

got to
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

RA 12/2005 and onwards INDEX

A/05.11.2006

O.A/T.A No. 13/105
R.A/C.P No. 12/2005
E.P/M.A No. 107/05

1. Orders Sheet..... O.A..... Pg. 1..... to 4.....
PP 107/05 and onwards Pg. 1..... to 2 8/85/06

2. Judgment/Order dtd D. 25.08.2005..... Pg. 1..... to 5.....

3. Judgment & Order dtd..... Received from H.C/Supreme Court
13/2005..... Pg. 1..... to 6.....

4. O.A..... Pg. 1..... to 6.....

5. E.P/M.P. 107/05..... Pg. 1..... to 3.....

6. R.A/E.P. 12/105..... Pg. 1..... to 7.....

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

8. Rejoinder..... Pg. to

9. Reply..... Pg. to

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

11. Memo of Appearance.....

12. Additional Affidavit.....

13. Written Arguments.....

14. Amendment Reply by Respondents.....

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

16. Counter Reply.....

SECTION OFFICER (Judl.)

Malika
01/11/17

FORM NO. 4

(SEE RULE 42)
 CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH

ORDER SHEET

Original Application No. 13/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicants: Prafulla Ch. HazarikaRespondents: U.O.I. Govt.Advocates for the Applicant Mr. S. Sauma, Mr. U. DasAdvocates of the Respondents CASE

Notes of the Registry Date Order of the Tribunal

1) application is in form
is filed/C.F.A. Regd.
d. prov. d. via P. D.
No. 20112/146

Dated 21.12.04

25.01.2005

Present : The Hon'ble Mr. K.V. Prahладан
Administrative Member.Heard Ms. U. Das, learned
counsel for the applicant.Issue notice to show cause as
to why the application shall not
be admitted. Returnable within
four weeks.List on 25.02.2005 for
admission.Respondents to file written
statement on interim prayer on
next date.

The term of the Central
Government Standing Counsels
representing the Central
Government in this Tribunal is
over. Hence, there is no counsel
to represent the Central
Government. The Secretary,
Ministry of Law, Government of
India may take immediate action so
that Central Government
departments do not go
unrepresented when applications

Defects

- 1) Verification.
- 2) pages, 22, 27, 41, 43, 44, 45,
60 and 61 not legible.
- 3) copy not yet served on
respondents.

When removed from
but up for signature.

N. Das
19.1.05

Defect removed.

N. Das
20.1.05

Contd/-

Contd/-

25.01.2005 come up before this Tribunal.

A copy of this order be sent to the Secretary, Ministry of Law, Government of India.

KV Prahladan
Member (A)

25.02.2005 Present : The Hon'ble Mr. K.V. Prahladan, Member (A).

Heard Ms. U. Das, learned counsel for the applicant.

The application is admitted, call for the records.

List on 01.04.2005 for orders.

Order dt. 25/01/05
Sent to Secretary, M/o
Law, New Delhi.

Steps Not yet
taken

*C/c
8/2/05*

steps taken
on 21/02/05.

C/c

Notice & order
sent to D/Section
for issuing to 3.5.05
resp. Nos. 1 to 7
by regd. A/D post-
D/No=300 to 306
Dt= 25/2/05

Extra charge Rs=10/-
only for resp. Nos. 6 & 7
not yet taken.

mb
01.04.2005 At the request of Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents the case is adjourned to 3.5.2005. Written statement, if any, in the meantime.

2/2
2/2
Vice-Chairman

At the request of learned counsel for the applicant case is adjourned to 7.6.05. The Respondents have filed written statement in the meantime.

mb
Member

2/2
Vice-Chairman

24-2-05
S/12- availed

Notice of resp. No. 2, return
as incomplete addr.

C/c Notice duly served

CB
OA 13/05

Notes of the Registry Date Order of the Tribunal

Notice duly served
08-2-2005
S/2 - averted

Qu
31-5-05

7.6.2005

Mr. S. Sarma, learned counsel for the applicant seeks for a short adjournment. Post on 14.6.2005 for hearing.


Vice-Chairman

2-5-05
no arts have been
filed

Qu

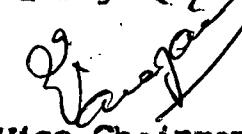
14.6.05

ICW 
Member

bb

Learned counsel for the applicant wants some more time.

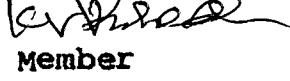
Post on 21.6.05 for hearing.


Vice-Chairman

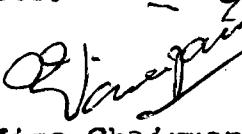
6-6-05
no O/S filed
so far.

Qu

pg
21.06.2005

ICW 
Member

Post on 19.7.2005. No further adjournment under any circumstances.


Vice-Chairman

No. Wts have been
filed.

My
20.6.05

19.7.2005

ICW 
Member

At the request of learned counsel for the parties the case is adjourned to 27.7.2005 asx first xx item.


Vice-Chairman

No written statement
have been filed.

My
26.7.05

27.7.2005

ICW 
Member

Heard Ms. B. Devi, learned counsel for the applicant and also Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents.

Hearing concluded. Orders reserved.


Vice-Chairman

nkm

ICW 
Member

3.8.2005 Judgment delivered in open Court, kept in separate sheets. The application is disposed of in terms of the order. No order as to costs.

M. U. Huss
Abdul
9/8/05
Add. G.S.C

9.8.05

Copy of the Judgment
has been sent to the
Appellee for serving
the same to the
Applicant by post.

UHS

K. R. Bhandarkar
Member

Q. V. J.

Vice-Chairman

mb

12.1.06

As per order
Dtd 5.1.06 passed
by RA 12/05 The
~~same~~ cause
title in OA 13/05
has been corrected
and a corrected D
the Judgment has been
lender over the
Applicant as well
as to the Add. G.S.C
for the Respondent

UHS

17/1/06

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.13/2005

DATE OF DECISION : 02.08.2005

Sri P.C. Hazarika & 2 others

APPLICANT(S)

Mr. S. Sarma & Ms B. Devi

ADVOCATE(S) FOR
THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. M.U. Ahmed, Addl. C.G.S.C.

ADVOCATE(S) FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN

THE HON'BLE MR K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether the judgment is to be circulated to the other Benches?

.....
Judgment delivered by Hon'ble Vice-Chairman.

*Mo - 91
2-10-05
S. Hazarika*

6

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.13 of 2005

Date of Order: This the 2nd day of August 2005.

The Hon'ble Justice Shri G. Sivarajan, Vice-Chairman

The Hon'ble Shri K.V. Prahladan, Administrative Member

1. Shri Prafulla Ch. Hazarika
At present working as Stenographer,
Defence Estate Office, Guwahati Circle,
Guwahati-3.
2. Shri Munindra Sarkar
At present working as LDC,
Office of the Asstt. Defence Estate Officer,
Abhaynagar, Agartala, Tripura.
3. Shri Jiban Dhan Bhattacharjee
At present working as LDC,
Office of the Asstt. Defence Estate Officer,
Abhaynagar, Agartala, Tripura.Applicants

By Advocates Mr S. Sarma and Ms B. Devi.

- versus -

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Defence, South Block,
New Delhi.
2. Union of India, represented by the
Secretary to the Government of India,
Ministry of Finance, North Block,
New Delhi.
3. The Controller General of Defence Accounts,
R.K. Puram, Sector-I,
New Delhi-66.

