-respondents to be recovered from them in easy installments."

14. The learned counsel for the applicant, on the other hand, has taken me to the decision of the Tribunal in O.A. No. 115 of 2002 dated 13th



November, 2002 in the case of Lalthansanga Varte & others vs. Union of India and others and also referred to the following cases:-

15. In the case of Shri Hari Singh & others vs. Union of India and others reported in 1997[3] SLJ 36, wherein it has been held that over payment detected after many years cannot be recovered. Para 5 of the said judgment is quoted below:

“5. It is an admitted position that the respondents have detected the wrong fixation of pay allowed to the applicants only at the time of retirement and the wrong fixation dates back to the date of promotion of the applicants as Highly Skilled fitters Grade-II w.e.f. 2.8.1989 and the respondents have consequently worked out the excess payment on account of this wrong fixation of pay which had occurred on 2.8.1989, i.e., almost 7 years back. In terms of para 1013 of the IREM Vol.I “all personal claims will normally be checked within one year from the date of retirement and if within this period an amount is discovered to have been paid erroneously through an oversight in the Accounts Office and not due to wrong interpretation of a rule or order it will ordinarily be recovered.” In the instant case, the over payment had occurred from 2.8.1989 as a result of incorrect fixation of pay on promotion and had been drawn by the applicants in a bona fide belief that they were entitled to such fixation... The respondents have also not shown how the overpayment could not have been detected in time by the Divisional Accounts Officer concerned at the time when the wrong fixation of pay was made in 1989. In any case, the applicants have been visited with civil consequences and no opportunity to show cause against the proposed recovery from the retirement benefits was provided to them. Law is well settled that belated recovery on account of wrong fixation of pay and that too after the retirement of the employee, cannot be sustained.”

16. In the case of Shri Sardar Gulzar Singh v. Union of India and others, reported in 1998[1] SLJ 21, it has been held that actions having civil consequences should not be done without giving notice.

17. The learned counsel for the applicant has also cited the decisions of the Hon'ble Supreme Court in the case of A-One Granites v. Union of India and others reported in [2001] 3 SCC 537 and in the case of Prabhavati Devi vs. Union of India & others reported in AIR

1996 SC 752 and would argue that in view of the above decisions, recovery is not justified. The learned counsel for the applicant further argued that stand of the respondents for recovery of amount cannot be accepted in view of the High Court decision since it is hit by sub silentio and per incuriam.

I have gone through the above decisions and I am of the view that that the Hon'ble Gauhati High Court had gone through the issue meticulously and came to a logical and reasoned conclusion and, therefore, it cannot be said to sub silentio or per incuriam. Therefore, the said contention of the applicant is totally rejected.

18. In an appeal filed by the Telecom Department in Civil Appeal No.700 of 2001 arising out of SLP No. 5455 of 1999 the Hon'ble Supreme Court on 5.10.2001 ordered that this issue is covered by the judgment of the Supreme Court in the case of UOI vs. S.Vijayakumar and others, reported in 1994 [supp. 3] SCC 649 and, therefore, this appeal is to be allowed in favour of the Union of India. The Hon'ble Supreme Court further directed that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them in spite of the fact that the appeal has been allowed till the date of the said judgment, i.e., 5.10.2001.

19. In the Audit objection it is specifically recommended that the amount is to be recovered from the applicant for the period from 6.10.2001 to 30.11.2003. In other words, as per the order of the Hon'ble Supreme Court, the amount paid prior to 6.10.2001 has been waived. Despite the Audit objection subsequently also SDA had been paid to the applicant. Therefore,

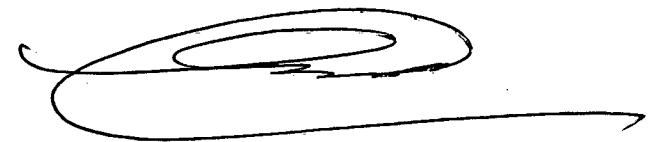


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it has become Rs. 40,713/- against Rs. 29,085/- at the time of Audit objection. The difference in amount is a matter of subsequent accrual of amount in calculation and plea of irregularity cannot be accepted.

20. Considering the entire gamut of the issue and considering the fact that the applicant was appointed in the N.E. Region [not posted], I am of the view that the applicant is not entitled for SDA benefit and recovery already made pertains to the period prior to the order of the Hon'ble Supreme Court [supra], and legal position being settled so, this Court is unable to grant any relief to the applicant and, therefore, the O.A. is only to be dismissed.

21. In the conspectus of the facts and circumstances of the case, this Court dismisses the O.A. In the circumstances, there shall be no order as to costs.



[K.V. Sachidanandan]
Vice-Chairman

cm

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORIGINAL APPEALATION NO.

126/06

a) Name of the Applicat:- A-K. Raha

b) Respondants:- Union of India & Ors

c) No. of Applicant(S) :-

2. Is the application in the proper form:- Yes/No.

3. Whether name & description and address of the all papers been furnished in cause title :- Yes/ No.

4. Has the application been duly signed and verified :- Yes/ No.

5. Have the Copies duly signed :- Yes / No.

6. Have sufficient number of copies of the application been filed :- Yes/ No.

7. Whether all the annexure parties are impleaded :- Yes/ No.

8. Whether English translation of documents in the Language : Yes/ No.

9. Is the application in time :- Yes/ No.

10. Has the Vakalatnama/Memo of appearance/Authorisation is filed :- Yes/ No.

11. Is the application by IFO/BD/For Rs: 5/- 266324181

12. Has the application is maintainable :- Yes/ No.

13. Has the Impugned order original duly attested been filed : Yes/ No.

14. Has the legible copies of the annexures duly attested filed :- Yes/ No.

15. Has the Index of documents been filed all available:- Yes/ No.

16. Has the required number of enveloped bearing full address of the respondents been filed:- Yes/ No.

17. Has the declaration as required by item 17 of the form:- Yes/ No.

18. Whether the relief sought for arises out of the single :- Yes/ No.

19. Whether the interim relief is prayed for :- Yes/ No.

20. In case of condonation of delay is filed is it supported :- Yes/ No.

21. Whether this Case can be heard by Single Bench/Division Bench:

22. Any other point:-

23. Result of the Scrutiny with initial of the Scrutiny clerk the application is in order:-
The application is in order.

SECTION OFFICER (J)

OP

DEPUTY REGISTRAR
Greet to the Member
concerned
by the Secretary

2
१०
गुवाहाटी बायपीठ
Guwahati Bench

Filed by
B. Ashok Patnaik

29/15/00

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. No. 126 /2006

Sri Ashim Kumar RahaApplicant
-versus-
Union of India & othersRespondents

LIST OF DATES / SYNOPSIS OF THE CASE

Date	Particulars	Annexure	Page
13.8.75	The applicant is a resident of resident of West Bengal. He was selected for appointment as Technical Assistant in a all India basis recruitment test held and he was posted at Jorhat vide order dated 13.8.1975 in the North Eastern Region.	1	14
14.9.75	Applicant joined in service. Memo of appointment made clear that the applicant is under all India Transfer liability	2	15
4.9.1984 and 29.11.1984	Applicant promoted to the post of Technical Supervisor and he joined on 29.11.84	3, 4	16-17
14.12.83	A Scheme providing payment of SDA was introduced entitling employees posted from outside to the NE Region.	5	18-21
20.4.87	The Govt. of India clarified that SDA would be admissible to those who have all India Transfer Liability and seniority and Promotion zone. The applicant falls under this category and is entitled to SDA and he has been granted and paid SDA.	6	22-23

S.D.A
1983/

6.2.2004	Audit report submitted in which it is stated that the applicant is not an eligible person for SDA as per instructions contained in above-mentioned GIMFOM dated 29.5.2002. It was further reported that the amount paid to the applicant from 6.10.2001 to 30.11.2003 for Rs.29,085/- be recovered and the payment of SDA be stopped 'henceforth'. <i>(Handwritten note: 13 ✓ 40-43)</i>	13 <i>✓</i>	40-43
	Respondent No.3 decided to recover the said amount of Rs.40,713/- in 28 installments from the salary of the applicant at the rate of Rs.1455/- per month for the 1 st installment and the rest 27 installments at the rate of Rs.1454/- per month. This was done without any notice to the applicant and without affording him any opportunity of hearing.		
25.6.2005, 12.9.2005, 16.11.2005	The applicant made representations for consideration of his case which have not been attended to by the respondents and the same are still pending disposal. Hence this application.	15, and 17 16	50-52

Filed by:

Bibhash Pathak
(Bibhash Pathak)
Advocate
Date: 29/5/06

2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. No. 126 /2006

Sri Ashim Kumar RahaApplicant
-versus-
Union of India & othersRespondents

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4	Annexure 2	Letter dt. 14.9.75	15
5	Annexure 3	Promotion order dt. 4.9.84	16
6	Annexure 4	Joining letter dt. 29.11.84	17
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10	Annexure 8	Judgment dt. 20.9.94 (S. Viyaya Kumar)	27-31
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Filed by:

Bibhash Pathak
(Bibhash Pathak)
Advocate
Date: 29/5/2006

29/5/2006
Filed by:
The Applicant through
Bishesh Pathak
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

[AN APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT, 1985]

ORIGINAL APPLICATION NO. 126 of 2006

BETWEEN

Sri Ashim Kumar Raha
Son of late Maniklal Raha
Village- Narayanpur, P.O. Lakshmipool
District- North Parganas, West Bengal

.....*Applicant*

-versus-

- (1) Union of India
Represented by the Development
Commissioner (Handicrafts)
Government of India, Ministry of Textiles
Office of the Development Commissioner
(Handicraft)
West Block VII, R.K.Puram
New Delhi-110066
- (2) The Regional Director, North Eastern Region
Office of the Development Commissioner
(Handicrafts), Housefed Complex, Dispur
Guwahati-6
- (3) Officer-in-Charge
Bamboo & Cane Development Institute
Office of the Development Commissioner
(Handicrafts), Khejur Bagan, P.O. Kathal
Bagan, Agartala
- (4) The Accountant General (Audit),
Tripura, Agartala

.....*Respondents*

Ashim Kumar Raha

DETAILS OF THE APPLICATION:

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

- (i) This application has not been made against any specific office order but against the stoppage of payment of Special Duty Allowance (hereinafter referred to as the SDA) with retrospective effect from July, 2004 allegedly on the basis of local audit objection and against the recovery by monthly installments from the salaries of the applicant.
- (ii) Non-consideration of the representation dated 25.6.2005, 12.9.2005 and 16.11.2005 submitted by the applicant to the respondents (as in ANNEXURE- 15, 16 and 17)

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION:

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

4. FACTS OF THE CASE:

- 4.1 That the applicant is a citizen of India and a permanent resident of village- Narayanpur, P.O. Lakshmipool, District-North 24 Parganas, West Bengal and as such he is entitled to all the rights, privileges and protection as guaranteed under the Constitution of India and the laws framed thereunder. At present the applicant is posted and working in the Bamboo &

Aslim Kumar Raha

Cane Development Institute, Office of the Development Commissioner (Handicrafts), Khejur Bagan, P.O. Kathal Bagan, Agartala-6 in the State of Tripura, as the Technical Supervisor.

4.2 That the respondents are the authorities under the direct control of the Ministry of Textiles, Government of India and are amenable to the jurisdiction of this Hon'ble Tribunal.

4.3 That the applicant was selected for appointment as Technical Assistant in a recruitment test held on 13.8.1975 on all India basis and he was posted at Jorhat vide order No.HB(ER) 57/(II)/Estt/DCTC(J)/74 dated 13.8.1975. When the applicant joined in service on 19.8.1975, the formal appointment letter was issued to the applicant vide Memorandum No.19/1/75-AD.II dated 14.9.1975. Amongst other terms and conditions as laid down in the said Memo of appointment, one of the important conditions has been fixed that the applicant will be liable to serve in any part of India. By the said clause it has been made clear that the applicant is under all India Transfer liability. In consonance with the said condition of all India transfer liability, the applicant, who is resident of West Bengal has been posted at Jorhat, Assam in the North-Eastern Region. The applicant had been promoted to the post of Technical Supervisor vide Office Order No.1/32/83-Admn.IV dated 4.9.1984 and was posted at Guwahati. He had been again transferred and posted at Agartala and joined there on 29.11.1984 and accordingly serving there.

The copies of the said appointment letter dated 13.8.1975 and 14.9.1975 and order of promotion and joining report dated 4.9.1984 and 29.11.1984 are annexed as the **ANNEXURE-1, 2, 3 and 4** respectively.

Asit Kumar Raha

4.4 That the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi, vide Office Memorandum No. 20014/3/83-E.IV dt.14.12.1983 brought out a scheme thereby extending certain facilities and allowances including the SDA for the civilian employees of the Central Govt. serving in the North-Eastern States and Union Territories etc. This was done to attract and retain the services of officers in the region due to inaccessibility and difficult terrain. A bare reading of the provisions of the said O.M. it is clear that these facilities and allowances are made available only to those who are posted in the region from outside. The applicant being posted in the N.E. Region as defined in the said OM dated 14.12.1983 from outside having all India transfer liability, the competent authority granted SDA to the applicant from the very beginning of the introduction of the scheme. As the applicant got the said extra benefit being posted in the N.E. Region, he was attracted to remain posted in the N.E. Region and did not opted for going out of the said region although he had the opportunity under the same scheme.

