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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 139/2006

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SECTION OFFICER (Judl.)

Parul
23.10.07

FROM No. 4.
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. original Application No. 139/06
2. Misc Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(s) Lependra Prasad

Respondents U.O.T. Govt

Advocate for the Applicant(s). Adv. Ahmed, Mr. S. Bhattacharjee
Mr. H. C. Shome,

Advocate for the Respondant(s) Adv. P. K. D.

Notes of the Registry	Date	Order of the Tribunal
1. Application is in form is filed/C. E. for its 10/- d. posited vide P.C./BD No. <u>266223562</u>	<u>9.6.2006</u>	Present: The Hon'ble Shri K. V. Sachidanandan Vice-Chairman. 2. The applicant is a defence civilian central government employee under the Ministry of Defence working under the respondents in the state of Nagaland. The claim of the applicant is for grant of House Rent Allowance (HRA in short) and he contended that he is identically and similarly placed to the applicants in O.A. Nos. 217/1995 and 218/1995 wherein this Tribunal vide judgment and order dated 18.10.1995 directed the respondents to pay HRA to the applicants. Respondents filed review applications against the said order which were dismissed by this Tribunal on 21.1.1996. The matter was taken up before the Hon'ble Supreme Court of India in Civil Appeal No. 1572 of 1997. The Hon'ble Supreme Court affirmed the judgment of this Tribunal.
3. Comply order dated <u>9.6.06.</u>		
4. NTS <u>13.6.06.</u>		

Contd. P/2

Contd.

9.6.2006 When the matter came up for admission Mr. A. Ahmed, learned counsel appearing for the applicants submits that the matter has already been settled by the Hon'ble Supreme Court in SLP filed in Civil Appeal No.1572 of 1997. Mr. M.U. Ahmed, learned Addl. C.G.S.C. represented the respondents. He prays for time for getting instruction and for ascertaining whether the applicants are identically placed employees to the applicants in other O.A.s mentioned in the petition. Let it be done.

Notice & order sent
to D/Section for
issuing to resp.
nos. 2 & 3 day regd.

A/D post.

(as
20/6/06. D/No. 627, 628
Dt: 21/6/06.

Considering the issue involved I direct to issue notice to the respondent Nos. 2 & 3. Post the matter 11.7.2006.

Vice-Chairman

bb

10.7.06
Notice issued on
21-6-06.
Service report awaited.

11.07.2006 Learned counsel for the respondents requested further time to file reply statement.

Post on 28.08.2006.

Vice-Chairman

mb

25-8-06
no W.S. filed
by

28.08.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman

When the matter came up for admission, Mr A. Ahmed, learned Counsel for the Applicant submitted that he has been instructed not to press the Application. Therefore, the Application is dismissed at not pressed.

Vice-Chairman

/mb/

8.9.06
Copy of the order
handed over to the
Advocates for the
parties

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

केंद्रीय नियन्त्रण न्यायालय
Central Administrative Tribunal, Guwahati

8 JUNE 2006

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

ORIGINAL APPLICATION NO. 139 OF 2006.

Shri Upendra Prasad
...Applicant

- Versus -

The Union of India & Others

...Respondents

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Date: 7-6-2006.

Advocate

Filed By:

Smita Bhattacharjee
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 139 OF 2006.

Shri Upendra Prasad

...Applicant

- Versus -

The Union of India & Others

...Respondents

LIST OF DATES / SYNOPSIS

23.09.1986 Office Memorandum regarding payment of House Rent Allowance to the Central Government employee.

18.10.1995 Judgment and Order passed in O.A.No.217/95 and 218/95 by this Hon'ble Tribunal for payment of House Rent Allowance to the Defence Civilian employees posted at Nagaland and Manipur.

17.02.1997 Judgment and Order passed in Civil Appeal No.1572/97 by the Hon'ble Supreme Court of India.

18.09.2002 Judgment and Order passed in Civil Rule No.5613/98 by the Hon'ble Gauhati High Court.

The Original Application is made for payment of House Rent Allowance to the Applicants as per aforesaid Office Memorandum and also vide various Judgments and Orders passed by the Hon'ble Tribunal, Hon'ble Gauhati High Court and Hon'ble Supreme Court of India. Hence this Original Application filed by the applicant seeking a direction from this Hon'ble Tribunal to the Respondents for payment of House Rent Allowance.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(An Application Under Section 19 Of The Administrative Tribunals Act 1985)

ORIGINAL APPLICATION NO. 139 OF 2006.

FILED BY G
Shri Upendra Prasad
Applicant

Through - Smrta Bhattacharya
(Advocate)

BETWEEN

Shri Upendra Prasad
Son of Sri Kailash Prasad Mazdoor
Office of the Garrison Engineer
868 EWS, C/o 99 APO

... Applicant

- AND -

1. The Union of India represented by the Secretary to the Government of India, Ministry of Defence, South Block, and New Delhi-1.
2. The Garrison Engineer, 868, Engineering Workshop, C/o 99 APO.
3. The Area Accounts Officer, Office of the Joint Controller of Defence Accounts, Ministry of Defence, Bivar Road, Shillong, P.O.- Shillong, Meghalaya.

... Respondents

1) DETAILS OF THE APPLICATION PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is made for non payment of House Rent Allowance (HRA for short) to the applicant.

2) JURISDICTION OF THE TRIBUNAL :

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

3) LIMITATION

The applicants further declares that the subject matter of the instant application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985.

4) **FACTS OF THE CASE:**

Facts of the case in brief are given below:

4.1) That your humble applicant is a citizen of India and as such, he is entitled to all the rights and privileges guaranteed under the Constitution of India.

4.2) That your applicant begs to state that he is a Defence Civilian Central Government Employee under the Ministry of Defence. Presently, applicant is working as Mazdoor in the office of the Respondent No. 2 which is located at Nagaland.

4.3) That your applicant begs to state that the Government of India, Ministry of Finance (Department of Expenditure) vide their Office Memorandum No.11013/2/86-E. II (B), New Delhi dated 23rd September 1986 granted House Rent Allowance to the Central Government Civilians Employees.