4. The Controller of Defence Accounts,
Udayan Bihar, Narangi,
Guwahati-781171.

5. The Area Accounts Officer,
River Road, Shillong.Respondents

By Advocate Mr M.U. Ahmed, Addl. C.G.S.C.

.....
ORDER

SIVARAJAN. J. (V.C.)

The applicants are three in number. The first applicant is working as Stenographer, the second and third applicants are working as LDCs. They are working in the office of the respondent Nos.4, 5 and 6. They have filed this application seeking for direction to the respondents to release the payment of Special (Duty) Allowance (SDA for short) for current as well as the arrears as has been done in the case of the applicants in O.A.No.148 of 2001 on the basis of the revised pay and to pay interest at the rate of 18% on the delayed settlement of the dues. It is stated that all the applicants have got All India Transfer liability and during the service tenure they have been transferred out from the North Eastern Region and subsequently they got their posting in the North Eastern Region. The applicants claim the benefit of various Government orders - O.M.s dated 14.12.1983 and 20.4.1987 and Circulars dated 5.5.1984 and 17.12.1986. According to the applicants though they are residents of the North Eastern Region, based on the All India Transfer liability, they have been transferred to outside the North Eastern Region and later retransferred to the North Eastern Region and are continuing as such.

S.M.

According to the applicants they satisfy the conditions for grant of SDA.

2. We have heard Ms B. Devi representing Mr S. Sarma, learned counsel for the applicants, and Mr M.U. Ahmed, learned Addl. C.G.S.C. for the respondents. Ms B. Devi, on behalf of the applicants, submitted that the applicants come squarely within the principles laid down by this Tribunal in paras 52 of the common order dated 31.5.2005 in O.A.No.170/1999 and connected cases and the respondents were not justified in discontinuing the grant of SDA to the applicants. She further submitted that the applicants are entitled to get the SDA from August 1996 onwards based on the revised pay drawn by them and a direction has to be given for grant of SDA from August 1996 with arrears.

3. Mr M.U. Ahmed, learned Addl. C.G.S.C., on the other hand, submitted that the decision of the Supreme Court rendered in Union of India and others Vs. S. Vijaykumar and others (C.A.No.3251 of 1993) and other cases are against the applicants and that at any rate since the applicant have not challenged the discontinuance of SDA in August 1996 till 2005, they cannot be granted the benefit with retrospective effect from August 1996. In other words, the submission of Mr M.U. Ahmed is that SDA can be given only prospectively based on the decision of this Tribunal mentioned above provided they fulfill the requirements of the principles stated therein.

4. We have considered in detail the claim for grant of SDA in the case of Central Government Civilian employees in our common order dated 31.5.2005 in O.A.No.170 of 1999 and connected cases. We had elaborately dealt with the various Government orders under which SDA is granted to Central Government Civilian employees and

9pt

the decision of the Supreme Court and this Tribunal in regard to the grant of SDA. We have summed up the guiding principles for grant of SDA at paras 52 and 53 of the common order as follows:

"52 The position as it obtained on 5.10.2001 by virtue of the Supreme Court decisions and Government orders can be summarized thus:

Special Duty Allowance is admissible to Central Government employees having All India Transfer Liability on posting to North Eastern Region from outside the region. By virtue of the Cabinet clarification mentioned earlier, an employee belonging to North Eastern Region and subsequently posted to outside N.E. Region if he is retransferred to N.E. Region he will also be entitled to grant of SDA provided he is also having promotional avenues based on a common All India seniority and All India Transfer liability. This will be the position in the case of residents of North Eastern Region originally recruited from outside the region and later transferred to North Eastern Region by virtue of the All India Transfer Liability provided the promotions are also based on All India Common Seniority.

53. Further payment of SDA, if any made to ineligible person till 5.10.2001 will be waived."

5. If the applicants were originally appointed in the North Eastern Region with All India Transfer liability and if they had been transferred to outside the region based on the All India Transfer liability and if they are again retransferred to the North Eastern Region and still they have got the All India Transfer liability and All India Common Seniority they will squarely fall under paras 52 of the common order. However, whether the applicants satisfy the aforesaid circumstances is a matter for verification by the concerned respondents.

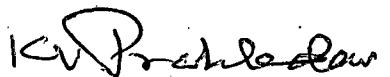
6. True, the applicants did not challenge the order of the respondents discontinuing the SDA from August 1996 and they have sought for grant of SDA only based on the decision rendered by this Tribunal in the case of some other persons on 19.12.2001. in

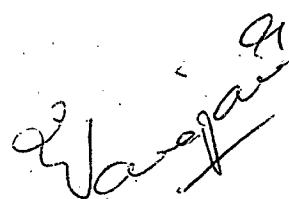
92

O.A.No.148/2001. Here, it must be noted that they did not pursue the matter even immediately thereafter and the O.A. has been filed only in 2005 after a period of four years. However, if as a matter of fact the applicants are entitled to the benefit of SDA under the various Government orders and the decision of this Tribunal rendered on 31.5.2005 in O.A.No.170/1999 and connected cases, certainly their claim also has to be considered.

7. In the circumstances we dispose of this O.A. with direction to the competent authority among the respondent Nos.3 to 3 to consider the claim of the applicants made in the light of paras 52 and 53 of the common order dated 31.5.2005 in O.A.No.170/1999 and connected cases and pass appropriate orders in accordance with law within a period of four months from the date of receipt of this order. The applicants will cooperate with the respondents in the matter of ascertaining the factual details if it is called for from the applicants to decide the applicability of the principles directed to be considered by the respondents.

The application is disposed of as above. No order as to costs.


 (K.V. PRAHLADAN)
 ADMINISTRATIVE MEMBER


 (G. SIVARAJAN)
 VICE-CHAIRMAN

nkm

19 JAN 2005

Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :

D.A. No. 13 of 2004

BETWEEN

Shri Prafulla Ch Hazarika & Ors. Applicants.

AND

Union of India & ors. Respondents.

SYNOPSIS.

That the grievances raised in the present D.A. by the applicants are basically non-payment of special Duty Allowance (SDA). The applicants in the light of office Memorandum issued in this regards were in receipt of SDA. It is noteworthy to mention here that the aforesaid SDA is counted on the basis of basic pay of an employee subject to certain limits. The pay of the applicants have been raised after the commencement of 5th Central Pay Commission Recommendation, but the present applicants continued to draw their SDA as per the pre-revised pay scale. Applicants thereafter made some correspondence regarding their arrears before the concerned authority. The authority concerned thereafter stopped the payment of SDA to the applicants with effect from Aug. 1996.... Being aggrieved by the said action applicants preferred representations. It is noteworthy to mention here that other similarly situated employees like that of the present applicants agitated the matter before the concerned authority and the concerned authority, thereafter served a copy

of the order dated 5.10.2000 referring to a legal notice. The said group in fact preferred Original Application before the Hon'ble Tribunal seeking direction for payment of SDA as well as its arrear which was numbered and registered as O.A. No 148/01. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said O.A directing the respondents to pay SDA-both arrear as well as the current from the date it was discontinued. The present applicants who were not the party to the said proceeding however, denied the said benefit although their cases are squarely covered by the said judgment. The representations filed by the applicant are yet to be attended to.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. of 2004

BETWEEN

Shri Prafulla Ch Hazarika & Ors. Applicants.