A copy of the said O.M.Dt.14.12.83 is annexed as
ANNEXURE-5.

4.5 That after some time, some departments sought some clarifications about the applicability of the said O.M. dt.14.12.83. In response to the said clarification, the Govt. of India issued another Office Memo. Vide No.20014/3/83-E.IV dt. 20.4.1987. The relevant portion of the said O.M. is quoted below:

“2. Instances have been brought to the notice of this Ministry where Special (Duty) Allowance has been allowed to Central Govt. employees serving in the North East Region without the fulfillment of the condition of all India Transfer liability. This is against the spirit of the orders on the subject. For the purpose of

Aslam Kumar Raha

sanctioning special (duty) allowance, the all India transfer liability of the members of any service/cadre or incumbents of any posts/group of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all India basis and whether promotion is also done on the basis of the all-India zone of promotion based on common seniority for the service/cadre/posts as a whole. Mere clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) 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."]

A copy of the said O.M. dt. 20.4.87 is annexed as
ANNEXURE-6.

4.6 That the Govt. of India again brought out another Office Memo. Vide F.No.20014/16/86/E.IV/E.II(B) dt. 1.12.88. By the said O.M. the special (duty) allowance was further continued to the central Govt. employees at the rate prescribed therein.

A copy of the said O.M. dt.1.12.88 is annexed as
ANNEXURE-7.

4.7 That in the meantime, several cases were filed in the court/Tribunal challenging the refusal of grant of SDA and some of such cases went to the Hon'ble Supreme Court. The Hon'ble Supreme Court in Union of India & others -vs- S.Vijaykumar & others (C.A. No.3251/93) upheld the provisions of the O.M. dt.20.4.87 and also made it clear that only those employees who were posted on transfer from outside to the N.E. Region were entitled to grant of SDA on fulfilling the criteria as in O.M.dt.20.4.87. Such SDA was not available to the local residents of the N.E. Region. The Hon'ble Supreme Court also

Aslam Kumar Raha

went into the object and spirit of the O.M.dt.14.12.83 as a whole.

A copy of the said judgment dt.20.9.94 is annexed as
ANNEXURE-8.

4.8 That the Hon'ble Supreme court in another decision dated 23.2.1995, in Ca No.3034/95 (Union of India & ors -vs- Executive Officers Association Group-C) held that the spirit of the O.M. dt. 14.12.83 is to attract and retain the services of the officers from outside posted in the North-Eastern Region, which does not apply to the officers belonging to the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. Therefore, the incentives granted by the said O.M. is meant for the persons posted from outside to the North-Eastern Region, not for the local residents of the said defined reason. The applicant not being a local resident of the N.E. Region and being posted from out is very much entitled to SDA.

A copy of the said judgment dt.23.2.95 is annexed as
ANNEXURE-9.

4.9 That after the judgment of the Hon'ble Supreme Court, the Govt. of India brought yet another Office Memo. Vide No. 11(3)/95-E.II(B) dt.12.1.96 and directed the departments to recover the amount paid to the ineligible employees after 20.9.94 as held by the Hon'ble Supreme Court. But the applicant being entitled to the grant of SDA continued to be granted the SDA thereafter also.

A copy of the said O.M.dt.12.1.96 is annexed as
ANNEXURE-10.

4.10 That in a recent decision dt. 5.10.2001, in Union of India & others -vs- National Union of Telecom Engineering Employees

Adim Kumar Das

Union & others (CA No. 7000/2001) the Hon'ble Supreme court once again clinched on the vexed question of grant of SDA to the central govt. employees and by relying on the earlier decision in S.Vijaykumar held that the amount already paid to such ineligible employees should not be recovered.

The copy of the judgment dt. 5.10.2001 is annexed as **ANNEXURE-11.**

4.11 That pursuant to the said judgment passed in CA No. 7000/2001. the Govt. of India, Ministry of Finance, Department of Expenditure, brought out another Office Memo. F.No.11(5)/97-E.II(B) dt.29.5.2002 and thereby directed all the departments to recover the amount of SDA already paid to such ineligible employees with effect from 6.10.2001 onwards and to waive the amount upto 5.10.2001 i.e. the date of the said judgment.

The copy of the O.M. dt. 29.5.2002 is annexed as **ANNEXURE-12.**

Now, from the above facts and circumstances of the case and the clarifications made in the matter, it is very much clear that only those employees irrespective of their group in A,B,C or D, shall be entitled to grant of SDA if they fulfill the criteria as underlined in O.M. dt. 14.12.1983 and 20.4.87 and such employees are in fact posted in the North-Eastern Region from outside. The applicant having been fulfilled the criteria required for grant of SDA continued to get the same even after 5.10.2001.

4.12 That the respondent No.4 conducted their audit of accounts in the office of the respondent No.3 for the period 1.3.1988 to 30.11.2003 and submitted their Audit Report vide letter No. OA(HQ)/Development/71-8/2003-04 dated 6.2.2004. In the said

Ashim Kumar Raha -

audit report it has been stated that the applicant is not an eligible person as per instructions contained in above-mentioned GIMFOM dated 29.5.2002. It was further reported that the amount paid to the applicant from 6.10.2001 to 30.11.2003 for Rs.29,085/- be recovered and the payment of SDA be stopped 'henceforth'.

The copy of the letter dated 6.2.2004 along with the audit report are annexed as **ANNEXURE-13**.

- 4.13. That pursuant to the said direction given by the respondent No.4, the respondent No.3 initiated the action to recover the SDA from the salary of the applicant and reassessed the alleged recoverable amount as Rs.40,713/- instead of alleged assessed amount of Rs.29,085/- by the respondent No.4. The respondent No.3 decided to recover the said amount of Rs.40,713/- in 28 installments from the salary of the applicant at the rate of Rs.1455/- per month for the 1st installment and the rest 27 installments at the rate of Rs.1454/-per month. Accordingly, the respondent No.3 started the process of recovery of the said installments. This action of the respondent No.3 is illegal and without any authority to do so.
- 4.14. That in the meantime, the applicant came to know about a judgment passed by this Hon'ble Tribunal in OA No.101/2003 on 18.7.2004 (Shri Mahanth Bishwakarma -vs- Union of India & Others). By the said judgment this Hon'ble Tribunal once again held that a central Government employee having all India transfer liability is entitled to grant of SDA if he is posted in the N.E. Region from outside. The case of the applicant is also squarely covered by the said judgment. Then the applicant immediately took up the matter with the authority through his representation on 25.6.2005. The said representation was duly forwarded by the respondent No.3 to the respondent No.2 for

Abdul Kumar Raha

consideration vide letter No. BCDI/4(33)/2005-2006/125 dated 21.7.2005. When there was no response, the applicant submitted the reminder on 12.9.2005 and 16.11.2005 which were also duly forwarded by the respondent No.3 to the respondent No.2 for consideration vide letter No. BCDI/4(33)/2005-06/149 dated 12.9.2005 and No.BCDI/4(33)/2005-06/ dated 16.11.2005 respectively. All these representations are still pending disposal with the said authority upto now. As such, the action of the respondents in recovering the SDA and stoppage of SDA from the month of August, 2004 is illegal, arbitrary and untenable in law and the respondents are liable to be restrained from recovering the balance amount and further be directed to continue to pay SDA to the applicant and refund the recovered amount.

The copies of the said judgment dated 18.7.2004, representation dated 25.6.2005, 12.9.2005, 16.11.2005, letter dated 21.7.2005, 12.9.2005 and 16.11.2005 are annexed as **ANNEXURE- 14, 15, 16, 17, 18, 19 and 20** respectively.

4.15 That the respondent No.3 is recovering the installments as stated hereinabove upto the month of April, 2006 and shall continue to recover the SDA in installments. As on February, as many as 19 installments have been recovered amounting to Rs. 27,627/- and a balance of Rs.13,086/- shown as outstanding. In another case as in OA No.115/2002, this Hon'ble Tribunal has directed the Government to refund the amount to the applicants officer from who the SDA was recovered although they were held to be not entitled to SDA. The applicant craves the leave of this Hon'ble Tribunal to allow him to reply upon and place the said order at the time of hearing of the case.

Aslam Kumar Raha

The copy of the statement-dated 13.2.2006 is annexed as ANNEXURE-21.

- 4.16 That being highly aggrieved by illegal action and inaction of the respondents, the applicant has been compelled to file this application for redressal of his grievances.
- 4.17 That the applicant demanded justice which has been denied to him.
- 4.18 That this application has been made bonafide and for the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

- 5.1 For that the impugned order dated 6.2.2004 and the action of stoppage of SDA and recovery is illegal and arbitrary and the same is not tenable in law and the same is liable to be set aside and quashed.
- 5.2 For that the action of the respondents in stoppage of SDA and the recovery thereof is illegal as the applicant has not be given any chance of hearing before action and as such action of the respondents amounts to violation of rules of natural justice.
- 5.3 For that the stoppage of payment of SDA and the recovery of such amount already paid has been done as contrary to the settled provisions of law laid down by the Hon'ble Supreme Court and decision rendered by this Hon'ble Tribunal.
- 5.4 For that the applicant is entitled to grant of SDA as per provisions of the Office Memo. Dated 14.12.1983 and 20.4.1987 and he can not be discriminated and deprived of the said benefit

Adil Kumar Raha

in violation of provisions of Article 14 and 16 of the Constitution of India.

- 5.5 For that in any view of the matter the impugned action of the respondents in stoppage of SDA and recovering the same with retrospective effect is bad in law and the same cannot sustain in law.
- 5.6 For that the action of the respondents without disposal of his representations is untenable in law.

6. DETAILS OF REMEDY EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to him and there is no alternative and efficacious remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

That the applicant further declares that he has not filed any application, writ petition or suit regarding the grievances in respect of which this application is made, before any court or any other Bench of the Tribunal or any other authority nor any such application or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances of the case, the applicant most respectfully prays in this Hon'ble Tribunal that the application be admitted, records of the case may be called for and notices be issued to the respondents directing them to show cause as to why the relief sought for should not be granted to the applicant as prayed for and after hearing the parties and

Azizum Kumar Raha.

perusing the records including the causes, if any, shown by the respondents, this Hon'ble Tribunal may further be pleased-

- 8.1 To restrain the respondents immediately from making any further recovery of installments of SDA from the salaries of the applicant;
- 8.2 To direct the respondents to continue to pay the SDA and refund the amount so recovered from the salary of the applicant;
- 8.3 To pay cost of the application and any other relief to which the applicant is found to entitled and or pass such order that this Hon'ble Tribunal may deem fit and proper.

9. **INTERIM ORDER PRAYED FOR:**

Pending disposal of the application before this Hon'ble, it is further prayed that the respondent No.2 and 3 may be restrained from any further recovery of the SDA from the salary of the applicant from the month of May, 2006 onwards till the disposal of the application or until further from this Hon'ble Tribunal.

10. The application is filed through the advocate

11. **PARTICULARS OF I.P.O.**

I.P.O. NO: 260324181 Date of Issue: 21/5/06
Issued from: C.R.P.O. Payable at: Granthati.

12. **LIST OF ENCLOSURES :** As stated in the INDEX

Pravin Kumar Ratha.

35

VERIFICATION

I, Shri Ashim Kumar Raha, son of late Maniklal Raha, aged about 59 years, at present working as Technical Supervisor in the office of the Bamboo & Cane Development Institute, Office of the Development Commissioner (Handicrafts), Khejur Bagar, P.O. Kathal Bagan, Agartala (Tripura), being the applicant do hereby solemnly affirm and state that the statements made in para 4.2 and 4.13 of the application are true to my knowledge and belief, those made in para 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.14 and 4.15 being matter of records are true to my information derived therefrom and the rest are my humble submission and statements on legal advice made before this Hon'ble Court. I have not suppressed any material fact.

And I sign this verification on this 29th day of May 2006 at Guwahati.

Ashim Kumar Raha

Identified by me

Deponent

Advocate

*S D A advocate
N B V Jr. Legal Practitioner*

Gram: Dycraftind
Tele.No. 23-0019

Government of India
Ministry of Commerce
ALL INDIA HANDICRAFTS BOARD
(EASTERN REGION)

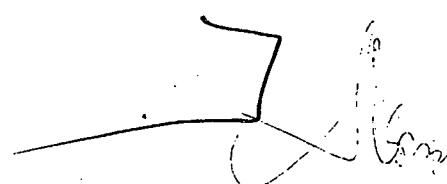
9-12, Old Court House Street,
Calcutta - I

No. EB(ER)57(II)/Estt/DCTC(J)/74

August 13, 1975

Shri Ashim Kumar Raha is hereby informed that on the basis of interview held on 13-8-75 he has been selected for appointment to the post of Technical Assistant attached to the Development Centre for Tribal Crafts, Jorhat. The post carries the scale of pay of Rs.425-15-500-EB-15-560-20-700/- plus other allowances ~~and~~ as admissible to Central Govt. Employees.

He is accordingly advised to report for duty at Development Centre for Tribal Crafts, Nakari Road, Jorhat-I (Assam) in the fore-noon of 20-8-75 positively. Failure to report for duty by the scheduled date shall automatically result in cancellation of this offer. Formal appointment letter will be issued in due course if he joins.