ANNEXURE - A is the photocopy of Office Memorandum No. 11013/2/86-E. II (B); New Delhi dated 23rd September 1986.

4.4) That your applicant begs to state that he is entitled for House Rent Allowance as per Office Memorandum No. 11013/2/86-E. II (B), New Delhi dated 23rd September 1986. But in spite of the said Office Memorandum the Respondents have not implemented the above said scheme of House Rent Allowance to the applicant on the plea that he is staying at Government defence land by constructing his own temporary hut and he is provided with water and electric connection by the Respondents at Government rate.

4.5) That your applicant begs to state that similarly situated Defence Civilian persons posted at Nagaland had earlier approached this Hon'ble Tribunal by filing Original Applications No. 217 of 1995 and 218 of 1995 for payment of House Rent Allowance in terms of Office Memorandum No. 11013/2/86-E. II (B), New Delhi dated 23rd September 1986. In the above said Original Applications the Respondents in their written statement

had stated that aforesaid applicants of the said Original Application are provided with free Defence land and they had constructed own temporary hut in the said land, the Respondents had also provided with water and electricity connection at Government rate. As such, aforesaid applicants were not entitled for payment of House Rent Allowance as per Office Memorandum No. 11013/2/86-E. II (B), New Delhi dated 23rd September 1986. But this Hon'ble Tribunal rejected the contention of the Respondents in the aforesaid case and the Hon'ble Tribunal vide its judgment and order dated 18th October 1995 directed the Respondents to pay the House Rent Allowance to the applicants as was applicable to the Central Government Employees in B, B-1, B-2 class cities/towns for the period from 1.10.1986 or from the actual date of appointment as the case may be in respect of each applicant up to 28-2-1991 and at the rate as may be applicable from time to time as from 1.3.1991 up to date and to continue to pay the same at the rate prescribed hereafter. Arrears to be paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applications during the aforesaid period towards House Rent Allowance. Future payment to be regulated in accordance with clause (a) above. Arrears to be paid as early as practicable, but not later than a period of three months from the date of communication of this order to the Respondents. The Respondents filed Review Applications No.22 of 1995 and 23 of 1995 before this Hon'ble Tribunal against the judgment and order passed by the Hon'ble Tribunal in O.A.No.217 of 1995 and 218 of 1995. The said Review Applications were dismissed by the Hon'ble Tribunal vide its order dated 2-1-1996. The Respondent No.1, the Ministry of Defence vide its order dated 3rd July 1996 sanctioned the payment of House Rent Allowance to the applicants of the O.A.No.217/95 and O.A.No.218/95. Accordingly the payment of House Rent Allowance was paid to the aforesaid applicants. Again the Respondents filed a Civil Appeal No. 1572 of 1997 before the Hon'ble Supreme Court of India against the judgment and order passed by this Hon'ble Tribunal in O.A.217/95 and 218/95 and also against the Review Applications No.22/95 and 23/95 respectively. The Grounds taken

by the Respondents in the Hon'ble Supreme Court of India is given below for kind perusal of this Hon'ble Tribunal.

"Because the Hon'ble Tribunal failed to appreciate it is against the basic concept of payment of HRA that any employee is paid HRA even when he is provided with free accommodation. The payment of HRA and free accommodation can not go together."

But the Hon'ble Supreme Court Of India vide its order dated 17th February 1997 passed in Civil Appeal No.1572 of 1997 affirm the judgment of the Hon'ble Tribunal regarding the payment of House Rent Allowance to the Defence Civilian Employee of the Nagaland and Manipur. Moreover, the Hon'ble Gauhati High Court vide its Judgment and Order dated 18-9-2002 passed in Civil Rule 5613 of 1998 affirmed the judgment of the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati regarding payment of House Rent Allowance to the Defence Civilian Employee, who are working in Nagaland and staying at temporary hut built by themselves in the Government Defence Land and availing water and electricity facility at Government rate.

ANNEXURE - B is the photocopy of Judgment and Order dated 18th October 1995 passed in O.A.No.217/95 and 218/95 by the Hon'ble Tribunal.

ANNEXURE - C is the photocopy of Relevant Extract Portion of Special Leave Petition filed by the Respondents in Civil Appeal No.1572 of 1997 against the judgment and order passed in O.A.No.217/95 and O.A.No.218/95.

ANNEXURE - D is the photocopy of judgment and order dated 17th February 1997 passed in Civil Appeal No.1572 of 1997 by the Hon'ble Supreme Court of India.

ANNEXURE – E is the photocopy of Judgment and order dated 18-9-2002 passed by the Hon'ble Gauhati High Court in Civil Rule No.5613 of 1998.

4.6) That your applicant begs to state that the matter relates to payment of House Rent Allowance to the Defence Civilian employees, who are staying at defence land in Nagaland and Manipur has attained finality in the eye of law. The Hon'ble Supreme Court, in earlier cases, rejected the all grounds taken by the Respondents including the instant ground that applicant is provided with Government land, etc. Therefore, non-entitlement of payment of House Rent Allowance to the instant applicant is not sustainable in the eye of law as well as fact of the instant case. Hence the applicant is entitle for payment of House Rent Allowance in terms of earlier Judgment and Orders passed by this Hon'ble Tribunal, Hon'ble Gauhati High Court and also by the Hon'ble Supreme Court of India.

4.7) That your applicant begs to state that the action of the Respondent is illegal, arbitrary, whimsical, mala fide, unfair and violative of the principle of natural justice as well as fundamental rights of the applicants.

4.8) That your applicant begs to state that in the above circumstances finding no other alternative the applicant is approaching the Hon'ble Tribunal for protection of their rights and interest through this Original Application.

4.9) That your applicant submits that he has got reasons to believe that the Respondents are resorting the colorable exercise of power only to deprive the applicant.

4.10) That in view of the facts and circumstances it is a fit Case for interference by Hon'ble Tribunal to protect the interest of the applicant.