AND

Union of India & ors. Respondents.

I N D E X

Sr.No.	Particulars	Page No.
1.	Application	1 to 15.
2.	Verification	16.
3.	Annexure-A.....	
4.	Annexure-B.....	
5.	Annexure-C.....	
6.	Annexure-D.....	
7.	Annexure-E.....	
8.	Annexure-F.....	
9.	Annexure-G.....	
10.	Annexure-H.....	
11.	Annexure-I.....	
12.	Annexure-J.....	
13.	Annexure-K.....	

Filed by : M. S. Das

Regn. No. :

File : C:\WGS\PRAFULLA

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH.

(An application under section 19 of the Central Administrative
Tribunal Act.1985)

O.A.No. 13 of 2004

BETWEEN

1. Shri Prafulla Ch. Hazarika.
At present working as Stenographer,
Defense Estate Office, Guwahati Circle.
Guwahati-3.
2. Shri Munindra Sarker,
At present working as LDC,
In the Office of the Asstt. Defense Estate Officer,
Abhaynagar, Agartala, Tripura.
3. Shri Jibon Dhan Bhattacharjee.
At present working as LDC,
In the Office of the Asstt. Defense Estate Officer,
Abhaynagar, Agartala, Tripura.

..... Applicants.

AND

1. Union of India,
Represented by the Secretary to the Govt.of India,
Ministry of Defense, South Block,
New Delhi.
2. Union of India,
Represented by the Secretary to the Govt.of India,
Ministry of Finance, North Block,
New Delhi.

P.C. Hazarika

Filed by
the applicants through
Usha Das
Advocate
5/1/05

S.I. 06

Respt. X 3. The Director General, Defense Estate,
Govt. of India, Ministry of Defense,
R.K.Puram,

deleted

vide order

DT 5/1/06 X

passed in

R.A.12/05

(OA 13/05)

4. The Principal Director,
Defense Estate, Eastern Command.
13th Camac Street.
7th floor, Kolkata, 17.

5. The Controller General of Defense Accounts,
R.K.Puram, Sector-I,
New Delhi-66.

6. The Controller of Defense Accounts,
Udayan Bihar, Narangi.
Guwahati-781171.

7. The Area Accounts Officer.
River Road, Shillong.

..... Respondents.

PARTICULARS OF THE APPLICATION

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

The present Original Application is not directed against any particular order but has been preferred seeking a direction for payment Special Duty Allowance (SDA) along with arrears thereto. This application is also directed against the action of the respondents in discriminating the present applicants' their legitimate claim of SDA. The applicants in the present application has prayed for a similar direction as has been given in judgment and order dated 19.12.2001 in O.A No 148 of 2001, by this Hon'ble Tribunal.

2. LIMITATION:

The applicants declare that the instant application has been filed within the limitation period prescribed under section

PC Hazarika

21 of the Central Administrative Tribunal Act, 1985. It is stated that the applicants are pursuing the matter before the concerned authority but as on date nothing has been done so far in this matter apart from assurances.

3. JURISDICTION:

The applicants further declare that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicants are citizen of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India and laws framed thereunder.

4.2. That the present applicants are working under the respondents and presently they are posted in the office of the Defense Estate, as indicated above and they are holding various posts as mentioned above.

4.3. That the grievances of the applicants are basically non-payment of special Duty Allowance (SDA). The applicants in the light of office Memorandum issued in this regards were in receipt of SDA. It is noteworthy to mention here that the aforesaid SDA is counted on the basis of basic pay of an employee subject to certain limits. The pay of the applicants have been raised after the commencement of 5th Central Pay Commission Recommendation, but the present applicants continued to draw their SDA as per the pre-revised pay scale. Applicants thereafter

made some correspondence regarding their arrears before the concerned authority. The authority concerned thereafter stopped the payment of SDA to the applicants with effect from Being aggrieved by the said action applicants preferred representations. It is noteworthy to mention here that other similarly situated employees like that of the present applicants agitated the matter before the concerned authority and the concerned authority, thereafter served a copy of the order dated 5.10.2000 referring to a legal notice. The said group in fact preferred Original Application before the Hon'ble Tribunal seeking direction for payment of SDA as well as its arrear which was numbered and registered as O.A. No 148/01. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said O.A directing the respondents to pay SDA both arrear as well as the current from the date it was discontinued. The present applicants who were not the party to the said proceeding however, denied the said benefit although their cases are squarely covered by the said judgment. The representations filed by the applicant are yet to be attended to.

This is the crux of the matter involved in the present OA for which the applicants are seeking an appropriate direction to the Respondents for payment of SDA including arrears with interest @ 18% p.a. on the delayed payment.

4.4. That the applicants are presently holding various posts under the respondents as mentioned above and in the light various office Memorandum relating to payment of SDA, they are entitled to such payment as they fulfill all the required qualification / criteria mentioned in the said OMs.

PC Hazarika

4.5. That the respondents in regard to payment of SDA issued various circulars specifying the eligibility criteria for payment of such allowance. Mention may be made of the OM issued vide memo No.20014/9/83-B.IV dated 14.12.83, by which guidelines for payment of SDA has been issued. Basically, the said OM dated 14.12.83 was the initial guidelines by which the terms and conditions regarding the payment of SDA has been started. The basic foundation of granting SDA was to meet the hardship being faced by the people of N.E. Region in comparison to other region in all respect, including essential commodities, because of it's peculiar geographical position as well as the unstable political situations. The N.E. Region comprises of seven states covering Assam, Meghalaya, Manipur, Nagaland, Mizoram, Tripura and Arunachal Pradesh. The major percentage of the land area is covered by hilly areas and same creates obvious disadvantages in road transportation and other communications resulting higher price of essential commodities. The above hardship covers the people on posting from outside NE Region as well as the people of N.E Region.

4.6. That noticing the hardship the Govt. of India considering all the inconvenience and disadvantages faced by the employees of Central Govt. and on acting on the demand raised by the various unions / forums, issued an OM dated 14.12.83 granting an allowance namely special duty allowance (SDA). The said allowance was made applicable to the employees working in the NE region specifying certain eligibility criteria for the same. Amongst the eligibility criteria one of the most vital criteria is All India Transfer Liability.

A copy of OM dated 14.12.83 is annexed herewith and marked as Annexure-A.

4.7. That the applicants beg to state that they fulfill all the required qualification as well as eligibility criteria laid down in the Annexure-A OM dated 14.12.83 towards drawl of SDA. All the applicants have got All India Transfer Liability and in fact during the service tenure they have been transferred out from NE region and subsequently they got their posting in NE Region. Although the OM dated 14.12.83 has been worded unambiguously but even then facing various adverse situations, the concerned Ministry issued further clarification to meet out the controversies. The respondent No.3 thereafter, issued a circular dated 5.5.84 clarifying that all the civilian employees having All India Transfer Liability shall be entitled to get SDA, irrespective of the facts of their belongings.

A copy of the circular dated 5.5.84 is annexed as Annexure-B.

4.8. That even after the issuance of Annexure-B clarification dated 5.5.84 the controversies did not come to an end same again cropped up. Reiterating the stand the respondents issued a circular dated 10.12.86. The respondent No.3 took up the matter and issued another circular dated 17.12.86 circulating an OM dated 29.10.86 with the presidential Sanction.

A copy of the circular dated 17.12.86 is annexed as Annexure-C.