(S. LASKAR)
DY. DIRECTOR(EASTERN REGION)

To
Shri Ashim Kumar Raha,
3/1A, Amherst Street,
Calcutta-700009

g.s.g./

Certified to be true Copy.


Babhash Pathak
Advocate

A
Dale
Allen

REGISTERED
IMMEDIATE

No. 19/1/75-AD-II
Government of India
Ministry of Commerce
All India Handicrafts Board

West Block No. 7, R.K. Puram,
New Delhi-22, the 21 Sept., 75

MEMORANDUM

Shri Pravin Kumar Raha is hereby appointed to
tent w.e.f. 19.8.75 (F/D) in the scale of Rs. 425-75-500-15-560-20-700
in Development Centre for Tribal Crafts, Jorhat (Assam)

under the All India Handicrafts Board, Ministry of Commerce. The post is purely temporary under Plan Scheme and his services are liable to be terminated at any time without notice and without any reasons being assigned. The appointment will be subject to the Production of a certificate of physical fitness from the authorised medical authority and verification of his character and antecedents, as per rules.

Shri Pravin Kumar Raha if, at any time wishes to resign his employment shall give notice in writing, for a period of not less than thirty days of his intention to resign.

Shri Pravin Kumar Raha will be required to produce a character certificate in the proforma attached from the Head of the educational institution last attended by him and a similar certificate from his employer, if any, duly attested by a Stipendiary First Class Executive Magistrate (including District Magistrate or a Sub-Divisional Magistrate).

Shri Pravin Kumar Raha will be liable to serve in any part of India.

Shri Pravin Kumar Raha will be required to take oath of Allegiance to the Constitution of India and furnish a certificate at the time of joining duty that he, if already married, has not more than one wife living, and that he will not contract another marriage without first obtaining permission of Government notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

Shri Pravin Kumar Raha will be entitled to draw house rent and other allowances as are admissible to similar Government Servants under the rules in force from time to time.

No travelling allowance will be granted to Shri Pravin Kumar Raha for joining the post or on termination thereof. Other conditions of service will be governed by the relevant rules and orders in force from time to time.

Sh. Raha will be required to sign the undertaking in the attached Form Contd. on page 2/2.

Certified to be true Copy.

Bishesh Pathak
Advocate

No. 1/32/83-Admn. IV

Government of India

Ministry of Commerce

Office of the Development Commissioner (Handicrafts)

West Block No. 7, R.K.Puran,
New Delhi-110066.

Dated: 4th Sept., 1984.

OFFICE ORDER

The Development Commissioner (Handicrafts), Office of the Development Commissioner (Handicrafts), New Delhi hereby appoints Shri A.K. Raha, Technical Assistant in the scale Rs. 425-700 in D.C.T.C. Gauhati (Assam) to the post of Technical Supervisor in the pay scale of Rs. 550-25-750-ED-30-900 in Bamboo and Cane Division Institute Agartala on ad-hoc basis from the date he actually assumes charge of the post.

2. The above appointment on ad-hoc basis will not confer on Shri A.K. Raha any preferential treatment/claim for appointment to the said post on regular basis and the ad-hoc service rendered in the grade would not count for the purpose of seniority in the grade and for eligibility for confirmation and for promotion to the higher grade.
3. He will be entitled for joining time and transfer T.A. as admissible under the rules.
4. Orders for fixation of his pay in the cadre of Technical Supervisor will be issued separately, if required.

(S.K. Nayyar)

Section Officer (Admn. IV)
for Development Commissioner (Handicrafts)

To:

1. Shri A.K. Raha, Technical Assistant, D.C.T.C., Gauhati.
- C.C. to:
 1. Accounts Officer, CP&AO, Office of the Development Commissioner (Handicrafts), New Delhi.
 2. Deputy Director, Cane & Bamboo, B.C.D.I., Agartala. The joining report of Shri A.K. Raha as Technical Assistant may kindly be sent to this office alongwith his present pay in the cadre of Technical Assistant to enable this office to fix his pay in the cadre of Technical Supervisor.
 3. Director (Regional), Regional Office (ER), Calcutta. For information please.
 4. Chief Cane & Bamboo Division, Office of the DC (Handicrafts), New Delhi.
 5. Office order file / Personal file.

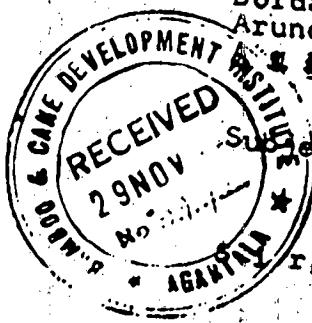
Certified to be true Copy.

Arshash Pathak
Advocate

To,

The Officer-in-Charge,
Office of the DC (Handicrafts),
Bamboo and Cane Development Instt.,
Bordawali, Near Govt. Press,
Arundhutinagar,
Agartala-3-799003.

Subject:- Joining report of Shri A.K.Raha, as Technical Supervisor in B.C.D.I., Agartala.



With reference to the order from the Section Officer (Admn.IV), Office of the DC(H), New Delhi-110066 vide his letter No.1/32/83-Admn.IV, dated 4th Sept.1984 regarding my appointment as Technical Supervisor.

I, myself report for duty on 29th Nov. 1984 at 10 A.M. (F.N.) as Technical Supervisor in Bamboo and Cane Development Institute, Agartala-3.

This is for favour of your kind record and necessary action.

Yours faithfully

A.K.Raha
(A.K.RAH) 29/11/84
Technical Supervisor

Copy to,

1. The Director(Regional), O/O the DC(Handicrafts), Calcutta-1. for his kind information.
2. The Chief, Cane and Bamboo Craft Div., O/O the DC(H), New Delhi-66. for his kind information.
3. The Section officer(Admn.IV), O/O the DC(H), New Delhi for his kind information.
4. The Asstt. Director, Marketing and Service Exten. Centre, O/O the DC (Handicrafts), Gauripur, Assam for his kind information and necessary action.

Sd/-
(A.K.Raha)
Technical Supervisor

LD/

Certified to be true Copy.

Bishash Pathak
Advocate

NO. 20014/2/83-E.IV
 Government of India
 Ministry of Finance
 Department of Expenditure

Now Delhi, th 14th December, 1983.

OFFICE MEMORANDUM

Subject :- Allowances and facilities for civilian employees of the Central Government serving in the states and Union Territories of North-Eastern Region - improvement thereof.

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

i) Tenure of posting/deputation

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

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

ii) Weightage for Central deputation/training abroad and special mention in Confidential Records.

- a) promotion in cadre posts;
- b) deputation of Central tenure posts; and
- c) courses of training abroad.

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North East.

Certified to be true Copy.

B. Ghosh Pathak

Advocate

Contd....2/-...

A specific entry shall be made in the C.R. of all employees who rendered a full tenure of service in the North Eastern Region to that effect.

iii) Special (Duty) Allowance :

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

iv) Special Compensatory Allowance :

1. Assam and Nagaland

The rate of the allowance will be 5% of basic pay subject to a maximum of Rs. 50/- p.m. admissible to all employees without any pay limit. The above allowance will be admissible with effect from 1.7.1982 in the case of Assam.

2. Manipur

The rate of Allowance will be as follows for the whole of Manipur :

Pay upto Rs. 260/- Rs. 40/- p.m.

Pay above Rs. 260/- 15% of basic pay subject to a maximum of Rs. 150/- p.m.

3. Tripura

The rates of the allowance will be as follows :

(a) Difficult areas 25% of pay subject to a minimum of Rs. 50/- and maximum of Rs. 150/- p.m.

(b) Other areas

Pay upto Rs. 260/- Rs. 40/- p.m.

Pay above Rs. 260/- 15% of basic pay subject to a maximum of Rs. 150/- p.m.

There will be no change in the existing rates of Special Compensatory Allowance admissible in Arunachal Pradesh, Nagaland and Mizoram and the existing rate of Disturbance Allowance admissible in specified areas of Mizoram.

Contd.... 3/...

(v) Travelling Allowance on first appointment

In relaxation of the present rules (S.R. 103) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in cases of journeys for taking up initial appointment to a post in the North-Eastern Region, travelling allowance limited to ordinary bus fare/ second class rail fare for road/rail journey in-excess of first 400 kms for the government servant himself and his family will be admissible.

(vi) Travelling Allowance for Journey on transfer :

In relaxation of orders below S.R. 116, if on transfer to station in the North-Eastern Region, the family of the Government servant does not accompany him, the Government servant will be paid travelling allowance on tour for self only for transit period to join the post and will be permitted to carry personal effects upto 1/3rd of his entitlement at Government cost or have a cash equivalent of carrying 1/3rd of his entitlement or the difference in weight of the personal effects he is actually carrying and 1/3rd of his entitlement as the case may be, in lieu of the cost of transportation of baggage. In case the family accompanied the Government servant on transfer, the Government servant will be entitled to the existing admissible travelling allowance including the cost of transportation of the admissible weight of personal effects according to the grade to which the officer belongs, irrespective of the weight of the baggage actually carried. The above provisions will also apply for the return journey on transfer back from the North-Eastern Region.

(vii) Road mileage for transportation of personal effects on transfer :

In relaxation of orders below S.R. 116 for transportation of personal effects on transfer between two different stations in the North Eastern Region, higher rate of allowance admissible for transportation in 'A' class cities subject to the actual expenditure incurred by the Government servant will be admissible.

(viii) Joining time with leave :

In case of Government servants proceeding on leave from a place of posting in North Eastern region, the period of travelling excess of two days from the station of posting to outside that region will be treated as joining time. The same concession will be admissible on return form leave.

(ix) A Lenan Travel Concession :

A government servant who leaves his family behind the old duty station or another selected place of residence and has not availed of the transfer travelling allowance for the family will have the option to avail of the existing lenan travel concession of journey to home town, once in a block period of 2 years, or in lieu thereof, facility of travel for himself once a year from the station of posting in the North-Eastern to his home town or place where the family is residing and in addition the facility for the family is (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employees at the station of posting in the North-Eastern Region. In case the option is for the latter alternative the cost of travel for the initial distance (400 kms/150 kms.) will not be borne by the officer.

Officers drawing pay of Rs. 2250/- or above, and their families, i.e., spouse and two dependent children (upto 18 years for boys and 24 years for girls) will be allowed air travel between Imphal/Silchar/Agartala and Calcutta and vice versa, while performing journeys mentioned in the preceding paragraph.

(x) Children Education Allowance/Hostel Subsidy:

Where the children do not accompany the Government servant to the North Eastern region, Children Education Allowance upto Class XII will be admissible in respect of children studying at the last station of posting of the employee concerned or any other station where the children reside, without any restriction of pay drawn by the Government servant. If children studying in schools are put in hostels at the last station of posting or any other station, the Government servant concerned will be given hostel subsidy without other restrictions.

2. The above orders except in sub-paro (iv) will also mutatis mutandis apply to Central Government employees posted to Andhra and Nicobar Islands.

3. These orders will take effect from 1st November, 1983 and will remain in force for a period of three years upto 31st October, 1986.

4. All existing special allowances, facilities and a concession extended by any special order by the Ministries/Departments of the Central Government to their own employees in the North Eastern Region will be withdrawn from the date of effect of the orders contained in this office Memorandum.

5. Separate orders will be issued in respect of other recommendation of the committee referred to in paragraph 1 as and when decisions are taken on them by the Government.

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

Sd/-

(S C MAHALIK)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA

To,

(6) No. 20014/3/83-E. IV
 Government of India
 Ministry of Finance
 Department of Expenditure

New Delhi, the 20th April, 1987.

OFFICE MEMORANDUM

Subject:- Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region and A. & N. Islands and Lakshadweep - improvement thereof.

The undersigned is directed to refer to para 1(iii) of Ministry of Finance, Department of Expenditure O.M. No. 20014/3/83-E. IV dated 14th December 1983 as amended vide Office Memorandum of even number dated 29.10.1986 on the above subject, which is reproduced below:-

1(iii) "Special (Duty) Allowance".

"Central Government civilian employees who have all-India transfer liability will be granted a special (duty) allowance at the rate of 25% of basic pay subject to a ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such Special (Duty) Allowance plus special pay/Deputation (Duty) Allowance will not exceed Rs. 100/- p.m. Special Allowance like special compensatory (remote locality) allowance, construction allowance and Project Allowance will be drawn separately".

2. Instances have been brought to the notice of this Ministry where special (duty) Allowance has been allowed to Central Government employees serving in North East Region without the fulfilment of the condition of all India transfer liability. This is against the spirit of orders on the subject. For the purpose of sanctioning special (duty) allowance, the all India transfer liability of the members of any Service/Cadre or incumbents of any posts/groups of posts has to be determined by applying tests of recruitment zone, promotion zone, etc. i.e. whether recruitment to the service/cadre/posts has been made on all-India basis and whether promotion is also done on the basis of the all-India zone of promotion based on common seniority for the service/cadre/groups as a whole. There clause in the appointment order (as is done in the case of almost all posts in the Central Secretariat etc.) 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.

Contd.../...

Certified to be true Copy.

Bishash Pathak
 Advocate

Post of my Delm
 Bishash Pathak
 Advocate

3. Financial Advisers of the administrative Ministries/Departments are requested to review all such cases where special (duty) allowance has been sanctioned to the Central Government employees serving in the various offices including those of autonomous organisations located in the North East Region which are under administrative control of their Ministries/Departments.