4.11) That this application is filed bona fide and for the interest of justice.

ORW

5) GROUNDS FOR RELIEF WITH LEGAL PROVISION:

In view of the facts and circumstances explained in the foregoing paras, the rejection of House Rent Allowance to the applicant is arbitrary, mala fide, discriminatory and badly misconceived on the following amongst other grounds: -

- 5.1) For that, the action of the Respondents are illegal, arbitrary and violative of the principle of natural justice as well as the fundamental rights of the applicant.
- 5.2) For that, the grants of House Rent Allowance to the Defence Civilian employees working in Nagaland are attained finality in the eye of law. As such the Respondents cannot deny the said benefit.
- 5.3) For that, similarly situated Defence Civilian Employees case, who are presently working in the state of Nagaland got the House Rent Allowance as per direction of this Hon'ble Tribunal which was affirmed by the Hon'ble Gauhati High Court. Hence non-entitlement of House Rent Allowance to the instant Applicant does not arise.
- 5.4) For that, other similarly persons are enjoying the benefit of House Rent Allowance without any interruption. Being a Model employer the Respondents cannot discriminate the applicant for payment of House Rent Allowance.
- 5.5) For that, it is settled proposition of law that when the same principle have been laid down in given cases, all the persons who are similarly situated should be granted the said benefits without requiring them to approach in the Court of law.
- 5.6) For that, the non-payment of House Rent Allowance to the applicant is total violation and disobedience of the Hon'ble Apex Court judgment in this matter and also non-application of proper mind by the Respondents.

APR

5.7) For that, the Respondents have violated the Article 14,16 & 21 of the Fundamental rights guaranteed under the Constitution of India.

5.8) For that, the action of the respondents are arbitrary, malafide and discriminatory with an ill motive.

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

The applicant craves leave of this Hon'ble Tribunal advance further grounds the time of hearing of this instant application.

6) DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant except the invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

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

That the applicant further declare that he has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other court, authority, nor any such application, writ petition or suit is pending before any of them.

8) RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicant most respectfully prayed that Your Lordship may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the

John

applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relieves.

- 8.1) That the Hon'ble Tribunal may be pleased to direct the Respondents to pay the House Rent Allowance to the Applicant from the date of his posting at Nagaland.
- 8.2) To Pass any other relief or relieves to which the applicant may be entitled and as may be deem fit and proper by the Hon'ble Tribunal.
- 8.3) To pay the cost of the application.

9) INTERIM ORDER PRAYED FOR:

At this stage no interim order is required. The Hon'ble Tribunal if think fit may be pleased to pass any appropriate order or orders as deem fit and proper.

10) Application is filed through Advocate.

11) Particulars of I.P.O.:

I.P.O. No. 26G 323562

Date of Issue 7.6.2006

Issued from Guwahati G.P.O.

Payable at Guwahati

12) LIST OF ENCLOSURES:

As stated above.

Verification

spw

VERIFICATION

I, Shri Upendra Prasad, Son of Sri Kailash Prasad Mazdoor, Office of the Garrison Engineer, 868 EWS, C/o 99 APO do hereby state that the statements made in paragraph nos. 4.1, 4.2, 4.4, 4.6, 4.7 and 4.8 — are true to my knowledge, those made in Paragraphs Nos. 4.3 and 4.5 — are being matters of records are true to my information derived there from which I believe to be true and those made in paragraph 5 are true to my legal advice and rests are my humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 7th day of June 2006 at Guwahati.

Upendra Prasad.

ANEXURE-A

ANEXURE-A

No. 11013/2/86-E.II(B)
Government of India
Ministry of Finance
(Department of Expenditure)

New Delhi, the 23rd September, 1986

OFFICE MEMORANDUM

Subject: Recommendations of the Fourth pay commission
Decisions of Government relating to grant
of Compensatory(City) and House Rent
Allowances to Central Govt. Employees.

The undersigned is directed to say that
consequent upon the decisions taken by the Government
on the recommendations of the Fourth pay
Commission relating to the above mentioned allowances
vide this Ministry's Resolution No.14(1)/IC/86
dated 13th September, 1986, the president is pleased
to decide that in modification of this Ministry's
O.M.-NO.F.2(37)-E.II(B)/64 dated 27.11.1965 as
amended from time to time, compensatory (city)
and House Rent Allowance to Central Government

....82

ATTESTED

Smila Bhattacharjee
ADVOCATE

82

Employees shall be admissible at the following
rates;

(i) COMPENSATORY (CITY) ALLOWANCE,

pay range (Basic pay)	Amount of CCA in class of cities (Rs. p.m.)		
	A	B-1	B-2
Below Rs.950/-	30	25	20
Rs.950 and above but			
below Rs.1500/-	45	35	20
Rs.1500 and above but			
below Rs.2000/-	75	50	20
Rs.2000/-and above	100	75	20

Note:- For 14 special localities, where CCA at
the rate applicable to B-2 class city are
being paid, fresh orders will be issued
separately.

... 33

ATTESTED

Smita Bhattacharjee
ADVOCATE

83

(ii) House RENT ALLOWANCES:

Type of accommodation to which entitled	Pay range in revised scales of pay for entitlement	Amount of H.R.A Payable in (rs.p.m.)			Places
		A, B-1, B-2, C class UN	Class cities	Class Cities	
A	750-949	150	70	30	
B	950-1499	250	120	50	
C	1500-2799	450	220	100	
D	2800-3599	600	300	150	

2. H.R.A. at above rates shall be paid to all employees (other than those provided with Government owned/hired accommodation) without requiring them to produce rent receipts. These employees shall, however, be required to furnish a certificate to the effect that they are incurring some expenditure on rent/contributing towards rent. H.R.A. at above rates shall also be paid to Govt. employees living in their won houses subject to their furnishing certificate that they are paying/contributing towards house or property tax or maintenance of the house.