4.9. That as stated above all the applicants were drawing SDA in the light of aforesaid OM's and circulars. All of them have got All India Transfer Liability clause in their appointment letters and in fact during their service tenure they have been made to transfer from NE Region to outside.

Since the transfer and posting of the applicants are not in dispute the applicants inspite of annexing the said transfer orders beg to place the details in a tabular form.

A chart showing the Transfer/postings of the applicants is annexed herewith as Annexure - D.

4.10. That having found certain discrepancies regarding payment of SDA Respondent No.2 issued an OM clarifying doubts raised cropped up in respect of eligibility criteria. The said OM was issued vide memo No.20014/3/83-E.IV dated 20.4.87.

A copy of the said OM dated 20.4.87 is annexed as Annexure-E.

4.11. That in the aforesaid OM dated 20.4.87 the respondents clarified the controversies regarding eligibility criteria for grant of SDA. The basic criteria laid down in the said OM is All India Transfer Liability. The present applicants are in possession of all the eligibility criteria mentioned in the said OM dated 20.4.87 and therefore, they are entitled to draw SDA.

4.12. That stated above the present applicants being fully eligible to draw SDA in the light of the OM dated 14.12.83 and

PC Hazarika

81

it's subsequent clarifications issued from time to time by the Respondents, were drawing SDA till Aug, 1996. After now the recommendation of 5th Central Pay Commission Report, the pay structure of the present applicant's has been revised but inspite of such revision, their amount paid in respect of SDA was kept unrevised. The applicants raised their grievances regarding revision of SDA acting on which, and respondents reacting on the said issue stopped paying SDA to the present applicant.

4.13. That the applicants beg to state that the respondents have acted illegally in not paying the applicants their due allowance without any prior notice. In fact the case of the applicants itself considered for granting the benefit of SDA but subsequently, the respondent's them self misinterpret various judgments of the Hon'ble Apex Court have rejected payment of SDA to the present applicants.

4.14. That the applicants consequence of aforesaid illegalities meted out to them by the respondent has caused utmost financial hardship to the present applicants. The aforesaid action on the part of the respondents disallowing the grant of SDA to the present applicants has resulted in hostile discrimination on name of in sider and outsider virtually basing on a incorrect intelligible differential.

4.15 That the applicants union took up the matter with the concerned authority praying inter-alia continuation of the payment of SDA with a further prayer to make payment of the arrears due to them. Respondent No. 4 explaining the details of the various OMs guiding the field wrote a letter to the respondent No. 3.

22

A copy of the letter dated 7.11.96 is annexed as Annexure-F.

4.16. That the applicants beg to state that the case of the applicants is covered by various OMs and its subsequent clarification issued from time to time but inspite of that the respondents have disallowed the said payment of SDA to them. In fact at various levels of clarification, the case of the applicants got due sanction from the President of India and the said sanction was conveyed by letter dated 31.5.91 issued by the Ministry of Defense (Finance).

A copy of the letter dated 31.5.91 is annexed as Annexure-G.

4.17. That as stated above at various levels sanction for grant of SDA has been accorded by the President of India and the aforesaid sanction has been granted taking into consideration the duties and responsibilities shouldered by the applicants in addition to the prescribed qualification/criteria laid in O.M dated 14.12.83. In fact the aforesaid Presidential sanction was sought for by various groups of employees but only in a very few cases the said sanction was granted including the case of the applicants.

23

A copy of the letter dated 21.3.89
granting Presidential sanction is annexed
as Annexure-H.

4.18. That the applicants beg to state that regarding payment of SDA controversies are still alive and to meet out the aforesaid doubts/controversies a high level committee was constituted in consultation with the Integrated Finance and Ministry of Finance (Department of Expenditure) issued a clarification vide its memo No. Cab.Sectt.UO.No.20/12/99-EA-I-1799 dated 2.5.2000.

A copy of the said clarification letter dated 2.5.2000 is annexed as Annexure-I.

4.19. That the applicants beg to state that all of them presently are holding various posts under the respondents and presently they are posted in the NE Region. During their service tenure each applicant in view of their All India Transfer Liability, have been transferred out from NE Region. In view of the aforesaid clarificatory letter dated 2.5.2000 the applicants are entitled to get the payment of SDA. But the respondents by impugned action have stopped the payment of SDA and proposal has been made for recovery of payment of SDA already made to them. It is pertinent to mention here that the present applicants were in receipt of SDA. However since ^{Aug, 1996} the applicants have not been granted with the payment of SDA. The applicants are also entitled to get the arrear of SDA in revised rate. In view of the above facts and circumstances, it is a fit case for granting an appropriate interim relief directing the respondents to pay the current SDA by suspending the operation of the impugned orders if

P.C.Hazarika

24

any issued subsequently, during the pendency of the present OA, with a further direction not to recover any amount in respect of payment already made towards SDA.

4.20. That the applicants beg to state that a group of seven similarly situated officials employed under the respondents being aggrieved the aforesaid action on the part of the respondents in denying the benefit of payment of SDA preferred Original Application before the Hon'ble Tribunal which was numbered and registered as O.A No 148/01. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said O.A vide its judgment and order dated 19.12.2001, directing the respondents to make payment of SDA both current as well as arrear. The applicants from the reliable source could come to know that recently the respondents have implemented the direction contained in the said judgment and have released the payments to them. It is stated the case of the present applicant is fully covered by the direction contained in the said judgment.

A copy of the said judgment and order dated 19.12.01 is annexed as Annexure-J.

4.21. That the applicants being aggrieved by the action of the respondents made several requests to the concerned authority but nothing fruitful came from the same. The applicant in those representations made categorical mention regarding the aforesaid judgment and order dated 19.12.2001 passed by the Hon'ble Tribunal but as on dated nothing has been communicated to them. The respondents apart from assurances nothing has been done so far in the matter. The respondents in the name of official formalities have been delaying the matter with out taking any positive steps. Situated thus the applicants have now come under

Pettarwankar

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the protective hands of this Hon'ble Tribunal seeking redressal of their grievances.

A Copy of such representations is annexed as Annexure-K.

4.22 That this application has been filed bonafide and to secure ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action of the respondents in issuing the impugned orders/actions more particularly the actions/orders narrated under the head "Facts of the case" are illegal arbitrary and same have been issued with an ulterior motive only to deprive the legitimate claim of the applicants and hence same is liable to be set aside and quashed.

5.2. For that the respondents have acted illegally in issuing the impugned actions/orders which are basically based on irrational and unreasonable classification in the name of outsider and insider is illegal, arbitrary and violating of Article 14, and 16 of the constitution of India and hence same are liable to be set aside and quashed.

5.3. For that the impugned action on the part of the respondents are opposed to the constitutional mandates as the same differentiates the present applicants in the same of insider and outsider. In fact similarly situated employees like that of the present applicants are presently drawing SDA ignoring the

26

applicant is entitled to all the reliefs as prayed for in the present application.

5.4. For that there being no difference between the applicant as well as the employees who are receipt of SDA so far it relates to duties and responsibilities are concerned, the respondents ought not to have issued impugned order which based on such criteria.

5.5 For that the respondents have issued the impugned orders without consulting the OMs issued from time to time as well as its subsequent clarification issued from time to time and same has been issued without applying their mind. Hence the aforesaid impugned orders are liable to be set aside and quashed.

5.6. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to set aside and quashed.