Chandresh

(A.N. SINHA)

DIRECTOR (EG)

TELE: 3011819

To

Financial Advisers of all Ministries/Departments.

F. No. 20014/16/UG/E.IV/E.II(B)
 Government of India
 Ministry of Finance
 Department of Expenditure
 New Delhi, the 1 December, 1960

OFFICE MEMORANDUM

Subject:- Improvement in facilities for Civilian employees
 of the Central Govt. serving in the States of North
 Eastern Region, Andaman & Nicobar Islands and Lakshadweep.

The undersigned is directed to refer to this Ministry's
 O.M. No. 20014/3/63-E.IV dt. 14th December, 1963 and 30th March,
 1964 on the subject mentioned above and to say that the question
 of making suitable improvements in the allowances and facilities
 to Central Govt. employees posted in North-Eastern Region comprising
 the States of Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal
 Pradesh and Mizoram has been enlisting the attention of the Govt.
 Accordingly, the President is now pleased to decide as follows:-

(1) Leave of posting/Deputation

The existing provisions contained in this Ministry's
 O.M. dated 14.12.63 will continue.

(2) Allowance for Central deputation and training abroad

The existing provisions as contained in this Ministry's
 O.M. dated 14.12.63 will continue. Cadre authorities are advised
 to give due weightage for satisfactory performance of duties for
 the proposed tenure in the North-East in the matter of deputation to Central tenure-post and course
 in the cadre posts, deputation and course
 in training abroad.

(3) Special (Duty) Allowance

Central Govt. Civilian employees who have All India
 transferability will be granted Special (Duty) Allowance at the
 rate of 12½% of basic pay subject to a ceiling of Rs 1000/- per
 month on posting to any station in the North-Eastern Region.
 Special (Duty) Allowance will be in addition to any special pay
 and/or deputation(duty) allowance already being drawn subject to
 the condition that the total of such Special (Duty) Allowance plus
 Special pay/Deputation(duty) Allowance will not exceed Rs 1000/- p.m.
 Special allowances like Special Compensation (Rugao) Locality
 Allowance, Construction Allowance and Project Allowance will be
 drawn separately.

2/2

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Bishesh Pathak

Advocate

The Central Govt. Civilian employees who are members of Schedule Tripos and are otherwise eligible for the grant of special (Duty) Allowance under this para and are exempted from payment of Income-Tax under the Income-Tax Act will also draw special (Duty) Allowance.

(iv) Special Expenditure Allowance:-
The recommendations of the 4th Pay Commission have been accepted by the Govt. and Special Expenditure Allowance at the revised rates have been made effective from 1.10.86.

(v) Traveling Allowance on First appointment:-
The present concessions as contained in this Ministry's O.M. dated 14.12.83 will continue with the liberalisation that on first appointment, T.A. should be admissible for the total distance, instead of 10% till distance in excess of first 400 Kms. only.

(vi) Traveling Allowance for Journey on transfer:-
The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue.

(vii) Allowance for transportation of personal effects:-
The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue.

(viii) Traveling with family:-
The existing provisions as contained in this Ministry's O.M. dated 14.12.83 will continue.

(ix) Child Education Allowance/Honourable
Officers drawing pay of Rs 5100/- or above, and their dependents upto 18 years and the dependent children (Upto 18 years for boys and 24 years for girls) will be allowed air travel between Madras/Chennai/Agartala/Visakhapatnam and Calcutta and vice versa; between Port Blair and Calcutta and vice versa in case of postings in I & II Islands; and between Bangalore and Cochin, and vice versa in case of postings in Lakshadweep.

(x) Child Education Allowance/Honourable
Where the children do not accompany the Government servant to the North-Eastern Region, Children Education Allowance upto Stage XII will be admissible in respect of children studying at the institution of posting of the employee concerned or any other institution where the officer resides. If children studying in schools are not in honours in the last station of posting or any other station, the Government servant concerned will be given honourable status without other restrictions.

The rates of Children Education Allowance/Hostel subsidy will be as in the D.O.P.R. O.M. 10011/1/87-Estt. (Allowances). dt. 31.12.87. as amended from time to time.

(xi) Communication regarding grant of House Rent Allowance to officers posted to the States of North Eastern Region, Andaman & Nicobar Island and Lakshadweep Islands.

The present concession as contained in this Ministry's O.M. No. 11016/1/E, II(B)/04 dy. 29.3.04 as amended from time to time will continue to be applicable.

(xii) Tel. infrastructure

The officers who are eligible to have residential telephone may be allowed to retain their telephone at their residences in their last place of the posting subject to the condition that the rental and all other charges are paid by such officers.

2. The above orders will also apply mutatis mutandis to the Central Govt. employees posted in Andaman & Nicobar Islands and Skokholm Island. These orders will also apply mutatis mutandis to officers posted to N.E. Council, when they are stationed in the N.E. Region.

2. This order will take effect from the date of issue.

4. In so far as the officers serving the Indian Audit & Accounts Deptt. are concerned their orders shall after consultation with the Comptroller & Auditor General of India,

2. Hand version of this *Macropandus* is attached.

1. Dr. B. R. AMBEDKAR
(A. P. AYARAKAN)
JOINT SECRETARY TO THE GOVT. OF INDIA.

.To

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

Copy (with serial number of spare copies) forwarded to
C.B.A.O., U.P., S.I., etc., etc., as per standard endorsement
list.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3251 OF (93)

Union of India and others

... Appellants

VERSUS

S. Vijayakumar and others

... Respondents

(With Civil Appeal Nos. 6163-81
of 1991 (arising out of
SLP(C) Nos. 16794/91, 16795/91,
16796/91, 16797/91, 16798/91,
10461/91, 9240/91).

JUDGMENT

HANSRAJ J.

The point for determination in this appeal
and in the special leave petitions (which have our favour)

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Bishash Pathak
Advocate

in whether the respondents are entitled to special duty allowance (hereinafter referred to as "the allowance"), even though they are residents of North-Eastern Region merely because of the posts to which they were appointed were of "All India Transfer Liability". The Tribunal has answered like question in affirmatively. These appeals have been preferred by the Union of India.

The Tribunal took the aforesaid view because the office memorandum dated 17.12.1905 wherein with the subject of "Allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of the North-Eastern Region improvement thereof" had stated that allowance shall be payable if the posts be those which have "All India Transfer Liability". The stand of the Union of India, however, is that this office memorandum, if it is read along with what was stated subsequently in office memorandum dated 20.4.1907, it would become clear that the allowance was required to be paid to those incumbents who had been posted in North-Eastern Region carrying the "Afghanistan" service condition and not to those who were residents of this region. The office memorandum of 1907 has clearly stated that the allowance

cause of inaccessibility and difficult terrain have said so because even the 1983 memorandum states saying that the need for the allowances who take an "allowance and retaining" the service of the competent officers for service in the North-Eastern Regions. Mention about retention has been made because it was found that incumbents going to that Region on deputation used to come back after joining thereby taking leave and, therefore, the memorandum stated that this period of leave would be excluded while counting the period of tenure of posting which was required to be of 2/3 years to claim the allowance depending upon the period of service of the incumbent. The 1983 memorandum makes this provision clear by stating that "Government employees who have All India Transfer Liability would be granted the allowance "on posting to a station to the North-Eastern Region". Thus "it is made clear beyond doubt by the 1983 memorandum" which stated that allowance would not become payable merely because of the clause in the appointment order relating to All India Transfer Liability. Merely because in the office memoranda of 1983 the subject was "mentioned" quoted above is not be enough to concede to it submission of Dr. Ghosh.

not have become payable merely because of the clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India.

3. Dr. Ghosh appearing for the ~~Government~~ ^{Opposition} contends that the office memorandum of 1983 having not stated what is contained in the memorandum of 1987, it can be added to the former that the allowance could be payable only to those who had been given posting in the North-Eastern Region, and not to those who were residents of this Region. It is also contended that denial of the allowance to the residents, while permitting the same to the non-residents, would be violative of the principle of equal pay for equal work and an Article 14 and 16 of the Constitution.

4. We have duly considered the rival submissions and are inclined to agree with the contention advanced by the learned Additional Solicitor General, Shirish Tulsi, for two reasons. The first is that a close perusal of the two aforesaid memoranda, alongwith what was stated in the memorandum dated 20.6.1985, which has been quoted in the memorandum of 20.4.1987, clearly shows that allowance in question was meant to attract persons outside the North-Eastern Region to work in that Region.

The submission of Dr. Ghosh that the denial of the allowance to the residents would violate the equal pay doctrine is adequately met by what was held in Reserve Bank of India vs. Reserve Bank of India Staff Officers Association and others, 1991 (1992) 2 SCC 20 which an abatement has been invited by the learned Additional Solicitor General, in which grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit, was not regarded as violative of Article 14 of the Constitution.

In view of the above, we hold that the respondents were not entitled to the allowance and the impugned judgments of the Tribunal are, therefore, set aside. Even so, in view of the fair stand taken by the Additional Solicitor General we state that whatever amount has been paid to the respondents, or for that matter to other similarly situated employes, would not be recovered from them in so far as the allowance is concerned.

(9) TYPE COPY (8)

PETITIONER:
UNION OF INDIA & ORS.

VS.

RESPONDENT:
EXECUTIVE OFFICERS ASSOCIATION GROUP-C

DATE OF JUDGMENT 23/02/1995

BENCH:
FAIZAN UDDIN (J)
BENCH:
FAIZAN UDDIN (J)
AGRAWAL, S.C. (J)

CITATION:
1995 AIR 1746 1995 SCC supl. (1) 757
JT 1995 (2) 533 1995 SCALE (2) 40

JUDGMENT:

1. Delay condoned.
2. Leave granted. The counsel for ties are heard.
3. This appeal has been directed by the appellants against the judgment dated May 28, 1993 passed by the Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as Tribunal) in O.A. No. 172 of 1972. By the said judgment the, Tribunal held that the respondents are entitled to Special Duty Allowance in terms of Office Memorandum dated December 14, 1983 with effect from the date specifically indicated in the said Office Memorandum and directed the appellants herein to pay and clear the Special Duty Allowance to the respondents herein within 90 days from the date of receipt of copy of the judgment in respect of the due and to release the current Special Duty Allowance with effect from the month of June, 1993.
4. The respondent No. 1 is an Association of Group (C) Inspectors of Customs and Central Excise under the Collectorate of Customs and Central Excise, Shillong and respondent Nos. 2 and 3 are its President and General Secretary respectively. The respondents approached the Tribunal claiming Special Duty Allowance on the strength of Office Memorandum No. 20014/2/83-E.IV dated December 14, 1983 and the Office Memorandum No. 20014/16/86.IV/E.II(13) dated December 1, 1988 issued by the Ministry of Finance, Government of India. The respondent-Association claimed that its members have all India transfer liability under the Central Excise and Land Customs Department Group (C) Posts Recruitment Rules, 1979 which were applicable to its members and in pursuance of which three of its members had been transferred and one Smt. Lisa L. Rynjah of Shillong had been posted at Goa under the said recruitment Rules and, therefore, they are eligible and entitled to claim Special Duty Allowance. The appellants herein opposed and contested the aforesaid claim of the respondents before the Tribunal. The appellants took the defence by stating that the Office Memorandum No. 20014/3/83-E/IV dated April 20, 1987 had clarified that the Special Duty Allowance is payable only to those officers, incumbents of Group (C) of posts who are having all India transfer liability defined in the said

Office Memorandum keeping in view the original Office Memorandum dated March 14, 1983 and that the conditions stipulated in the Recruitment Rules, 1979 referred to above cannot be taken as basis for saddling the respondents or its members with all India transfer liability and consequent payment of Special Duty Allowance to them. The appellants also took the plea that all India transfer liability of the members of any service/cadre or incumbent of any posts/Group of posts is to be determined by applying the tests of recruitment to the service/cadre/post made on all India basis and that mere clauses in the Recruitment Rules/Appointment Order stipulating all India transfer liability does not make him/them eligible for grant of Special Duty Allowance in terms of Office Memorandum dated December 14, 1983.

5. After considering the rival contentions the Tribunal observed that the contents of Office Memorandum dated April 12, 1984 as well as the letter No. 7/47/ 48.EA dated September 28, 1984 have been fully discussed by the Full Bench, Calcutta and held that the real test/criteria for determination is whether all India transfer liability exists and opined that without recalling the Office Memorandum issued in 1983 the concerned departments had no reason to deny the benefit of memorandum available to certain classes of employees and to withdraw its application to certain other classes. Relying on the said Bench decision of the Central Administrative Tribunal, Calcutta, the Tribunal allowed the application of the respondents by the impugned judgment and granted the relief as stated above against which this appeal has been preferred.

6. Learned counsel for the appellants submitted that the Tribunal has failed to appreciate the true meaning, intention and spirit behind the term 'all India transfer liability' which occurred in the Finance Ministry Office Memorandum referred to above and has thus seriously erred in holding that the members of the respondent Association are entitled to the Special Duty Allowance. He further submitted that the package of incentives contained in the Ministry's Office Memorandum dated December 14, 1983 (as amended) is based on the recommendations of the committee to review the facilities and allowance admissible to Central Government Employees in the North-Eastern Region and it was with a view to attract and retain competent officers service in the States and Union Territories in the North-Eastern Region that the Government of India on the recommendations of the committee made the provision for Special Duty Allowance to be paid to such officers who come on posting and deputation to North-Eastern Region from other Regions. It was, therefore, submitted that since the members of the respondent-Association belonged to the North-Eastern Region itself who were recruited and posted in the same Region, they were not entitled for Special Duty Allowance.