... 84

ATTESTED

Smita Bhattacharjee
ADVOCATE

3. Where H.R.A. at 15 per cent of pay has been allowed their special order, the same shall be given as admissible in A, B-1 and B-2 class cities. In other cases, covered by special order, HRA shall be admissible at the rate in C class cities. In both these cases there shall be no upper pay limit for payment of HRA.

4. The other conditions at present applicable for grant of HRA in cases of sharing of accommodation and other categories shall continue to be applicable.

5. Pay for the purpose of these orders will be pay as defined in F.R. 9(21) (a) (i). In the case of persons who continue to draw pay in the scales of pay which prevailed prior to 1.1.1986 it will include, in addition to pay in the pre-revised scales, dearness pay, dearness allowance, Additional Dearness Allowance, Ad-hoc Tax and Interim Relief appropriate to that pay, admissible under orders in existence on 31.12.1985.

....85

ATTESTED

Smita Bhattacharjee
ADVOCATE

- 14 - ~~18~~ ~~108~~ 50 19

6. These orders shall be effective from 1.10.1986. For the period from 1-1-1986 to 30.9.1986, the above allowances will be drawn at the existing rates on the national pay in the pre-revised scale.

7. These orders will apply to civilian employees of the Central Govt. belonging to Group 'B', 'C' and 'D' only. The orders will also apply to the Group 'B', 'C' & 'D' civilian employees paid from the Defence services Estimates. In regard to Armed Forces personnel and Railway employees, separate orders will be issued by the Ministry of Defence and Department of Railways respectively.

8. In so far as the persons serveice in the Indian Audit & Accounts Deptt. are concerned this order issues after consultation with the Comptroller and auditor General of India.

9. Hindi version of the order is attached.

sd/-

(B.P.Verma)

Joint Secretary to the Government
of India.

... .86

ATTESTED

Smita Bhattacharjee
ADVOCATE

In the Central Administrative Tribunal

Guwahati Bench, Guwahati.

Application under Section 19 of the Central
Administrative Tribunal Act 1985.

Case O.A. No. 217 of 1995

BETWEEN

1. 311640 Shri G.C. Mondal, PEON. ✓
2. 260088 Shri N.K. Kar, U.D.C
3. 216833 Shri B.C. Ghosh, Supdt, B/R Grade-I
- ✓ 4. 264666 Shri Samar Chakraborty, S.A, Grade-II.
- ✓ 5. 201694 Shri A.K. Bondopadhyay, S.A. Grade-I.
- ✓ 6. 220150 Shri S. Jabbar, Office Chowkidar. ✓
- ✓ 7. 220105 Shri P. Khalkhu, Chowkidar.
- ✓ 8. MES 202175 Shri T.B. Bhattacharya, Supdt, B/R Grade-II.
- ✓ 9. 243485 Shri K.P. Kewat, Peon.
- ✓ 10. 234117 Shri A.K. Dutta, Supdt, B/R Grade-I. ✓
- ✓ 11. 311608 Shri Surindra Kumar, Supdt, E/M Grade-I.
- ✓ 12. 263195 Shri S.K. Karmaker D' Man Grade-I
- ✗ 13. 208173 Shri Nilendra Roy, Supdt, B/S Grade-II.
- ✓ 14. 224065 Shri Abdul Rouf, S.K. Grade-I.
- ✓ 15. 216499 Shri Monoranjan Roy, S.K. Grade-II.
- ✗ 16. 263544 Shri R.C. Das, Asstt, Engineer E/M.
- ✗ 17. MES/201085 Shri N.K. Kundra, B/S Grade-II.
- ✗ 18. MES/210151 Shri D.R. Khati, B/S, Grade-II.
- ✓ 19. MES/268151 Shri S.K. Nag, B/S Grade-I.
- ✓ 20. MES/201185 Shri Angsu Gopak Saha AE/ B/R
- ✓ 21. MES/265840 Md. Kaium Ansari, Supdt, E/M Grade-II. ✓
- ✓ 22. MES/242028 Shri G.C. Bora, U.D.C.
- ✓ 23. MES/238173 Shri Ramesh Ch. Baishya, BSO
- ✓ 24. MES/216447 Shri U.S. Prasad, AE ✓

..... Applicants
Now all are serving in the office of the G.E. 868 EWS

- And -

C/O 99 APO



..... Respondents

ATTESTED

Smita Bhattacharjee

ADVOCATE

Original Application No.217 of 1995

With

Original Application No.218 of 1995.

Date of Decision : This the 18th Day of October, 1995.

The Hon'ble Justice Shri P.L.Chatterji, Vice-Chairman.

The Hon'ble Justice Shri G.L.Samlyine, Member (Administrative)

O.A.No.217/95 ✓

311640 Shri G.C.Mondal & 23 others.
All are serving in the office of the
Garrison Engineer, 868 EWS C/o 99 APO.

... Applicants

- VERSUS -

1. Union of India represented by the Secretary, Defence, Govt. of India, New Delhi.
2. The Garrison Engineer, 868 EWS, C/o 99 APO.
3. The Garrison Engineer, 869 EWS, C/o 99 APO.

... Respondents.

O.A. No.218/95

238016 Shri K.P.Pillai & 225 others.
All are serving in the office of the
Garrison Engineer, 868 EWS C/o 99 APO.

... Applicants

- VERSUS -

1. Union of India represented by the Secretary Defence, Govt. of India, New Delhi.
2. The Garrison Engineer, 868 EWS, C/o 99 APO.
3. The Garrison Engineer, 869 EWS, C/o 99 APO.

... Respondents

For the applicants in both the cases :

By Advocate Shri Ahmed.

For the respondents in both the cases : By Advocate Shri S. Ali, Sr.C.G.S.C.

ORDER

RAUDHARI J. V.C.

O.A.No.217/95 :

As the question raised is covered by earlier decisions
the O.A. is admitted. Issue notice to the respondents.
Returnable forthwith. Mr S.Ali, Sr.C.G.S.C waives notice and

ATTESTED

Smita Bhattacharjee
ADVOCATE

contd.