The applicants crave leave of this Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of this case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicants declare that they have exhausted all the remedies available to them and there is no alternative remedy available to him.

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

27

The applicants further declare that they have not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other 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 applicants most respectfully pray that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To direct the respondents to release the payment of SDA both current as well as the arrears as has done in case of the Applicants in O.A No 148/01 on basis of the revised pay and to pay the interest @ 18% pa. on the delayed settlement of the dues.

8.2. To set aside and quash the impugned communications as well as any such orders and/or DMs by which the applicants have been deprived the applicants from drawing SDA.

8.3. Cost of the application.

8.4. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

PC Harganika

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application the applicants pray before this Hon'ble Tribunal for an interim order, directing the respondents not to make any recovery from the applicant in respect of SDA already paid to them and to allow them to draw current SDA.

10.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 20 G 117146
2. Date : 21/12/04
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

PC Hazarika

20

VERIFICATION

I, Shri Prafulla Ch Hazarika, aged about 45 years, son of Late K.Hazarika ,at present working as Stenographer Gr III, in the office of the Defense Estate Office. Guwahati Circle.Guwahati-3. do hereby solemnly affirm and verify that the statements made in paragraphs 23, 41, 42, 43, 44, 414, 422 & 5 to 12 are true to my knowledge and those made in paragraphs 1, 45 - 413, 415 to 421 are matter of records which I believe to be true and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 4th day of June 2005

Prafulla Ch. Hazarika

Signature.

44-17- ANNEXURE-A

ANNEXURE P-1
NO. 20014/9/83-B.IV
Government of India
Department of Expenditure

New Delhi, the 14th, December, 1983.

OFFICE MEMORANDUM

Subject :- Allowance and facilities for civilian employees of the Central Government serving in the State 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 Mizoram has been engaging the attention of the Government for some time. The Government has appointed a Committee under the Chairmanship of a 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 :-

Attested
Advocate

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18-10-

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(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 of 2 years at a time for officers with more than 10 years of service. Period of leave, training etc. in excess of 16 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.

Satisfactory performance of justice for the prescribed tenure in the North East shall be given due in the case of eligible officers in the matter of -

Attested
V. R. Ven
Advocate.

Attested
Advocate.

59 34

-10-

- (a) promotion in cadre posts;
- (b) deputation to 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.

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 per cent of basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region. Such of those employees who are 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 Allowances like Special Compensatory (Remote Locality) Allowance,

Attested
Umar
Advocate

Construction Allowance and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance :-

1. Assam and Meghalaya

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 a 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.

Attested
V. D. D.
Advocate

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

(v) Travelling Allowance on first appointment :

In relaxation of the present rules (S.R. 106) that travelling allowance is not admissible for journeys undertaken in connection to initial appointment, in case 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 a 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 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

Arrested
W.D.
Advocates

the cost of transportation of baggage. In case the family accompanies 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 regions 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 travel in 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 from leave.

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(ix) Leave Travel Concession

A Government servant who leaves his family behind at the 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 leave 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 East to his home town or place where the family is residing and in addition the facility for the family (restricted to his/her spouse and two dependent children only) also to travel once a year to visit the employee 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.

ATTESTED
V. Das
Advocate.

(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 restriction.

2. The above orders except in sub-para (iv), will also mutatis mutandis apply to Central Government employees posted to Andaman 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 concessions 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.

Attested
V. D. S.
Advocate.

6. Separate orders will be issued in respect of other recommendations 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 issue after consultation with the Controller and Auditor General of India.

(S.C. MAHALIK)

JOINT SECRETARY OF THE

GOVERNMENT OF INDIA.

To,

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

Copy (with spare copies) to C. & A.G., U.P.S.C. etc.

AMGSC
Advocate.

CIRCULAR

26
66
Annexure 2
39
ANNEXURE P-2
MOST IMMEDIATE

NO. AN/XIV/14004/III/VOL.I
Office of the
Controller General of Defence Accounts
West Block-V, R.K.PURAM
New Delhi-55

Dt. 5.5.84

To,

THE CDA PATNA
THE CDA GAUHATI
THE CDA(AF) DEHRADUN
THE CDA (ORs) (NORTH) MEERUT.

SUB:- ALLOWANCES & FACILITIES FOR CIVILIAN
EMPLOYEES OF THE CENTRAL GOVT. SERVING IN THE
STATES AND UNION TERRITORIES OF NORTH EASTERN
REGION - IMPROVEMENT THEREOF.

REF:- THIS OFFICE CIRCULAR NO.
AN/XIV/14004/III/VOL.I DATED 25.2.84
ADDRESSED TO CDA GAUHATI, CDA PATNA, CDA (AF),
DEHRADUN, CDA(ORs) NORTH MEERUT WITH COPY TO
OTHER CDA, D.A.

Clarifications received from the Ministry of
Finance (Dept. of Exptdr.) on various points
raised by this office on the implementation of the
Govt. of India, Ministry of Finance (Dept. of
Exptdr.) OM No. 200 14/3/83-EIV dated 14.12.83 are
given below for information and guidance.

Access
W.D.
Advocate.

~~24~~ 27 *EF* *YV* *40*
POINT OF DOUBT

i) Whether the personnel posted to this region, either on recruitment or on transfer at their own request are eligible for these concessions and facilities.

ii) Whether the Spl. (Duty) allowance is admissible for duration of service in the region, irrespective of whether they are allowed to stay there at their own request or otherwise, or will it be restricted to the duration of tenure ?

iii) Whether the Special (Duty) allowance would

CLARIFICATION

All civilian Central Govt. employees with all India Transfer Liability serving in North Eastern region are eligible for the allowances & facilities contained in those orders, irrespective of whether they were posted in the region on recruitment/transfer before or after the issue of the orders.

So long eligible staff serve in the region the allowance will continue to be admissible.

NO

Attested
near
Advocate

- 25 - 28 -

be deemed an special pay
as defined in FR9(25).

iv) Whether the term
employees who are exempt
from payment of Income
Tax appearing in clause
(iii) of Govt. order
dt. 14.12.83 applies only
to those who are specific-
ally exempt from payment
of I.T. under I.T.Act
(eg. Sn 10(25) of Act)
or it applies even to those
who are liable to pay
income tax by virtue of
their salary being less
than taxable limits.

v) Whether these orders
are applicable to all
groups of Govt. servants
(by Gp.A, B, C&D).

In elucidation of the necessity
for fixing the tenure under para 1(i)
of Govt. letter dt. 14.12.83
it has also been stated by the
Ministry of Finance that those
employees sent from outside to
a region for service there

It is confirmed that
term applies only
personnel who are
specifically exempted
under I.T.Act & Rules
not to those who are not
liable to pay income-
tax by virtue of their
salary being less than
taxable limits.

Arrested
N. S. J.
Advocate

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should not be left for indefinite period and therefore laying down a tenure was necessary. However, so far as payment of Special duty allowance to DAD employees is concerned, please refer to clarification at item (4) above.

2. As it is desired that Govt. orders dated 14.12.83 should be implemented without delay, immediate action may please be taken to extend the allowance and facilities to DAD staff serving in North Eastern Region.

Please acknowledge receipt.

Sd/-

(T.S. MADHAVAN)

A.C.G.D.A. (AN)

Copy forwarded to :-

1. All C.S.D.A. for information.
2. All Groups/Sections in AN(Local).
3. AT/II Section (Local).

Sd/-

(T.S. MADHAVAN)

A.C.G.D.A. (AN)

Attested
When
Advocate.