7. The main source for claiming the Special Duty Allowance is the Office Memorandum dated December 14, 1983 the very first paragraph of which reads as under:-

"The need for attracting and retaining the services of competent officers for service in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram have been engaging the attention of the Government for some time. The Government had appointed a Committee under the Chairmanship of Secretary Department of

Personnel & Administrative Reforms, to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in this region and to suggest suitable improvements. The recommendations of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows."

8. A careful perusal of the opening part of the Office Memorandum reproduced above would show that the Government had appointed a Committee under the Chairmanship of the Secretary Department of Personnel and Administrative Reforms to review the existing allowances and facilities admissible to the various categories of Civilian Central Government Employees serving in the North-Eastern Region so that competent officers may be attracted and retained in the North-Eastern Region States. The use of words 'attracting and retaining' in service are very much significant which only suggest that it means the competent officers belonging to the Region other than the North-Eastern Region. The question of attracting and retaining the services of competent officers who belong to North-Eastern Region itself would not arise. The intention of the Government and spirit behind the Office Memorandum is to provide an incentive and attraction to the competent officers belonging to the Region other than the North-Eastern region to come and serve in the North-Eastern Region. It can hardly be disputed that the geographical, climatic, living and food conditions of people living in North-Eastern Region and the States comprising therein are different from other Regions of the country. The North-East Regions is considered to be 'hard zone' for various reasons and it appears that it is for these reasons that the Government provided certain extra allowance, benefits and other facilities to attract competent officers in the North-Eastern Region at least for two to three years of tenure posting. The Ministry's Office Memorandum in question came up for consideration before this Court in *Chief General Manager (Telecom) v. S. Rajender C.H. Bhattacharjee & Ors.* [J.T. 1995 (1) SC 440] which was decided by us by judgment dated January 18, 1995 in which this Court took the view that the said Office Memorandum are meant for attracting and retaining the services of competent officers in the North-Eastern Region, from other parts of the country and not the persons belonging to that region where they were appointed and posted. This was also the view expressed by this Court in yet another case reported in *J.T. 1994 (6) 443 Union of India v. S. Vijaya Kumar & Ors.* In *Vijaya Kumar (Supra)* the point for consideration was exactly identical, with regard to the entitlement to Special Duty Allowance to those employees/officers who are residents of North-Eastern Region itself. After considering the memorandum dated December 14, 1983 and other related Office Memorandums indicated above, it was held that the purpose of the allowance was to attract persons from outside the North-Eastern Region to work in the North-Eastern Region because of inaccessibility and difficult terrain. In the facts and circumstances stated above the view taken by the Tribunal cannot be upheld and deserves to be set aside.

9. For the reasons stated above the appeal is allowed. The impugned order of the tribunal is set aside and the application filed by the respondents before the tribunal for grant of Special Duty Allowance to them is dismissed. In the facts and circumstances of the case, we make no order as to costs.

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

 New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No. 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 20011/1C/86-E.IV/E.II(B) dt. 1.12.88 on the subject mentioned above.

2. The Government of India vide the abovementioned OM dt. 14.12.83 granted certain incentives to the Central Government civilian employees posted to the NE Region. One of the incentives was payment of a 'Special Duty Allowance' (SDA) to those who have "All India Transfer Liability".

3. It was clarified vide the above mentioned OM dt. 20.4.1987 that for the purpose of sanctioning 'Special Duty Allowance', the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc. i.e., whether recruitment to service/cadre/post has been made on all India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of SDA.

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

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

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Bishesh Pathak

Advocate

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

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

- i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived; &
- ii) the amount paid on account of SDA to ineligible persons after 20.9.94 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.94, but payments were made after this date i.e. 20.9.94) will be recovered.

8. All the Ministries/Departments etc. are requested to keep the above instructions in view for strict compliance.

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

10. Hindi version of this (Q) is enclosed.

(C.Balachandran)

Under Secy to the Govt of India

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

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

TYPE COPY

In the Supreme Court of India

Civil Appellate Jurisdiction

Civil Appeal No. 7000 of 2001

Arising out of SLP (C) No. 6465 of 1999

Union of India & another Appellants
 -versus-
 National Union of Telecom Engineering Employees Union & others Respondents

ORDER

Leave granted.

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

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

Sd/-

R. Santosh Hegde

Sd/-

K.G. Balakrishnan

New Delhi
 October 05, 2001

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Bibhash Patnaik
 Advocate

Swarnysnews

17

July, 2002

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 G.I., M.F., O.M. No. 11 (5)/97-E. II (B), dated 29-5-2002 (but to
 G.I., M.F., O.M. No. 11 (3)/95-E. II (B), dated 12-1-1996 (Sl. Nos. 214 and 103
 of Swamy's Annual, 1988 and 1996 respectively) on the subject mentioned above.

Special Duty Allowance to civilian employees posted in N.E. region from outside the region only

The undersigned is directed to refer to this Department's O.M. No. 20014/3/83-E. IV, dated 14-12-1983 and 20-4-1987 read with O.M. No. 20014/16/86-E. IV/E. II (B), dated 1-12-1988 and O.M. No. 11 (3)/95-E. II (B), dated 12-1-1996 (Sl. Nos. 214 and 103 of Swamy's Annual, 1988 and 1996 respectively) on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted in N.E. region vide OM, dated 14-12-1983. Special Duty Allowance (SDA) is one of the incentives granted to the Central Government employees having "All India Transfer Liability". The necessary clarification for determining the All India Transfer Liability was issued vide OM, dated 20-4-1987, laying down that the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone, etc., i.e., whether recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an All India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in N.E. region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UoI. The Hon'ble Supreme Court in judgment delivered on 20-9-1994 (in Civil Appeal No. 3251 of 1993 in the case of *UoI and Others v. Sh. S. Vijaya Kumar and Others*), have upheld the submissions of the Government of India that Central Government civilian employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North-Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

SN-2

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Abhishhek Pathak

Advocate

July, 2002

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Swamysnews

4. In a recent appeal filed by Telecom Department (Civil Appeal No. 7000 of 2001-arising out of SLP No. 5455 of 1999), Supreme Court of India has ordered on 5-10-2001 that this appeal is covered by the judgment of this Court, in the case of *UoI and Others v. S. Vijayakumar and Others*, [reported as 1994 (Supp. 3) SCC, 649] and followed in the case of *UoI and Others v. Executive Officers' Association Group 'C'* [1995 (Supp. 1) SCC, 757]. Therefore, this appeal is to be allowed in favour of the UoI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed.

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

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

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

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

- (i) The amount already paid on account of Special Duty Allowance to the ineligible persons "not qualifying" the criteria mentioned in 5 above on or before 5-10-2001, which is the date of judgment of the Supreme Court, will be waived. However, recoveries, if any, already made need not be refunded.
- (ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5-10-2001 will be recovered.

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

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

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OFFICE OF THE ACCOUNTANT GENERAL (AUDIT)
TRIPURA:::AGARTALA

(13) NO. OA(HQ)/Development/71-8/2003-04 /2005

Dated:-

F 6 FEB 2005

To
The Officer-in-charge
Bamboo & Cane Development Institute,
Office of the Development Commissioner(Handicrafts),
Khejurbagan, P.O Kunjaban, Agartala, Tripura(W)

Sir,

I am to enclose an Inspection Report relating to the audit of the accounts of your office for the period from 01/03/1988 to 30/11/2003 and to request you that an annotated copy of the same showing the action taken against each para may kindly be sent to this office within one month from the date of receipt.



Yours faithfully,

Arshad Pathan
Sr. Audit Officer

Memo No. OA(HQ)/Development/71-8/2003-04

Dated:-

Copy forwarded for information and necessary action to:-

Govt. of India, Ministry of Textile Deputy Director (NER), Office of the Development Commissioner(Handicrafts) Bamboo and Cane Development Institute, Guwahati-6, Assam.

This relates to the Audit Note on the accounts of the Office -in-charge, BCDI Office of the Development Commissioner(Handicrafts) for the period from 01/03/1988 to 30/11/2003.

*Case may be forwarded
to the R D NER for
preparation of action
taken against each para
on Manubhai*

23.2.04

Sr. Audit Officer.

Certified to be true Copy
Parbhash Pathan
Advocate

Inspection Report on the accounts of the Officer-in-Charge, Bamboo and Cane Development Institute, Agartala for the period from 1.3.1988 to 30.11.2003.

Part-I

Introductory:- The accounts of the Officer-in-charge, Bamboo and Cane Development Institute (BCDI) for the period from 1.3.1988 to 30.11.2003 were test audited by an audit party deputed from the Office of the Accountant General (Audit), Tripura, Agartala during 22.12.2003 to 31.12.2003.

Incumbency:- The following persons functioned as Officer-in-Charge (Head of the Office and DDO) from time to time during the period as indicated against each.

<i>Sl.No.</i>	<i>Name of the person</i>	<i>Period</i>
1.	Shri L. Hazao, Dy. Director (NER) O/o the DC (H) Guwahati-6	1.3.1988
2.	Shri Ashutosh Kumar	6.4.1988
3.	Shri S.R. Masrami	1.12.2000 to till date.

Expenditure Statement:-

<i>Year</i>	<i>Total Budget</i>		<i>Total Expenditure</i>	
	<i>Salary</i>	<i>Non-Salary</i>	<i>Salary</i>	<i>Non-Salary</i>
2000-2001	16,50,000	5,95,000	15,28,919	3,48,568
2001-2002	18,30,000	9,13,703	12,90,274	8,92,582
2002-2003	20,00,000	6,25,000	14,92,722	6,16,465

Part-II-A

NIL

Part-II-B

Para.1(a) Non-operation of Cash Book.

During scrutiny it was noticed that Cash book had been maintained upto 27.10.87 thereafter it stood non operational w.e.f. 28.10.1987 till 5.4.1988.

The position of suspension of operation of cash book was also mentioned in Para.2 of Part-II-B of the preceeding Inspection Report covering the period from 1.3.1986 to 29.2.1988.

The reason for non operation of Cash Book has been attributed to temporary cessation of cheque drawal authority of Local Drawing Officer and vested in the Dy. Director (NER), Sub Regional Officer, Guwahati-6 vide letter No. HB.C & B/Misc/DCDI/86-87 dated 23.9.87. The reason for such temporary withdrawal of cheque drawing power of local authority and subsequent restoration of that resumption of Cash Book operation w.e.f. 6.4.1988 could not be made available to audit.

During discussion, the Officer-in-charge BCDI stated that the matter had already been referred to the Dy. Director (NER) Guwahati and correspondence with audit would follow throwing necessary light on the matter.

(b) *Non production of Counterfoils of cheques drawn between 1.3.1986 and 23.4.1987 for cheque based system of payments made by DDO was prevalent in BCDI prior to 28.10.1987.*

With effect from 28.10.1987, the drawing power, cheque drawal authority of Local DDO was withdrawn and placed under Dy. Director (NER), Sub Regional Officer, Guwahati.

The function of Local DDO resumed w.e.f.6.4.1988 with the changed system of Bank Draft link payment discontinuing cheque based payment system.

During preceeding audit the BCDI could not produce the counter foils of the cheques drawn between 1.3.1986 and 23.4.1987 on the ground that those counterfoils had been transmitted to Sub Regional Officer, Guwahati.

This time also the BCDI could not produce those counterfoils before audit. During discussion the BCDI has been requested to throw adequate light on this matter and also to arrange to produce those cheque counterfoils positively to next audit.

Para.2:- Payment of Special Duty Allowance (SDA) to an ineligible person— Recoverable Amount stood at Rs. 29,085/- upto November 2003.

Eligibility for entitlement of SDA in respect of a Central Government employee serving in the North Eastern Region is required to be regulated in terms of Govt. of India, Ministry of Finance Office Memorandum No. F.11(5)/97-E11(B) issued on 29th May 2002 as the follow up of the judgement delivered by the Hon'ble Supreme Court of India determining the criteria for eligibility.

In its judgement dated 5.10.2001 the Hon'ble Supreme Court observes that mere All India Transfer Liability will not entitle a person for Special Duty Allowance (SDA) and determines that "The Special Duty Allowance (SDA) shall be admissible to Central Civilian Employees having All India Transfer Liability on posting to North Eastern Region (including Sikkim) from outside the Region."

In the context of GIMFOM ibid dated 29th May 2002, the entitlement/eligibility/admissibility of SDA in respect of Shri A.K. Raha, Tech Supervisor of BCDI, Agartala has been examined with reference to his service information and his service book produced to audit. On scrutiny, it is found that Shri Raha joined on appointment at Jorhat, Assam (a place within North Eastern Region) in the Development Centre for Tribal Crafts on 19.8.1975 as his first posting in service. During service he has so far been worked in the following stations all of them were within North Eastern Region.

Sl.No.	Station	Office	Period
1.	Jorhat (Assam)	Development Centre for Tribal Crafts	19.8.1975 to 7/78
2.	Guwahati (Assam)	Development Centre for Tribal Craft	7/78 to 11/84
3.	Agartala (Tripura)	Bamboo and Cane Development Institute, O/o the DC (Handicrafts), Agartala.	11/1984 to till date.