2...

appears for the respondents, called out for final hearing.

O.A.No.218/95 :

As the question raised is covered by earlier decision in O.A. No. 217/95, the O.A. is admitted. Issue notice to the respondents.

Returnable forthwith. Mr S.Ali, Sr.C.G.S.C. gives notice of appearance for the respondents. Called out for final hearing.

As the claims made in both the above O.A.s are identical, these are disposed of by a common order. The applicants in the respective applications are granted leave to agitate their claim in the single application.

Facts of O.A.No.217/95:

The 24 applicants concerned in O.A.217/95 are civilian employees belonging to Group A, B, C and D and are serving in the Defence Department from respective dates since 1963 onwards. They have stated that they are from outside the North East Region but have been posted as civilian employees in Nagaland in the office of Garrison Engineer, 868 EWS C/O 99 A.P.O. Their grievance is that they are eligible to be paid :

(i) Special (Duty) Allowance (SDA),

(ii) House Rent Allowance (HRA) at the rate of 15% on the monthly salary with effect from 1.10.1986;

(iii) Special Compensatory (Remote Locality) Allowance with effect from 1.4.1993 and

(iv) Field Service Concession with effect from 1.4.1993.

It appears that these benefits are being wrongfully denied to them by the respondents. They placed reliance upon the earlier decision in O.A.48/91. It also appears that the applicants had filed Civil Suit No.265/89 praying for the aforesaid benefits and the suit was decreed. However according to the applicants the decree is not obeyed by respondents. It is a question of jurisdiction being without jurisdiction.

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Smita Bhattacharjee

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Facts of O.A.No.218/95 :

The O.A.218/95 has been filed by 226 applicants. They are all civilian employees belonging to Group 'C' serving in the Defence Department from respective dates since 1963. They also claim the benefits of :

(i) Special (Duty) Allowance,

(ii) House Rent Allowance,

(iii) Special Compensatory (Remote Locality) Allowance and

(iv) Field Service Concession in the same manner and on the same grounds as claimed by the applicants in the other O.A.

In support of the claim for Special (Duty) Allowance reliance is placed upon the Defence Ministry O.M. No.4(19)/83/D,Civil-I dated 11.1.84 and Defence Ministry Memorandum No.20014/3/83-IV. Reliance is placed upon the Circular

issued by Government of India, Ministry of Finance No.11013/2/B6-E.II(B) dated 23.9.1986 in support of the

claim of HRA at the rate of 15% applicable to B Class cities.

The claim for Special Compensatory (Remote Locality) Allowance

meant for Defence department civilian employees is based upon the letter of Ministr. of Defence, Government of India No.B/37269/AG/PS3(s)/165/D(Pay)/Services dated 31.1.95 with

effect from 1.4.93. Lastly, the Field Service Concessions

are claimed on the basis of letter No.16729/ORG4/(p.M.) (d)

dated 25.4.94 issued by the Army Headquarter in pursuance of letter of Government of India dated 13.1.94.

The Hon'ble Supreme Court has now held that employees having all India transfer liability who were appointed outside North East Region but have been posted in the said region are entitled to the benefit of payment of 50% under

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Smita Bhattacharjee contd.

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the Memorandum dated 14.12.1983 relied upon by the
(See decision of the Hon'ble Supreme Court in Civil Appeal No.834 of 1995, Chief General Manager (Telecom), N.E.T. Circle & another vs. Shri Rajendra Ch. Bhattacharjee & others (I.T. 1495 (1) S.C. 440 dated 16.1.95.) We have considered this aspect as well as the question of eligibility of House Rent Allowance, Special Compensatory (Remote Locality) Allowance and Field Service Concessions in our order on O.A.124/95 with O.A.125/95 dated 24.8.95. The applicants in those cases were also Defence civilian employees like the applicants serving under the Garrison Engineer and who had been posted in the State of Nagaland. After examining the relevant materials we have held that the applicants are entitled to get all these benefits. The applicants in the instant O.As and the applicants in those cases were also plaintiffs in the same Civil Suit (No. 255/95) as they are all identically placed. We are satisfied that for the same reasons as are recorded in the common order on the aforesaid two applications namely O.A. 124/95 and O.A.125/95, similar order may be passed in the instant applications. Although the applicants claimed SOA from November, 1993 we shall allow that claim with effect from 1.12.1988 as was done in the earlier cases. Similarly in so far as the HRA is concerned the relief will not be granted as prayed but as was granted in the earlier cases. Other two reliefs will also be similarly granted as was done in the earlier cases.

For the aforesaid reasons following order is

passed :

(A) O.A.No.217/95:

i) It is declared that SOA is payable from 1.12.1988.

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Smita Bhattacharjee
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ii) (a) The respondents are directed to pay to the applicants Special (Duty) Allowance (SDA) with effect from the date of actual posting in Nagaland on or after 1.12.1988 as the case may be in respect of each applicant and continue to pay the same so long as the concession is admissible.

(b) Arrears from the date of actual posting in Nagaland on or after 1.12.1988 upto date to be paid within three months from the date of receipt of copy of this order.

iii) (a) It is declared that SCA(RL) is payable from 1.10.1986,

(b) The respondents are directed to pay to the applicants SCA(RL) with effect from the date of actual posting in Nagaland on or after 1.10.1986 as the case may be in respect of each applicant and to continue to pay the same so long as the concession is admissible.

(c) Arrears from the date of actual posting in Nagaland on or after 1.10.1986 upto date to be paid within a period of three months from the date of communication of this order.

iv) (a) It is declared that FSC is admissible from 1.4.1993.

(b) The respondents are directed to extend the FSC to the applicants in the prescribed manner with effect from 1.4.1993 or from the date of actual appointment as the case may be in respect of each applicant upto date and to continue to give the same so long as admissible.

v) (a) It is declared that HRA is admissible as indicated below:

(b) The respondents are directed to pay HRA to the applicants at the rate as was applicable to the Central Government employees in B, B-1, B-2 class cities/towns TESTED for the period from 1.10.1986 or from the actual date of Smta. Bhattacharya
ADVOCA



appointment as the case may be in respect of each upto 28.2.1991 and at the rate as may be applicable time to time as from 1.3.1991 upto date and to continue to pay the same at the rate prescribed hereafter.