~~SECRET~~
CIRCULAR

- 27 - 30 -

~~Annexure~~

ANNEXURE P-3
NO. AN/XIV/14004/III/VOL-I
Office of the C.G.D.A.
West Block-V, R.K.Puram
New Delhi-66

ANNEXURE - C

Dated the 17th Dec.86.

To,

All C.G.D.A.

C of Accounts (Fys) Calcutta, HVP Avadi,
Madras and Jabalpur,
JCDA (Funds) Meerut Cantt.

Sub:-Allowance and facilities for civilian
employees of the Central Govt. serving in the
states and Union Territories of North Eastern
Region and Andman and Nicobar Islands and
Lakshadweep improvement thereof.

Re/-In continuation to this office circular
No. dated.

Govt. of India, Ministry of Finance, Deptt.
of Expenditure OM No. 20014/3/83 E-IV dated
29.10.1986 on the above subject received under
Govt. of India Ministry of Defence (Finance
Division) Endorsement No.4(3)-Estt-1/C/86 (5271-
E.I) dated 14.11.86 is forwarded herewith for
information and guidance.

14

*AC. 55
V.Das
Advocate*

- 28 - 31 - 46

2. The clarification issued vide para 1(iv) of our letter no. AN/XIV/14004/III/Vol-II dt. 5.5.84 as amended vide No. dt. 10.11.86 stands modified.

Sd/-
(T.S. MADHAVAN)
For Controller General of
Def. Accounts

Copy to :-

1. All Sections/groups local
2. Audit-II
3. Monday List.
4. Library.
5. File No.

Sd/-
(T.N. SRINIVASAN)
For Asstt. C.G.D.A. (AN)

Copy of Ministry of Finance Deptt. of
Expenditure's O.M. No. 20014/3/83-E.IV dated
29.10.1986.

Sub:- as above.

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 on the above subject and to say that the question of allowing Special (Duty) Allowance to those Central Government Scheduled Tribe employees who are exempted from payment of Income Tax under the Income Tax Act has been under consideration of the Government. The President is pleased to decide that Central Government Civilian employees who are Members of Scheduled Tribe and others so eligible after the grant of Special

Attested
V.S. Nair
Advocate.

- 29 32 -

(Duty) Allowance in terms of para 1(iii) of this Ministry's Office Memorandum dated 14th December, 1983 referred to above but are not being granted the same on account of their being covered under the scheme of Income Tax exemption, will not be eligible to draw the Special (Duty) Allowance. As such para 1(iii) of this Ministry's Office Memorandum dated 14th December, 1983 after modification may be read as under : -

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 26% of basic pay subject to a ceiling of Rs.400/- per month of 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. 400/- p.m. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately".

Attested
U.P.A.
Advocate

- 30 -
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2. This order will also apply to Central Government employees posted to Andaman and Nicobar Islands and Lakhdweep.

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

4. In so far as person serving in the Indian Audit and Accounts Department are concerned, this order issues after consultation with the Controller and Auditor General of India.

Sd/-
(A.N. SINHA)
DIRECTOR (EG)
TELE-3011819.

Attested
V.D.S.
Advocate.

ANNEXURE-D.

1. Prafulla Ch Hazarika. Applicant No 1.

a) 9.3.83 - Joined the service and posted at Jorhat.

b) Aug 1989 - Posted at Guwahati.

c) Aug 2001 - Posted to Siliguri (West Bengal). *

d) 2003 Posted back to Guwahati.

SDA received from ~~Aug up to~~ 1996. *user*

2. Munindra Hazarika. Applicant No 2.

a) 3.5.83 - Joined at Narengi as LDC.

b) 16.12.83 - Posted at 512 Army Base Work Shop, Pune. *

c) 10.01.87 - Posted back to Jorhat.

d) 20.02.98 - Posted to Agartala.

SDA received from ~~Aug~~ *user* 1996.

3. Jibon Dhan Bhattacharjee Applicant No 3.

a) 20.01.72 - Joined as LDC at Guwahati.

b) 29.1.81 - Posted to Siliguri (West Bengal) *

c) 17.5.84 - Back to Agartala.

SDA received from ~~Aug up to~~ 1996. *user*

Attested
user
Advocate

- 36 -
ANNEXURE P-4
NO. 20014/3/83-E.IV
Government of India,
Ministry of Finance,
Department of Expenditure

24
ANNEXURE

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

Attested
Vidur

Vidur

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".

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/group 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/posts 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 concerned post holder to be transferred

Attested
N.D.
Advocate

- 38 -

anywhere in India does not make him eligible for the grant of special (duty) allowance.

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.

(A.N. SINHA)
DIRECTOR (EG)
TELE: 3011819

To,

Financial Advisers of all Ministries/Departments.

Attested
N.D. Sinha
Advocate.

ANNEXURE P-5
NO. AN/III/01/P&A/MO/Order/VI
Office of the CDA
Udayan Vihar, Narangi
Guwahati, 781 171.

ANNEXURE - F

Dated : 7th November, 96.

To,
The CGDA
West Block-V
R.K. Puram,
NEW DELHI-110 066

Sub:-Discrimination in payment of Special Duty
Allowance in N.E. Region.

Ref:-Your No. AT/II/2366/SDA-II dt. 7/8/96 and
Reminder dt. 9.9.96 and Telegram No. 4614 dt.
7.10.96.

The representation received under Hrs. office letter cited under reference has been examined. It briefly relates to :

(i) Discrimination in payment of SDA to Class IV employees.

(ii) Confusion and wrong intentional misinterpretation of the order of Supreme Court and non-implementation of Govt. order dated 17/1/96 and

Attested
N.D. Bar
Advocate

- 35 40 83

(iii) Continuation of payment of SDA to DAD Staff in contravention of orders.

2. Instead of commenting on the specific issues highlighted in the representation, we would like to bring to the notice of the Hqrs. office the complications and confusion faced by us as also certain categories of defence civilians serving in the NER due to inconsistency in the stand of the Deptt. of Expenditure in the Ministry of Finance in amplifying and interpreting the eligibility criteria for the grant of SDA. These are set out in the succeeding paragraphs :

3. The problem started right from the time, the GOI, Min. of Finance (Deptt. of Expenditure OM No. 20014/Aa/83-E-IV dated 4/12/83 was issued. It was mentioned there in that with a view to attracting and retaining the services of competent officers for service in the North Eastern Region comprising of the states of Assam, Meghalaya, Manipur, Nagaland and Tripura and Union Territories of Arunachal Pradesh and Mizoram, the Govt. had appointed a committee to review the existing allowances and facilities admissible to various categories of Civilian Central Govt. Employees (C.C.G.E.) serving in this region - the word serving used in the Govt. letter is meaningful here as it is distinct from the word member and to suggest suitable improvements.

Attested
Veer
Advocate

- 36 45 - 54

Based on the recommendations of the committee, the Govt. took various decisions which were embodied in the Deptt. of Expenditure OM dated 14.12.83. A perusal of various allowances and facilities extended by the Govt. vide their OM ibid indicates that these can be divided into three distinct categories :

(i) Allowances/facilities that were meant exclusively for those C.C.G.E. who were posted to N.E. Region from outside the N.E. Region, such as: a fixed tenure for posting on deputation of 2 to 3 years, relaxable in case of willingness of the affected employees to continue serving in the NER beyond the fixed tenure period; weightage to such deputationists or people coming to NER from outside NER on a fixed tenure basis in the matter of Central deputation and training appointment and for journey for travelling allowance on first appointment and for journey on transfer; joining time with leave; leave travel concession; and children education allowance and hostel subsidy.