Shri Raha has been receiving the SDA through he is not an eligible person as per instructions contained in above mentioned GIMFOM dated 29th May, 2002.

6-10-2001

Mark
object

As he has been receiving SDA ab initio, the recovery is to be waived upto 5.10.2001 (date of Judgement in Supreme Court) and it is to be effected w.e.f. 6.10.2001 as per aforesaid GIMF.O.M.

As per statement furnished by the Officer-in-charge, BCDI, Agartala, the recoverable amount for the period from 6.10.2001 to 30.11.2003 stood at Rs. 29,085/-.

In compliance with the instructions contained in the aforesaid GIMFOM dated 29th May 2002, the following action may please be taken under intimation to audit.

- (a) Payment of SDA to Shri A.K. Raha, Tech Supervisor may henceforth be discontinued.
- (b) Recovery of already paid recoverable amount of SDA to the tune of Rs. 29,085 upto 30.11.2003 may please be effected.

Para.3:- Trainees finished products produced between 1.3.1988 and 30.11.2003 lying unsold -Rs. 68,406/-

On test check it was noticed that between 1.3.1988 and 30.11.2003 a total nos 35 nos of Batches (Batch No.23 to 57) of trainees (40 trainees in each batch of Six months duration training) passed out and produced 6180 nos of articles as detailed in Annexure I of as many as 131 types during the period of training. The Trainee's Finished products are subject to sale besides display and preservation in the case of certain selected and specialised items.

Total value of finished products determined as Rs. 1,20,237/- (Actual cost of production plus 10% Service charge).

Test check revealed that during the period only 3189 nos of articles worth Rs. 51,831/- was sold and balance 2991 nos of articles worth Rs. 68,406/- remained lying in the stock unsold.

Scrutiny further revealed that unsold articles also included products of 23rd Batch which was imparted training from 1.1.1988 to 30.6.1988 and a considerable nos of articles produced by different batches have already turned unserviceable (The nos and value could not be made available to audit).

As the articles produced by bamboo and cane are subject to high depreciation, necessary arrangement may be made for sale of articles early in good condition to avoid total loss.

Part-III

NIL

On behalf of
5/3/04
Sr. Audit Officer.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(14)

X

Original Application no. 101/2003

Date of decision : This the 1st day of July, 2004Hon'ble Mrs. Bharati Ray, Member (J)
Hon'ble Shri K.V. Prahaladan, Member (A)Shri Mahanth Vishwakarma,
Laboratory Technician,
C/o. Commandant,
SSB Group Centre, Tezu,
Dist. Lohit,
Arunachal Pradesh. Applicant

By Advocate Mr. M. Chanda

-versus-

1. The Union of India,
Represented through
the Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.
2. The Director General of Security,
Office of the Director, SSB,
Block-V (East), R.K. Puram,
New Delhi 110 066.
3. The Divisional Organiser,
A.P. Division, S.S.B.,
Itanagar, Arunachal Pradesh.
4. The Area Organiser (Staff),
Divisional Headquarters, SSB
Itanagar, Arunachal Pradesh.
5. The Asstt. Commandant/DDO,
Group Centre, SSB
Tezu, Arunachal Pradesh. Respondents.

By Advocate Mr. A. Deb Roy, Sr.CGSC

O R D E R

Mrs. BHARATI RAY, MEMBER (J)

This is an application filed by the applicant u/s 19 of the A.T. Act, 1985 seeking the following relief:

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned memorandum issued

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Bibhash Pathak
Advocate

-:2:-

under No.GCT/0531/2002-03/SDA/12601 dated 05.10.02 and all other letters associated thereto.

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to pay Special Duty Allowance (SDA) to the applicant in terms of O.M. dated 14.12.83/1.12.88 and O.M. dated 22.7.98, and also in the light of judgment and order passed on 10.8.2001 in O.A. No.84/2001 by this Hon'ble Tribunal, along with arrear, with retrospective effect from the date from which it was stopped.

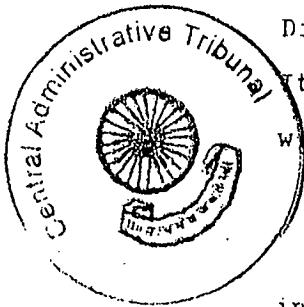
8.3 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to payment of SDA in terms of the O.M. dated 14.12.83, 1.12.88, 22.7.98 and in terms of O.M. dated 12.1.96 issued by the Govt. of India, Ministry of Finance.

8.4 That the respondents be directed to refund the full amount of SDA recovered from the applicant immediately.

8.5 Cost of application.

8.6 Any other relief(s) which the applicant is entitled to as the Hon'ble Tribunal deems fit and proper.

2. The undisputed facts of the case are that the applicant was initially appointed as Laboratory Technician by the Directorate General of Security, SSB, New Delhi vide appointment letter No.D/SSB/A-2/89(18) dated 23.2.90 and was posted in the Office of the Divisional Organiser, SSB, Arunachal Pradesh Division, Itanagar in the North Eastern Region and joined there w.e.f. 19.3.90.



3. Government of India had decided to give some incentive to the civilian employees of the central government working in the states and Union Territories of the North Eastern Region. The scheme amongst others granted Special Duty Allowance (hereinafter referred to as SDA) to the employees having all India transfer liability. The original scheme was issued under Ministry

-;3:-

of Finance's O.M. No. II 20014/3/83/E-IV dated 14.12.83 whereby SDA was given with effect from 1.11.1983 in terms of para 3 of the said O.M. The period and rate of payment was subsequently modified from time to time. The central government employees posted in North Eastern Region covered by the said OM dated 14.12.83 were paid SDA in terms of the said OM. Copy of the OM dated 14.12.1983 is enclosed as Annexure -III to the OA.

4. In terms of the above OM and on fulfillment ~~criteria~~ of the eligibility, the applicant was granted SDA which was paid to him since his initial appointment. But thereafter, all of a sudden, the payment of SDA has been denied to the applicant and recovery has been effected from his salary on the plea that the applicant is not entitled to get SDA. The applicant submitted representation to the respondents on 22.4.2002 requesting for payment of SDA and refund of the amount recovered on account of SDA to him. The said representation was followed by subsequent representations dated 22.5.2002, 10.8.2002 and 5.10.2002. Ultimately the respondent no.5 vide impugned memorandum No. GCT/0531/2002-03/SDA/12601 dated 5.10.02 rejected the prayer of the applicant informing him that he is not eligible for SDA and forbidding him from making further correspondence in this regard. Being aggrieved by the same the applicant approached this Tribunal seeking the relief mentioned above.

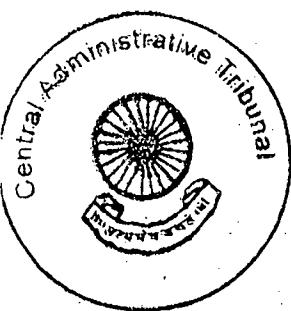
...4/-



5. It is the contention of the applicant that in terms of para 10 of the appointment letter dated 23.2.90 applicant has all India transfer liability and he hails from outside the North Eastern region and posted at 19.3.90 Itanagar w.e.f. L and subsequently transferred to Group Centre, SSB, Tezu where he joined on 22.7.1995, both of which are in the North Eastern region. Therefore, in terms of O.M. dated 14.12.83 and O.M. dated 12.1.96 the applicant is entitled to get the SDA. The learned counsel for the applicant in this context has placed reliance on the judgment of the Hon. Supreme Court in the case of Union of India and Ors. vs. S. Vijayakumar and Ors. reported in 1994 Supp(3)SCC 649 and a judgment of this Bench in OA 136/2000 decided on 20.12.2000 which was allowed following the above mentioned decision of the Hon'ble Supreme Court.

6. Heard Mr. M. Chanda, xxxxx, learned counsel for the applicant and Mr. A. Deb Roy, learned Sr.C.G.S.C for the respondents. We have gone through the facts of the case and material papers placed before us. We have also gone through the judgments relied upon by the learned counsel for the parties.

7. The O.M. dated 14.12.1983 which was issued by the Ministry of Finance to provide some incentive in North Eastern Region was subsequently clarified by further O.M. dated 29.10.1986 and 20.4.1987. A number of litigations were filed before the Tribunal and finally the matter was resolved by the decision of the Supreme Court rendered in the case of Union of India vs. S.



-15-

"Vijay Kumar and Ors." reported in 1994 (28) ATC 598. It was observed by the Hon'ble Supreme Court that in the O.M. dated 29.10.1986 which was quoted in the O.M. dated 26.4.1987 clearly shows that allowance in question was meant to attract persons outside the North Eastern Region to work in this region because of the inaccessibility and difficult terrain and held that 1986 memorandum made the position clear by stating that Central Government civilian employees who have All India Transfer liability would be granted the allowance "on posting to any station to the North Eastern Region and the allowance (SDA) is not payable to employees who are residents of that region." It is further held that denial of the allowance to such employees did not violate Article 14 and 16 of the Constitution.

On going through the judgment of this Bench in OA 136/2000 we find that the applicant in the said OA is a person hailing from outside North Eastern region and selected on All India selection was initially sanctioned SDA but thereafter he was denied the payment of SDA. This Tribunal following the decision of the Hon'ble Supreme Court (supra) allowed the OA. The applicant in this OA is similarly placed. We have gone through the decision of this Bench in OA No. 43/2000 decided on 11.1.2001 relied upon by the respondents and find that in the said case the applicant therein hails from the North Eastern Region and permanent residents of Assam and recruited in the Special Service Bureau in the initial stage and consequent upon the promulgation of the Madras Act, the

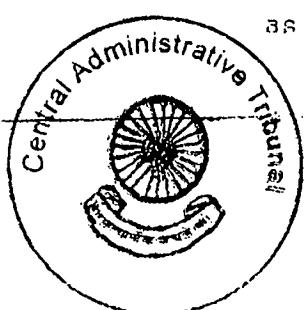


- 6 :-

were absorbed in D.G(S) Secretarial Cadre Rules during 1975 and therefore held that they are not entitled to the benefits of the above OMs. Therefore, the case relied upon by the respondents has no application in the case in hand.

9. In view of the above facts and circumstances we are of the view that the applicant's case is squarely covered by the decision of the Hon'ble Supreme Court as well as the decision of this Bench in OA No.136/2000. Therefore, the impugned order dated 05.10.2002 is not sustainable and is quashed and set aside. The respondents are directed to pay the SDA along with arrears from the date it was stopped. Respondents are also directed to refund the amount, if any, already recovered from the applicant. Respondents shall complete the above exercise within two months from the date of communication of the order.

10. In result, the O.A. is allowed with no order as to costs.



Certified to be true Copy
তথ্যাত্মক প্রতিলিপি

Sd/ MEMBER (J)
Sd/ MEMBER (A)

N. S. S. 21/2/05
অসম অধিকারী
Section Officer (Judl)
Central Administrative Tribunal

গুৱাহাটী-৫
GUWAHATI-5

16/1/05
N. S. S.

50



(15) To
 The Officer -in- charge
 Bamboo & Cane development Institute
 O/o the D.C.(Handicrafts)
 Khejur bagan, Agartala-799006

Sub:- Prayer for restoration of S.D.A. in respect of Shri A.K.Raha, Technical Supervisor, BCDI,O/o the DC(H), Agartala, regarding,

Sir,

I have the honour to state that you are aware I have been receiving SDA (Special Duty Allowances) since inception of SDA introduced w.e.f. 14.12.1983. As I am from other than N.E.Region and posted at Jorhat (Assam) in 19.08.1975 and having all India transfer liability.

That Sir, As per local audit at BCDI in December 2004, the Audit Officer has objected my case for drawl of SDA vide OM. No. F.11(5)/97-EII (B), dated 29.05.2002, that I am not entitled SDA as my initial posting in NERegion ie, Jorhat ,Assam. Therefore, payment of SDA to me already stopped w.e.f. July 2004 and are being recovered of SDA of Rs. 40,713/- (Rupees Forty thousand seven hundred thirteen) only deducted w.e.f August , 2004 @1454/- pm in 28 installments .

That Sir, recently I came to know from Swamy news's in February 2005 edition (a copy enclosed) that " Shri Mahanth Vishwakarma V Union of India and others 2/05, swamy news 104 ,(Guwahati) date of judgment 28.07.2004.The Hon'ble Guwahati Tribunal court has given judgment in favour of Shri Mahanth Vishwakarma. The respondents are directed to pay the SDA along with arrears from the date it was stopped and also directed to refund the amount already recovered from the applicant . Respondents shall complete the above exercise with in two months from the date of communication of the order". I may mentioned here that Shri Mahanth Vishwakarma being a permanent residents of Assam and his initial posting at Itanagar in the NERegion.

That Sir, in the light of the above mentioned judgment I fervently request you that the payment of SDA which was stopped to me, may kindly be restored and make payment of recoverable amount to me at earliest.

Your early action in this regards will be highly solicited.