(c) Arrears to be paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applicants during the aforesaid period towards NRA.

(d) Future payment to be regulated in accordance with clause (a) above.

(e) Arrears to be paid as early as practicable, but not later than a period of three months from the date of communication of this order to the respondents.

The original application is allowed in terms of the aforesaid order. No order as to costs.

A copy of the order dated 24.8.95 passed in O.A.No.1246/95 and 125/95 shall be made part of record of this O.A.

(B) O.A.No. 218/95:

i) It is declared that SDA is payable from 1.12.1988.
ii) (a) The respondents are directed to pay to the applicants Special (Duty) Allowance (SDA) with effect from the date of actual posting in Nagaland on or after 1.12.1988 as the case may be in respect of each applicant and continue to pay the same so long as the concession is admissible.

(b) Arrears from the date of actual posting in Nagaland on or after 1.12.1988 upto date to be paid within three months from the date of receipt of copy of this order.

iii) (a) It is declared that SCA(RL) is payable from 1.10.1986,

ATTESTED:

Smita Bhattacharya

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(b) The respondents are directed to pay to the applicants SUA(RL) with effect from the date of actual posting in Nagaland on or after 1.10.1986 as the case may be in respect of each applicant and to continue to pay the same so long as the concession is admissible.

(c) Arrears from the date of actual posting in Nagaland on or after 1.10.1986 upto date to be paid within a period of three months from the date of communication of this order.

iv) (a) It is declared that FSC is admissible from 1.4.1993.

(b) The respondents are directed to extend the FSC to the applicants in the prescribed manner with effect from 1.4.1993 or from the date of actual appointment as the case may be in respect of each applicant upto date and to continue to give the same so long as admissible.

v) (a) It is declared that HRA is admissible as indicated below :

(b) The respondents are directed to pay HRA to the applicants at the rate as was applicable to the Central Government employees in B, B-1, B-2 class cities/towns for the period from 1.10.1986 or from the actual date of appointment as the case may be in respect of each applicant upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 upto date and to continue to pay the same at the rate prescribed hereafter.

(c) Arrears to be paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applicants during the aforesaid period towards HRA.

(d) Future payment to be regulated in accordance with clause (a) above.

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1. Smita Bhattacharya

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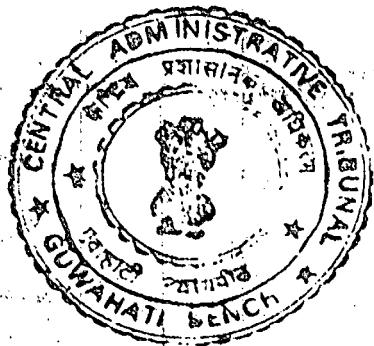
23-28 -

(i) Arrests to be paid as early as practicable, but not later than a period of three months from the date of communication of this order to the respondents.

1. The original application is allowed in terms of the aforesaid order. No order as to costs.

A copy of the order dated 24.8.95 passed in O.A. No. 124/95 and 125/95 shall be made part of record of this O.A.

Sd/- VICE CHAIRMAN
Sd/- MEMBER (ADMN)



Certified to be true Copy
প্রমাণিত প্রতিলিপি

[Signature]
Section Officer (J)
সামুদায়িক প্রতিক্রিয়া
Central Administrative Tribunal
কেন্দ্রীয় প্রশাসনিক প্রতিক্রিয়া
Guwahati Bench, Guwahati-6
গুৱাহাটী স্বামীগুৱাটী-৬

ATTESTED

Smruti Bhattacharjee
ADVOCATE

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA NEW DELHI.

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED:

Most Respectfully Soweth:

1. THAT the petitioners are filling this petition for grant of Special Leave to Appeal against the common judgement and order dated 13.10.1995 and 2.1.1996 passed by the Central Administrative Tribunal, Guwahati Bench, Guwahati in O.A. No. 217/95 and 218/95 and Review Application No. 22 and 23/95 respectively.
2. That the impugned judgment has been passed by the Hon'ble Tribunal in O.A. No. 148/95 by following its earlier decisions in O.A. No. 124/95 and O.A. No. 125/95 decided on 24.8.1995. It is submitted that the petitioners have already challenged the order dated 24.8.1995 in O.A. No. 22

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ATTESTED

Smita Bhattacharya
ADVOCATE

v) That feeling aggrieved from the common judgment and order dated 18.10.1995 in O.A. Nos. 217/95 and 218/95 and orders dated 2.1.96 in R.A. 22/95 and 23/95 passed by the Guwahati Bench of the Tribunal, the petitioners are filing the present petition for special leave to Appeal before this Hon'ble Court on the following amongst other:-

GR C U N D S

A. BECAUSE the impugned judgments are contrary to the provisions of law, O.M.S. and material on record and the same are liable to be set aside by this Hon'ble Court.

B. BECAUSE the impugned judgments are contrary to the Chandigarh Bench of the Tribunal dated 4.4.1989 in O.A. 672/JR/1987.

* ATTESTED

Smita Bhattacharjee
ADVOCATE

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F. BECAUSE the Hon'ble Tribunal erred in following its earlier decision in 124 and 125/95, against which order, the special leave petition of the petitioners is pending disposal before this Hon'ble court.

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G. BECAUSE the Hon'ble Tribunal erred in granting SDA, SCA (RL) in addition to FSC and HRA when the Respondents have been provided free accommodation, which is against the policy of the Govt. and other wise unsustainable.

H. BECAUSE the Hon'ble Tribunal failed to appreciate that it is against the basic concept of payment of HRA that any employee is paid HRA even when he is provided with free accommodation. The payment of HRA and free accommodation cannot go together.