(ii) The allowances which were to be paid to all the C.C.G.E. serving in the NER irrespective and independent of any other eligibility criteria except the fact they were serving in the N.E. region, such as : Special compensatory allowance depending upon the particular state on U.T. of NER where a C.C.G.E. was posted;

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(iii) A special allowance called 'Special Duty Allowance (SDA)' to be paid to all the C.C.G.E. who have All India Transfer Liability on their posting to the North Eastern Region.

4. It will be seen from the above analysis that while the Govt. orders contained in the OM of 14.12.83 did adopt 3 different eligibility criteria for payment of various types of allowances and facilities to the C.C.G.E.'s at no place was any mention made about the fact that SDA or any other allowance will become payable to them only if they are not residents of NER.

5. In fact this doubt that the eligibility of a C.C.G.E. was to be dependent upon the status of his residence was never raised at any stage. And this perhaps was the reason that in response to some doubts expressed by some Controllers with regard to eligibility of C.C.G.E. for SDA and other allowances it was clarified by the Hqrs. office, after consultations with the Mis. of Finance, vide their letter No. AN/XIV/1404/III/Vol.I dated 5.5.84 that all civilian Central Govt. employees with All India Transfer Liability serving in North Eastern Region were eligible for SDA (amongst other allowances and facilities contained in the said OM dated 14.12.83) irrespective of whether they were posted in the region on recruitment/transfer before or after the issue of the orders.

- 38 - 43:2

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6. Once these clarifications were issued on 1984 it became crystal clear that all DAD employees serving in the North Eastern Region were eligible to draw SDA as they fulfilled the criteria of All India transfer liability.

7. The aforesaid clarifications also made it evident that even the other Defence Civilians serving in the NER could also be paid SDA provided they fulfilled the All India transfer liability criteria.

8. In other words, the clarifications given by the Hqrs. office established the rule that the only criteria that a C.C.G.E. serving in the NE Region would have to fulfil to be eligible to draw SDA was his liability for All India transfer. Based on the above, this office began regulating the claims of C.C.G.E. serving in the N.E. Region.

9. Problems, however, arose sometime later in respect of certain categories of Defence civilians working as industrial or non-industrial employees under posts in Gp 'D' and 'C'. While the service conditions of some such employees contained a clause regarding their liability for All India transfer, although in actual practice most of them had never been transferred outside the NE Region, some other similarly placed employees in other Defence Establishments in the NE Region did not have this clause at all.

10. This meant that while the former claimed and got SDA from our sub offices, the latter were denied of SDA due to absence of A.I.T.L. clause in their service conditions. Discontent therefore spread among the affected employees. What confused the matter further was that even some of the adversely affected employees subsequently managed to get payment of SDA from our Area Accounts office and other field functionaries like UAGE/LAO's for the reason that none of our offices had any means of verifying whether a particular individual for whom SDA was being claimed actually fulfilled the criteria or not.

11. It will therefore be pertinent to mention here that the nature of eligibility criteria for drawal of SDA, viz., all India transfer liability, was, and continues to be, such that its strict enforcement by this office or by our sub offices alone is not possible unless the executive authorities co-operate with us by not claiming the SDA for the employees who are not entitled to draw it. The reason is that neither in the pay bills for non-industrial civilian employees of defence establishments, which are pre-audited and paid by our Area Accounts office at Shillong, nor in the pay bills of the industrial employees, which are only to be post audited by our local audit offices/UAGE's etc., are there any columns for indicating whether those employees actually fulfil

Answered
Answered
Answered

the necessary eligibility criteria, nor do we have the necessary manhours and manpower to sent to each and every defence establishments to verify the service conditions of every civilian employees in this regard. In the circumstances we are totally dependent upon the support and help of the concerned executive authorities on whom lies the sole responsibility for ensuring that SDA is claimed only for those employees who are eligible to get it in terms of existing Govt. orders.

12. As soon as the matter came to the notice of Ministry of Finance, Deptt. of Expenditure, they issued clarificatory orders in regard to the eligibility criteria for drawal of SDA by the CCGE serving in the State and Union Territories of North Eastern Region vide their OM No. 20014/3/83-E-IV dated 20th April, 1987. Operative part of the said memorandum, viz. para-2, is reproduced below :

"Instances have been brought to the notice of this Ministry where SDA has been allowed to Central Govt. employees serving in North Eastern Region without the fulfilment of the condition of all India transfer liability. This is against the spirit of order on the subject. For the purpose of sanctioning SDA, 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 tests of recruitment zone., promotion zone etc. i.e. whether recruitment to the Service/Cadre/posts has been made on all India transfer 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 SDA."

13. It would be observed from the above OM which laid down the determining criteria for drawal of SDA that no mention whatsoever was made for restricting the payment of SDA to only those C.C.G.E. serving in this region who were not residents of North Eastern Region.

14. In fact, it is also pertinent to note from para-3 of the OM dated 20th April 1987 that while directing the Financial Advisers of all the administrative Ministries and departments, the M.O.T. of Expenditure only requested them to review all such cases where SDA had been sanctioned to the C.C.G.E. serving in the various offices located in the NER without in any way directing them to effect recoveries from those who had been paid this allowance un-authorisedly.

Attested
W.Ban
Advocate.

15. When the amplified of all India transfer liability was applied to the DAD civilians of all groups working in the NER, it was found that they met the criteria in full. Accordingly payment of SDA to all of them was continued.

16. The payment of SDA to the non-DAD civilians working in various defence establishments in the NER was also regulated in accordance with the amplified eligibility criteria laid down by the department of expenditure. As a result of this, the civilian employees who were adversely affected, and who mostly belonged to Gp-'D' and in some case to Gp-'C' posts in various static establishments of Defence services in NER, approached CAT Guwahati. While we do not have the details of various CAT judgment, the Tribunal as and when approached by any effected party generally permitted the applicants to draw SDA provided they fulfilled the all India transfer liability criteria as laid down in the Govt. OM of Dec '83. No cognisance of the amplified criteria as set out in the OM of 87 was taken by the Tribunal in any of their judgments. Further payments of SDA to such personnel were therefore made as per the judgment of Tribunal.

17. A few years later some problem arose vis-a-vis the employees of 222 ABOD and 14 FAD, who were mostly industrial employees, where this

office sought to stop payment of SDA to these employees on the ground that they were mostly recruited locally and served only in the NE Region and did not fulfil the All India transfer liability criteria as set out in the two Govt. orders. As the difference of opinion between this office and the two Army formations persisted, the matter was referred by this office to the CGDA.

18. The Hqrs. office, after consulting MOD(FIN), who in turn consulted Min. of Finance, Deptt. of Expenditure, clarified vide their letter No. AT/II/2366/SDA dated 9.10.92 that the affected employees who were recruited locally in the North Eastern Region did not fulfil the criteria of All India transfer liability as set out in the two OM's of Deptt. of Expenditure dated 14.12.83 and 20.4.87 and in such were not eligible for grant of SDA. Although these establishments remained dissatisfied with this decision, we regulated payment of SDA to them in accordance with the directions from, the Hqrs. office. This decision continues to remain a sore point with the employees association till date and they have therefore questioned its validity in their representation to the CGDA's office.