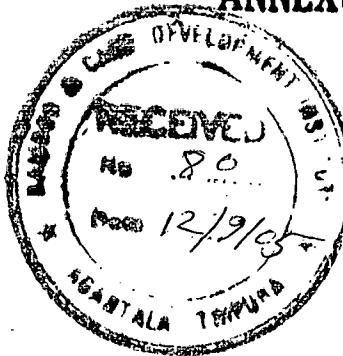
Yours faithfully,

A.Raha 25.06.05
 (A. K. RAHA)
 Technical Supervisor
 BCDI, AGARTALA

Enc/- As above

Certified to be true Copy.
Parbhash Pathak
 Advocate

16
To
The Officer-in-Charge
Bamboo & Cane Development Institute
O/o the D.C.(Handicrafts)
Khejurbagan, Agartala-799006.



Sub:- Prayer for restoration of SDA in respect of Shri A.K.Raha,
Technical Supervisor, BCDI, O/o the D.C.(H), Agartala,
regarding,

Ref:- My earlier letter dated 25.06.2005.

Sir,

With reference to the subject cited above. You are aware my case regarding payment of SDA which has been stopped as per Audit objection. Till date I have neither received any satisfactory reply nor any communication from your end.

In this connection, I am earnestly requested once again to look into my case and take necessary arrangement for settlement of payment my SDA at the earliest.

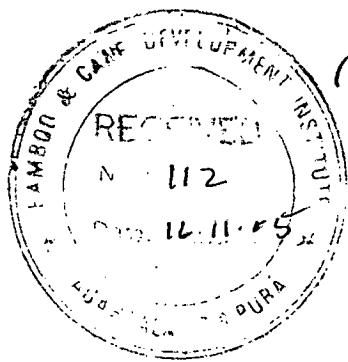
Your appropriate action will be highly solicited. (a copy of my earlier representation is enclosed herewith for your ready reference.

Yours faithfully,

A.Raha 12.09.05
(A.K.RAHA)
Technical supervisor

Certified to be true Copy.
Bishash Pathak
Advocate

1. BISHASH PATHAK
2. BISHASH PATHAK
3. BISHASH PATHAK



To
 The Officer-in-Charge
 Bamboo & Cane Development Institute
 O/o the D.C.(Handicrafts)
 Khejurbagan, Agartala-799006.

Sub:- Prayer for restoration of SDA in respect of Shri A.K.Raha,
 Technical Supervisor, BCDI,O/o the D.C.(H), Agartala,
 regarding;

Ref:- My earlier letters dated 25.06.2005 & 12.09.05.

Sir,

With reference to the subject cited above. You are aware my case regarding payment of SDA which has been stopped as per Audit objection. Till date I have neither received any satisfactory reply nor any communication from your end.

In this connection, I am earnestly requested once again to look into my case and take necessary arrangement for settlement of payment my SDA at the earliest.

Your appropriate action will be highly solicited. (a copy of my earlier representations are enclosed herewith for your ready reference.

Yours faithfully,

A.K.Raha 16.11.05
 (A.K.RAHA)
 Technical supervisor

Certified to be true Copy

Bishash Pathak
 Advocate

GRAM: VENUSHILP
TEL.NO.0381-2226807
TEL/FAX NO.0381-2326245

GOVERNMENT OF INDIA
MINISTRY OF TEXTILES
O/o THE DEVELOPMENT COMMISSIONER (HANDICRAFTS)
BAMBOO & CANE DEVELOPMENT INSTITUTE
KHEJUR BAGAN, AGARTALA-6.

NO. BCDI/4(33)/2005-2006/125

Date 13.07.05
21

To
The Regional Director(NER)
O/o the D.C.(Handicrafts)
House fed complex
Guwahati-781006.

Sub:- SDA regarding;

Sir,

Kindly find enclosed herewith a representation received from Shri A.K.Raha , Technical Supervisor, of this institute, which is self explanatory.

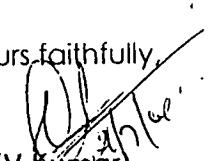
In this connection, Shri Raha has been drawn SDA earlier but the local audit objected and stopped for drawal of SDA. W.e.f. July,2004 and huge amount is being recovered from him as Shri Raha initially posted in the NERegion ie, Jorhat Assam.

The Hon'ble Guwahati Tribunal court has given judgment a case in favour of Shri Mahanth Vishwakarma that he is entitled to draw SDA though Shri Mahanth is a permanent residents of Assam and his initial posting at Itanagar in the NERegion ,which is published in Swamy news's in February 2005 edition (Copy enclosed).

In view of the above facts, the case of Shri Raha may be reviewed and considered.

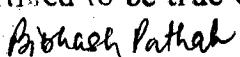
This is for favour of your kind information and doing the needful.

Yours faithfully,


(V. Kumar)
Sr. Asstt. Director(H),
Officer - in charge

Encl/As above.

02
Certified to be true Copy,


Bipash Pathak

Advocate

54

GRAM: VENUSHILP
 TEL.NO.0381-2226807
 TEL/FAX NO.0381-2326245

GOVERNMENT OF INDIA
 MINISTRY OF TEXTILES
 O/o THE DEVELOPMENT COMMISSIONER (HANDICRAFTS)
BAMBOO & CANE DEVELOPMENT INSTITUTE
 KHEJUR BAGAN, AGARTALA-6.

No.BCDI/4(33)/2005-06 / 129

Dated, the 12th Sept.05.

To,
 The Regional Director(NER),
 O/O the DC(Handicrafts),
 Gawahati-78006.

Sub:- SDA regarging
 Ref:- Our earlier letter No.BCDI/4(33)/2005-06 /125 ,
 dated 21.7.05.

Sir,

With reference to the subject cited above . I am to inform you that Sri A.K.Raha, Tech. Supervisor of this Institute has submitted a reminder letter regarding his stopped SDA. The matter had already been brought to your kind notice but till date this office has not received any communication regarding the fate of his representation.

I, therefore request you the case of Sri Raha may kindly be reviewed and considered.

Your faithfully

6/9/15
 (P.C Dutta)
 Asst. Director(H),
 Officer-in-Charge

Certified to be true Copy

Bishesh Pathak
 Advocate

GRAM: VENUSHILP
 TEL. NO. 0381-2226807
 TEL/FAX NO. 0381-2326245

GOVERNMENT OF INDIA
 MINISTRY OF TEXTILES
 O/o THE DEVELOPMENT COMMISSIONER (HANDICRAFTS)
BAMBOO & CANE DEVELOPMENT INSTITUTE
 KHEJUR BAGAN, AGARTALA-6.

No.BCDI/4(33)/2005-06 /

Dated, the 16th. Novemrer.05.

To,
 The Regional Director(NER),
 O/O the DC(Handicrafts),
 Gawahati-78006.

Sub:- **SDA regarding**

Ref:- Our earlier letter No.BCDI/4(33)/2005-06 /125 ,
 dated 21.7.05 & 12th.Sept.2005.

Sir,

With reference to the subject cited above, I am to inform you that Shri A.K.Raha , Technical Supervisor of this Institute has submitted 2nd. reminder letter regarding his stopped SDA. The matter had already been brought to your kind notice but till date this office has not received any communication regarding the fate of his representation.

I, therefore request you the case of Sri Raha may kindly be reviewed and considered.

Yours faithfully

Encl/ As above.

Emr
 (P.C Dutta) 16/11/05
 Asst. Director(H),
 Officer-in-Charge

Certified to be true Copy.

Bibhush Pathak
 Advocate

Statement by PAO											Deductions/Recoveries adjustable by other Accounts Offices																										
servants, etc.				Short-term Advances				Interest on Recoverable loans & Advances		G.P.F. /C.P.F. Contribution		G.P.F. /C.P.F. advance recoveries		Other Deductions (nature to be specified)		Total (Cols. 9 to 18)		G.P.F. /C.P.F. Contributions/recoveries		Postal Life Insurance		Loans & Advances		Other Recoveries		Total (Cols. 20 to 23)		Total deductions (Cols. 19 + 24)		Net amount required for payment (Cols. 8 - 25)		Provident Fund A/c./ PLI No.		Remarks			
Other Conveyances		Other Advances		Festival Advance		Sesol Advance		14		15		16		17		18		19		20		21		22		23		24		25		26		27		28	
Rs.	Rs.	Rs.	Rs.	P.	Rs.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.	Rs.	P.						
—	—	—	5000/-	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1151/-	19/28	—	—	6181/-	00	13,163/-	—	R PAO/CAL/DC(11)/299	—	—	—								
150/- 1/10	—	—	7500/-	1200/-	3/35	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	9299/-	00	6899/-	00	—	Do	—	1301								
150/- 1/10	300/-	21/30	3500/-	2500/-	2/33	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6553/-	00	6511/-	00	—	Do	—	1303								
150/- 1/10	335/-	21/21	3000/-	2500/-	2/16	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6015/-	00	6911/-	00	—	Do	—	1332									
150/- 1/10	—	—	3000/-	2500/-	3/30	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6180/-	00	7335/-	00	—	Do	—	1305									
600/-	635/-	19/20	1900/-	8700/-	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1151/-	00	—	—	31531/-	00	40,769/-	00	—	—	—	—							
Passed for payment of Rs. 40,769/- (Rupees Forty thousand seven hundred sixty nine only)																																					
4477/-																																					
C. D. L. Agarwala																																					

SCHEDULE SHOWING RECOVERY OF (SDA) SPECIAL DUTY ALLOWANCE, BAMBOO & CANE
DEVELOPMENT INSTITUTE, O/O. THE D.C (HANDICRAFTS), AGARTALA, FOR THE MONTH OF Feb '06 2004

PAY BILL NO. 183 /BCDI/PAY/2005-06

DATE...13/12/2006

SL.NO. NAME & DESIGNATION	RECOVERABLE AMOUNT	AMOUNT REALESED OF THIS MONTH	TOTAL NO. OF INSTALMENT REALESED.	TOTAL AMOUNT REALESED	OUT STANDING BALANCE	REMARKES
1. SHRI A.K.RAHA Tech. Supervisor	RS. 40,713/-	1159/-	19 28	27,627/-	13086/-	i) 1 st . Installment @ Rs. 1455/- P.M ii) 27 Installment @ Rs. 1454/- P.M

As per audit objection of Agartala, A.G Office vide letter No. A(HO)Dev/71/8/03-04/12005 dt.06-02-2004. Shri A.K.Raha, Technical Supervisor, of BCDI, is not entitled SDA, whatever amount drawn after 05-10-2001 should be recovered. The amount Rs.40713/- has been drawn by him from 06-10-2004 to 31-07-2004. The said amount will be recovered from his pay from August 2004 and onwards in 28 Nos. of installment

l.m.
(S.R. Masram)

Officer in charge,

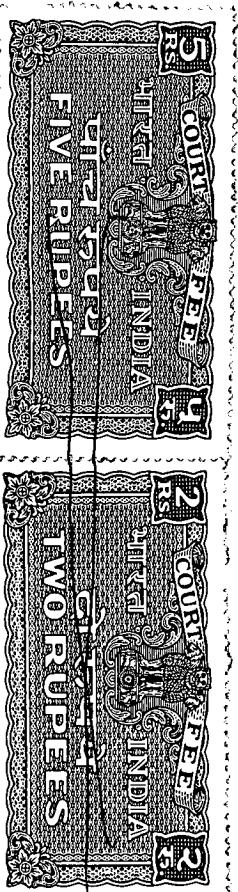
Office No. 1, Agartala

Sh. Sri Shri A.K. Agartala

C.D.I. Agartala

DISTRICT:

VAKALATNAMA
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI



OA NO.....126.....OF 200⁶.....

SHRI. ASHIM KUMAR RAHA

APPLICANT
PETITIONER

VERSUS
UNION OF INDIA & OTHER

RESPONDENTS
OPPOSITE PARTY

Know all men by these presents that the above named Applicant do hereby nominate, constitute and appoint Sri/ Smti B.C. PATHAK, B. PATHAK & SUNITA MEDHICHOWDHURY Advocate and as such of the undermentioned Advocates as shall accept this Vakalatnama to be my/our true and lawful Advocates to appear and act for me/us in the matter noted above and in connection therewith and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers, deeds of composition etc. for me/us and on my/our behalf and I/We agree to ratify and confirm all acts to be done by the said Advocates as mine/ours for all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate will be bound to appear and act on my/our behalf.

In Witness Whereof I/We hereunto set my/our hand on this 18th Day of MARCH, 2006

A K CHOWDHURI

H K MAHANTA

B. PATHAK

BHUBANESWAR KALITA

DR.(MRS) M PATHAK

DEEPAK BORA

CHINMOY CHOWDHURY

NIRAN BARAH

NEELAKHI GOSWAMI

MANORANJAN DAS

DINAMANI SARMA

JULI GOGOI

B.C. PATHAK

DILIP BARUA

AMVALIKA MEDHI

NISHITENDU CHOWDHURY

P J SAIKIA

JAVED ALI HASAN

BOLIN SARMA

JOY DAS

GUNAJIT BAISHYA

MANIK CHANDA

DIPENJYOTI DUTTA

S C KEYAL

SUNIT SAIKIA

Received from the executant,
satisfied and accepted

Mr/Ms.....
Will lead me/us in the case

And Accepted

B. mode Ch. Pathak

Advocate

Advocate

And Accepted

And Accepted

B. Pathak
Advocate

Advocate

Advocate

NOTICE

48

From:

Bibhash Pathak
Advocate

Date: 29.5.2006

To: The
C.G.S.C, CAT, Ghy Bench
Advocate, Guwahati.