I. BECAUSE the Hon'ble Tribunal erred in directing that inspite of the field

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Smita Bhattacharjee
ADVOCATE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1572 OF 1997
(Arising out of SLP (C) No. 14068 of 1996)

33
Certified to be true copy

J. Mukundan
Assistant Registrar (Jducl.)

..... 3/3/97 188
Supreme Court of India

Union of India & Ors. etc.

... Appellants

Versus

B. Prasad, B.S.O. & Ors. etc.

... Respondents

WITH

CIVIL APPEAL NOS. 1573-1576, 1577, 1578-1579, 1580-1585/97
(Arising out of SLP (C) Nos. 17236+39, 14104, 15141-42,
15740, 25108-10 of 1996, SLP (C) No. 4336 /96 (CC-
5040/96) and SLP (C) No. 4338 /96 (CC-6660/96))

O R D E R

Leave granted. We have heard learned counsel
for the parties.

These appeals by special leave arise from the
various orders passed by the Central Administrative
Tribunal, Gauhati Bench in different matters. The main
order was passed on 17.11.1995 in RA No. 4/95 in OA
No. 49/89.

The Government of India have been issuing
orders from time to time for payment of allowances and

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facilities for civilian employees of the Central Government servants working in the States and Union Territories of the North-eastern region. It is not in dispute that Special Duty Allowance was ordered by the Government @ 25% of the basic pay subject to a ceiling of Rs. 400/- per month on posting on any station in the North-eastern region. Subsequently, the Government have been issuing orders from time to time. In the proceedings dated April 17, 1995, the Government modified the payment of the Special Duty Allowance and Special Compensatory (Remote Locality) Allowance as under:

"The Defence Civilian employees, serving in the newly defined modified Field Areas, will continue to be entitled to the Special Compensatory (Remote Locality) Allowance and other allowances as admissible to Defence Civilians, as hitherto, under existing instructions issued by this Ministry from time to time. However, in respect of Defence Civilian employees in the newly defined Field Areas, Special Compensatory (Remote Locality) Allowance and other allowances not concurrently admissible along with Field Service Concessions."

It is contended by Mr. P.P. Mallotra, learned senior counsel appearing for the Union of India, that the view taken by the Tribunal that they are entitled to both, is not correct and that they would be entitled

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ADVOCATE

either of the allowances. Shri P.P. Rao, learned senior counsel appearing for some of the respondents has contended that those civilian employees working in the defence service at various stations in the North-eastern region were given Special Duty Allowance with a view to attract the competent persons and the persons having been deployed, are entitled to the same and the amended concessions would be applicable to those employees who are transferred after April 17, 1975. All those who were serving earlier would be entitled to both. Shri Arun Jaitely, learned senior counsel appearing for some of the respondents has drawn our attention to the distinction between Field area and Modified Field area and submitted that in cases where civilian employees are supporting the field defence persons deployed for the border operational requirements facing the immense hostilities, they will be denied the payment of both allowances while the personnel working in the Modified Field Area, in other words, in barracks, will be entitled to double benefit of both the allowance. This creates hostile discrimination and unjust results.

Having regard to the respective contentions, we are of the view that the Government having been

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Sunita Bhattacharjee
ADVOCATE

extending the benefit of payment of Special Duty Allowance to all the defence employees working in the North-eastern region as per the orders issued by the Government from time to time as on April 17, 1995, they are entitled to both the Special Duty Allowance as well as Field Area Special Compensatory (Remote Locality) Allowance. The same came to be modified twice, that date. Therefore, irrespective of the fact whether or not they have been deployed earlier to that date, all are entitled to both the allowances only upto that date. Thereafter, all the personnel whether transferred earlier to that or transferred from on or after that date, shall be entitled to payment of only one set of Special Duty Allowance in terms of the above modified order.

As regards the payment of Special Duty Allowance to the defence civilian personnel deployed at the border area for support of operational requirement, they face the imminent hostilities supporting the army personnel deployed there. Necessarily, they alone require the double payment as ordered by the Government but they cannot be deprived of the same since they are facing imminent hostilities.

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Smriti Bhattacharjee
ADVOCATE

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in hilly areas risking their lives as envisaged in the proceedings of the Army dated January 13, 1994. But the Modified Field Area, in other words, in the defence terminology, "barracks" in that area is a lesser risking area; hence they shall not be entitled to double payment. Under these circumstances, Mr. P.P. Malhotra is right in saying that the wording of the order requires modification. The Government is directed to modify the order and issue the corrigendum accordingly.

The appeals are disposed of accordingly. It is made clear that the Union of India is not entitled to recover any payments made of the period prior to April 17, 1995. No costs.

X (K.RAMASWAMY)

X (G.T.NANAVATI)

NEW DELHI;
FEBRUARY 17, 1997.

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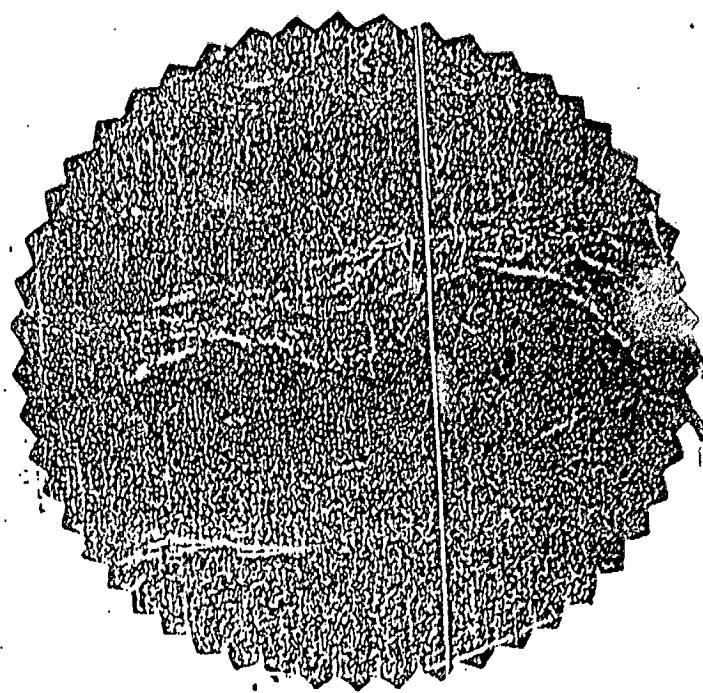
Smita Bhattacharjee
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Section 101(2)(b) (1987)
Supreme Court of India