Subject:OA.....NO.126/2006.....filed by (Sri Ashim Kumar
Raha -vs- Union of India & Ors)

Sir,

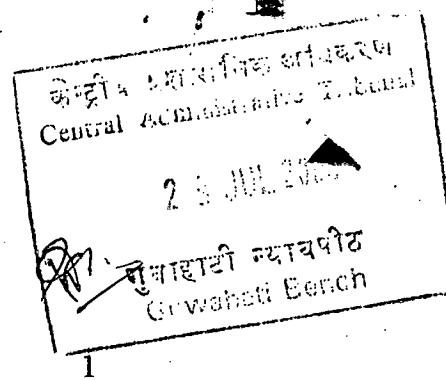
Please find enclosed herewith a copy of the aforesaid
OA NO.126/2006 (A K Raha -vs- U.O & Ors) filed in the
Hon'ble Central Administrative Tribunal, Guwahati Bench on 29.5.06
Kindly acknowledge the receipt of the same.

Yours sincerely,

Received copy:
From *Parbat Baruah* S.C.
Advocate 29.5.06

Bibhash Pathak
Advocate
29/5/2006

2. *Parbat Baruah*
2. *Parbat Baruah* 5087199
2. *W.P.(C) 5087199*
2. *Parbat Baruah* 29/5/2006



Filed by
The Respondent
Sukher No. 163
Through
Abdul Quader
Regional Director (NER)
OIC Dev. Commissioner (Handicrafts)
OIC Dev. Office Complex
Household Office Complex
NERO, Guwahati
28/7/06
89

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

OA NO. 126/2006

SHRI A. K. RAHA

.....APPLICANT

-VERSUS-

UNION OF INDIA

.....RESPONDENTS

WRITTEN STATEMENT FILED BY THE RESPONDENTS NO. 1 to 3

- 1) That the respondents have received a copy of the OA and have gone through the same and have understood the contentions made thereof. Save and except the statement specifically admitted herein below, rests may be treated as total denial. The statements, which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.
- 2) That with regard to the statement made in paragraph 1 of the OA the answering respondents beg to state that payment of Special duty has been stopped as per the judgment of Hon'ble Supreme Court as well as Hon'ble High Court.
- 3) That with regard to the statement made in paragraph 2, 3, 4.1, 4.2 and 4.3 of the OA the answering respondents beg to offer no comment.
- 4) That with regard to the statement made in paragraph 4.4 of the OA, the respondents beg to submit that grant of Special Duty Allowance to the incumbent authority was irregular in view of Comptroller and Auditor General's clarification in this regard vide No. 289/CA-1/237-2000 dated 10.4.2000 wherein it was stated that " Special Duty Allowance is admissible only in cases where the Govt. Servant is transferred from a station outside the region to a station in the North Eastern Region and the same is not applicable for transfer from one station to another station within the region."

“ Further, the Hon’ble Supreme Court in their judgment delivered on 20.9.1994 (Civil Appeal No. 3251 of 1993) upheld the submission of the Government of India, Govt. Civilian employee who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North Eastern Region from the outside region and Special Duty Allowance would not be payable merely because of the clause in the appointment order relation to All India Transfer Liability.”

In the instant case, the applicant was first appointed in the North Eastern Region (Jorhat) and he was not transferred to North Eastern Region from a station outside the North Eastern Region. His subsequent transfer was also within the North Eastern Region i.e., from Jorhat to Guwahati and Guwahati to Agartala. Grant of Special Duty Allowance (SDA) to the applicant on the basis of Office Memorandum dated 14.12.19983 is, therefore, irregular.

- 5) That with regard to the statement made in paragraph 4.5, 4.6, 4.7 and 4.8 of the OA the answering respondents beg to offer no comment.
- 6) That with regard the statement made in paragraph 4.9 of the AO, the answering respondents beg to submit that continuation of granting SDA to the applicant even after the judgement of the Hon’ble Supreme Court dated 20.9.1994 and Govt. of India’s Memo Mo. 11(J)/95-B II (B) dated 12.1.1996 regarding recovery of the amount of SDA already paid to ineligible employees after 20.9.1994 shows non-adherence to Government of India’s orders and irregular payment of SDA to ineligible employee. The Hon’ble Supreme Court however, in Case No. 70000 of 2000 held (5.10.2001) that the amount already paid to such ineligible employees up to 5.10.2001 will not be recovered.

The Audit in the instant case, therefore, has suggested recovery of the amount of SDA paid to the applicant from 6.10.2001, who was ineligible for payment of SDA.

- 7) That with regard to the statement made in paragraph 4.10 and 4.11 of the OA the answering respondents beg to offer no comment.
- 8) That with regard to the statement made in paragraph 4.12 of the OA, the answering respondents beg to state that the objection was raised on the basis of

OM No. F.No.11 (5)/97-E.II (B) dated 29th May 2002 of Govt. of India, Ministry of Finance, Deptt. Of Expenditure which was issued on the basis of Supreme Court judgment. The same is reiterated as under:

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

The applicant was first appointed in the N. E. Region and not posted to from outside to N. E. Region.

In this connection we may refer the letter No. 289/CA-I/2367-2000 dated 10.04.2000 of the Comptroller of Auditor General of India where in it has been clearly stated "Special (Duty) Allowance is admissible only to a station in the N. E. Region and same not applicable for transfer from one station to another station within the region."

The applicant was transferred within N. E. Region i.e., Jorhat (Assam) to Guwahati (Assam) and Guwahati to Agartala (Tripura) and as such audit observed that grant of S.D.A. to the applicant is irregular.

- 9) That with regard to the statement made in paragraph 4.13, 4.14, and 4.15 of the OA, the answering respondent begs to offer no comment.
- 10) That with regard to the statement made in paragraph 4.16 of the OA, the answering respondents beg to state that the action has been taken as per Hon'ble Supreme Court judgment and as per the OMs mentioned above hence cannot be said to be an illegal one.
- 11) That with regard to the statement made in paragraph 4.17, 4.18 and 4.5.1 of the OA the answering respondents beg to offer no comment.
- 12) That in view of the submissions made above the answering respondents beg to pray before the Hon'ble Tribunal that the Hon'ble Tribunal may be pleased to dismiss the instant Original Application with heavy cost.

Stelland Akher 9/
 Regional Director (NER)
 O/O Dev. Commissioner (Handicrafts)
 O/O Dev. Office Complex
 NERO, Guwahati-6

VERIFICATION

I STELLAND DHAR , aged
about 52 years at present working as
REGIONAL DIRECTOR (NER), O/O DEV. COMMISSIONER
(HANDICRAFTS), GUWAHATI
....., who is one of the respondents and taking steps in this case, being
duly authorized and competent to sign this verification for all respondetns,
do hereby solemnly affirm and state that the statement made in paragraph
1 to 12 are true
to my knowledge and belief, those made in paragraph
2 to 11 being matter of records, are
true to my information derived there from and the rest are my humble
submission before this Humble Tribunal. I have not suppressed any material
fact.

And I sign this verification this --27--th day of July 2006 at Guwahati

DEPONENT

Stelland Dhar

Regional Director (NER)
O/O Dev. Commissioner (Handicrafts)
Housefed Office Complex
NERO, Guwahati-6

Notice

23

Date - 28/7/06

From,

Visha Das.
Advocate.

To,

Mr. B. e. Pathak

Mr. B. Pathak

Advocate

Sub: OA no. 126/06 Sru A.K. Reha

Sir,

Please find herewith a copy
of ws being filed today. Kindly
acknowledge the receipt thereof.

Thanking you.

Received copy

Sincerely Yours

Visha Das

Advocate

~~Bookmarked~~

~~28/7/06~~

~~Advocate~~

28 AUG 2006

Guwahati
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

OA NO. 126/2006

SHRI A. K. RAHA

.....APPLICANT

-VERSUS-

UNION OF INDIA

.....RESPONDENTS

Filed by
✓

Niranjan Barik
24
Asst. Asst. General Counsel
Tribunal, Agartala
Vidhan Dari-
25/8/06

WRITTEN STATEMENT FILED BY THE RESPONDENT NO.4

- 1) That the respondents No. 4 has received a copy of the OA and has gone through the same and has understood the contentions made thereof. Save and except the statement specifically admitted herein below, rests may be treated as total denial. The statements, which are not borne on records, are also denied and the applicant is put to the strictest proof thereof.
- 2) That with regard to the statement made in paragraph 1 of the OA the answering respondent begs to state that payment of Special duty has been stopped as per the judgment of Hon'ble Supreme Court as well as Hon'ble High Court.
- 3) That with regard to the statement made in paragraph 2, 3, 4.1, 4.2 and 4.3 of the OA the answering respondent begs to offer no comment.
- 4) That with regard to the statement made in paragraph 4.4 of the OA, the respondents begs to submit that grant of Special Duty Allowance to the incumbent authority was irregular in view of Comptroller and Auditor General's clarification in this regard vide No. 289/CA-1/237-2000 dated 10.4.2000 wherein it was stated that " Special Duty Allowance is admissible only in cases where the Govt. Servant is transferred from a station outside the region to a station in the North Eastern Region and the same is not applicable for transfer from one station to another station within the region."

" Further, the Hon'ble Supreme Court in their judgment delivered n 20.9.1994 (Civil Appeal No. 3251 of 1993) upheld the submission of the Government of India, Govt. Civilian employee who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North Eastern Region from the outside region and Special Duty Allowance would not be payable merely because of the clause in the appointment order relation to All India Transfer Liability."

In the instant case, the applicant was first appointed in the North Eastern Region (Jorhat) and he was not transferred to North Eastern Region from a station outside the North Eastern Region. His subsequent transfer was also within the North Eastern Region i.e., from Jorhat to Guwahati and Guwahati to Agartala. Grant of Special Duty Allowance(SDA) to the applicant on the basis of Office Memorandum dated 14.12.19983 is, therefore, irregular.

- 5) That with regard to the statement made in paragraph 4.5, 4.6, 4.7 and 4.8 of the OA the answering respondent begs to offer no comment.
- 6) That with regard the statement made in paragraph 4.9 of the AO, the answering respondent begs to submit that continuation of granting SDA to the applicant even after the judgement of the Hon'ble Supreme Court dated 20.9.1994 and Govt. of India's Memo Mo. 11(J)/95-B II (B) dated 12.1.1996 regarding recovery of the amount of SDA already paid to ineligible employees after 20.9.1994 shows non-adherence to Government of India's orders and irregular payment of SDA to ineligible employee. The Hon'ble Supreme Court however, in Case No. 70000 of 2000 held (5.10.2001) that the amount already paid to such ineligible employees up to 5.10.2001 will not be recovered.

The Audit in the instant case, therefore, has suggested recovery of the amount of SDA paid to the applicant from 6.10.2001, who was ineligible for payment of SDA.

- 7) That with regard to the statement made in paragraph 4.10 and 4.11 of the OA the answering respondent begs to offer no comment.
- 8) That with regard to the statement made in paragraph 4.12 of the OA, the answering respondent begs to state that the objection was raised on the basis of

OM No. F.No.11 (5)/97-E.II (B) dated 29th May 2002 of Govt. of India, Ministry of Finance, Deptt. Of Expenditure which was issued on the basis of Supreme Court judgment. The same is reiterated as under:

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

The applicant was first appointed in the N. E. Region and not posted to from outside to N. E. Region.

In this connection we may refer the letter No. 289/CA-I/2367-2000 dated 10.04.2000 of the Comptroller of Auditor General of India where in it has been clearly stated "Special (Duty) Allowance is admissible only to a station in the N. E. Region and same not applicable for transfer from one station to another station within the region."

The applicant was transferred within N. E. Region i.e., Jorhat (Assam) to Guwahati (Assam) and Guwahati to Agartala (Tripura) and as such audit observed that grant of S.D.A. to the applicant is irregular.

- 9) That with regard to the statement made in paragraph 4.13, 4.14, and 4.15 of the OA, the answering respondent begs to offer no comment.
- 10) That with regard to the statement made in paragraph 4.16 of the OA, the answering respondent begs to state that the action has been taken as per Hon'ble Supreme Court judgment and as per the OMs mentioned above hence cannot be said to be an illegal one.
- 11) That with regard to the statement made in paragraph 4.17, 4.18 and 4.5.1 of the OA the answering respondent begs to offer no comment.
- 12) That in view of the submissions made above the answering respondent begs to pray before the Hon'ble Tribunal that the Hon'ble Tribunal may be pleased to dismiss the instant Original Application with heavy cost.

9X

VERIFICATION

I Nirayan Baidya aged
about 58 years at present working as
Sr. Deputy Accountant General (Audit), Tripura, Agartala in the Office of the Lt. Governor (Audit), Tripura
Agartala, who is one of the respondents and taking steps in this case, being
duly authorized and competent to sign this verification for all respondents,
do hereby solemnly affirm and state that the statement made in paragraph

1 to 12 are true

to my knowledge and belief, those made in paragraph

2 to 11 being matter of records, are

true to my information derived there from and the rest are my humble
submission before this Humble Tribunal. I have not suppressed any material
fact.

And I sign this verification this 31st day of July 2006 at Agartala.

DEPONENT

Nirayan Baidya

Mr. Dy. Accountant General (Audit)
TRIPURA, AGARTALA
(Official Seal)