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Smita Bhattacharjee
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ANNEXURE-- E

IN THE COAGUATI HIGH COURT
(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
and by Mizoram & Arunachal Pradesh)

Appellant from

OR

No. 56/3 of 1998

Appellant
Petitioner

Termus

Gauhati, 25/02/

Respondent
Opposite-Party

Appellant D. Sany

Petitioner A. D. G. S. C

Content P.R. A. Bhattacharya

Attested by

ATTESTED

Smita Bhattacharya

ADVOCATE

Application No.

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To the Ministry of

Union of India,

represented by the Secretary to the
Govt of India, Ministry of Defence,

New Delhi.

2. The Commanding Officer,

600017 ASC(Supply) Type-C,

c/o 97 APO.

..... Petitioners

..... Varus -

1. Ulla Gonda

2. Ram Ray

3. Arun

4. Pradeep

5. Panjabani

..... contd. 3

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Smita Bhattacharjee
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3.

6. Huzamulli
7. Oundicha Naik
8. Kirton Gouda
9. Dev Raj
10. Mangalu Bohara
11. Dandapand Naik
12. Bhirgu Nath
13. Khindal Gouda
14. Fadda Naik
15. Remchander
16. Surash Lal Loratha
17. Sankuru Naik
18. Soma Naik
19. Rasday Chirhan
20. Sirpat Ram
21. Ram Prasad
22. Panini Bohara
23. Moti Ram
24. Dipan Salvi
25. Nitna Devak
26. L. D. Naik
27. Bheem Nath
28. Cyprian
29. Devaraj Ghil
30. Bal Krishan
31. Ram Krishan
32. Narinda

ATTTESTED

Ranita Bhattacharjee

ADVOCATE

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1.
2.
3.
4. Bhimu Naik
5. Smt. Kelawati
6. D. N. B. Naik
7. Nam Trilok
8. Nam Sarup
9. Subhashi Gangi
10. Kali Sahu
11. Surindar Sahu
12. V. K. Pillai
13. Mackilt
14. Indha Nem
15. Remchandar Gondu
16. Andyandher
17. Kengolu Pendher
18. Uday Nath
19. Lal Dhar
20. Murali Prasad
21. Pitamber
22. Batali Ram
23. Sabi Ram
24. Giridheri Thirlo
25. Hordav Ram
26. Neemrajan
27. Ram Narayan

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Smita Bhattacharjee
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6.

- 61. Jay Prakash Ram
- 62. Ram Badan
- 63. Tribhubhan
- 64. Roop Ram
- 65. Ganga Saran
- 66. Panru Pradhan
- 67. Shanker Thulur
- 68. Ram Prasad
- 69. Ram Shankar
- 70. R.K. Chatri
- 71. Imlal P. Misra Jaiswar
- 72. S.K. Paul
- 73. Motilal
- 74. Moudar
- 75. Rameswar
- 76. Subhash Tali
- 77. P.P. Todur
- 78. Dibulcar Gouda
- 79. R.P. Sarmoh
- 80. Homild Beld
- 81. Trilok Nath
- 82. R.N. Gouda
- 83. Om Prakash Gupta
- 84. Kader
- 85. Rajender

ATTESTED

Sonata Bhattacharjee
ADVOCATE

All serving in the office of the

Controlling Officer, 10 GOV. NAGAR, 1951

Officer or legate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	1	
			CR 5613/98
			DISFORU
			THE HON'BLE THE J.C.
			THE HON'BLE MR JUSTICE AMITAVA ROY
10.09.02			
			<p>It is submitted by the learned counsel for the respondents that the petitioners are Central Government employees serving in the States of Nagaland and Manipur and similarly situated persons have been given the benefit of House Rent Allowance and Fluid Areas Special Compensatory (Domestic Locality) Allowance by the Central Administrative Tribunal. The Union of India challenged the order of the Tribunal before the Apex Court in the matter of Union of India and others-V B Prasad, BVSD and Others, reported in (1997) 4 SCC 109. The judgment of the Tribunal was challenged in the Apex Court on various grounds, including the grant of House Rent Allowance as Ground No.(D) in Special Leave Petition. The Apex Court has not accepted the contention of the Union of India and the judgment of the Tribunal for payment of the House Rent Allowance has not been reversed by the Apex Court. It is also submitted by the learned counsel for the respondent that similarly situated persons have been paid the House Rent Allowance by the Union of India after the judgment of the Apex Court. Hon'ble Mrs H Sharma, learned</p>

ATTESTED

Smita Bhattacharya

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Officer or name	Serial No.	Date	Office notes, reports, or with signature	proceedings
	2	3		

Additional Central Government Standing Counsel for the petitioner.

We have considered the submissions made by the learned counsel for the parties and perused the record. It appears that nothing has been said by the Apex Court about the House Rent Allowance in the case Union of India and Ors v. B Frasad, BSC and others (Supra), but at the same time the ground raised by the Union of India challenging the House Rent Allowance granted by the Central Administrative Tribunal having not set at knot by the Supreme Court, we can safely assume that the judgment of the Tribunal on the question of payment of House Rent Allowance was accepted by the Apex Court. Apart from this, after the judgment delivered by the Apex Court similarly situated persons have been paid House Rent Allowance by the Union of India. That being the case, we do not find any reason to interfere with the order dated 26.9.97 passed by the Central Administrative Tribunal, Guwahati Bench in OA No. 86/97.

Appeal is dismissed. However, there shall be no order as to costs.

ATTESTED

Smita Bhattacharjee

ADVOCATE

1. Subrata Kumar Saha
20th day of Dec 2002