19. The complications that currently beset this office, however, arose consequent to the delivery of judgment on 20.9.94 by the Hon'ble

Accepted
V.D. An
Advocate

K.B. 49 - 61

Supreme Court in a Civil Appeal No. 3251 of 1993, Union of India and others vs. S. Vijai Kumar & others. The point for determination in this appeal was whether the respondents were entitled to SDA, even though they were residents of NER, merely on the ground that the posts of which they were appointed were of All India transfer liability.

20. The stand taken by the Counsel for respondents was that since the OM dated 14.12.83 stated that SDA will be payable to the civilian Central Govt. employees posted to the North Eastern Region provided their posts carried All India transfer liability criteria, the respondents were entitled to payment of SDA.

21. However, the stand of Union of India was that if the OM dated 14.12.83 was read together with what was subsequently stated in the OM dated 20.4.87, it would be clear that the allowance was required to be paid only to those incumbents who had been posted in NER carrying theforesaid service condition and not to those who were residents of this region. The Union Counsel further stated that the intention of the Govt. to grant SDA only to non residents of NER would further become clear. If we looked at the intention of the Govt. behind extending various facilities and allowances, which was to attract and retain the service of ex NER C.C.G.E. in the NE region, no wonder the Hon'ble Court accepted

the stand of the Union and gave the judgment that SDA would not be payable to the residents of NER even though they fulfilled the All India transferability criteria as set out in the two OM's. The Court, however, graciously stopped the recovery of the SDA already paid to all such employees.

22. As, however, we did not receive a copy of the judgment of the Court we continued making payment of SDA to such employees even beyond the date of judgment. In any case, even if we had received the judgment we could not have stopped payment of SDA to other Govt. employees not a party to the appeal unless, the Govt. extended the provisions of the judgment to all through issue of specific orders.

23. It is neither our intention at this stage to question the judgment of the Hon'ble Apex Court, which is delivered based on the official stand of Union of India, nor do we have the necessary competence and wisdom to do so, we cannot hold ourselves back from indicating what appears to us the inconsistency and flaw in the stand of Union of India.

24. We have repeatedly read and carefully scrutinised the two OM's in question while it is indeed true that the allowances/facilities contained in the two OM were drawn with a view to

Attested
W. Dan
Advocate.

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attracting and retaining the services of competent officers for service in the North Eastern Region, no where is there any indication, either explicit or implied, that any of the allowances or facilities contained in them were not meant for residents of NER.

25. And even if we grant, for a moment, the contention of the Govt. that these allowances, and facilities were granted for attracting and retaining the services of officers who were not only posted to NER but were also not residents of NER, we cannot apply this criteria selectively to SDA alone and ignore it in respect of other allowances.

26. The facts on the other hand are that :

(i) Even a resident of NER, when he is posted to this region from outside NER is entitled to all those allowances/facilities which would be available to any other civilian Central Govt. employee who is not a resident of this region but is posted to this region.

(ii) Every civilian Central Govt. employee serving in the NER, irrespective of any other criteria, will be entitled to Special Compensatory Allowance.

Attested
V.K.N.
Advocate

27. Can we in the circumstances legitimately deny any of these allowances/facilities indicated above to a C.C.G.E. simply on the plea that he is not a resident of NER ? If not, then how can we select just one allowance, viz. SDA, and deny it to a resident of NER even though he fulfils the laid down criteria of All India transfer liability.

28. It took the Deptt. of Expenditure nearly one and a half years to give effect to the judgment of the Hon'ble Court. However, the OM dated 12.1.96 issued by the Govt. on the subject only made partial implementation of the judgment of the Court as would be evident from the following :

(i) While the Court had decided that payment of SDA will not be made to the residents of NER even if they were posted to the region carrying All India transfer liability condition, the OM of 12.1.96 merely says that 'C.C.G.E. who have all India transfer liability are entitled to SDA' on being posted to any station in the NER 'from outside the region'. It omits the words " and 'not to the residents of this region" which was actually the basic point for determination by the Court.

- 53 -

30. Recovery was ordered from all the pending receipt of decision on issue of employees belonging to the in eligible category. The status quo ante will continue for payments made after 20.9.94. This again gives rise to two problems. First, which ineligibility criteria is to be taken into account for this purpose - the one laid down by the SDA Supreme Court, which debars a resident of NER from claiming SDA irrespective of any other conditions, or the one laid down in the O.M. of 12.1.96, which permits a resident of NER to claim SDA provided he is posted to NER from outside the region. Second, whether it would be legally valid to recover SDA for the period 21.9.94 to 12.1.96 from the employees categorised as ineligible by the Supreme Court, except for respondents, in the subject litigation, because their eligibility to SDA stands till the date of issue of OM, viz. 12.1.96 ?

39. In the light of the aforesaid complications, there appears to exist an inescapable need to refer the whole matter to the Min. of Finance, Deptt. of Expenditure and request them to stick to the criteria of all India transferability, as set out in the two OM's of 14.12.83 and 20.4.87 respectively for the drawal of SDA without in any way linking it to place of residence of a C.C.G.E. The advantages of such a decision would be many as indicated below :

Attested
N. S. Nair
Advocate

(i) It will remove all the existing inconsistencies between Govt. orders, clarificatory orders, Supreme Court judgment and orders issued for giving effect to the Supreme Court judgment.

(ii) Since the number of C.C.G.E. posted to this region and also residents of this region who fulfil the all India transfer liability criteria as determined by test prescribed in Govt. order of 1987, are not many, payment of SDA to them would not cause any undue burden to the Govt. Exchequer. Instead, this move will greatly reduce the chasm between the NER and ex-NER employees. In fact, in the wake of the massive financial package announced by the Govt. for the States in the NER, it would be appropriate to approve the suggested move.

(iii) The suggested move for payment of SDA to the NER resident C.C.G.E. would also be more rational in as much it will recognise the problems that they face within the North East Region which consists of seven states that are widely scattered and remotely located. For example, the NER staff when posted from say, Rangiya or Guwahati to distant and difficult locations in Mizoram, Arunachal Pradesh, Tripura, Nagaland etc. which are sometimes more than 1000 kms. away, will face the same problems as would be faced by an ex-NER staff to those stations from other Commands.

ANNEXURE - G

Ref: AN/XIV/1100h/II/ Vol.IV (PC)
Government of India,
Ministry of Defence (Finance),
New Delhi. 31/5/91.

To

The C.G.D.A.
New Delhi.

Subj: Grant of Special (Duty) Allowance to
DAD Officers & STAFF attached with
GREF in North Eastern Region.

Sir

I am directed to refer to your UO note No. AN/XIV/1100h/II/ Vol.IV dated 8.6.89 and to convey the sanction of the President for the grant of Special (Duty) Allowance to DAD officers & STAFF serving in the offices of Defence Accounts Department attached with GREF Units and formations located in North Eastern Region and Andaman & Nicobar Islands, on the same terms and conditions as laid down in Ministry of Finance (Dept. of Expenditure) OM No. 20014/3/83-E-IV dated 14.12.83, read with OM No. 20014/16/86/E-IV/E.II(B) dated 1.12.88 as amended from time to time, on the basis of Ministry of Surface Transport, B.R.D.B. Letter No. F.45(7)/BRDB/88-Estt/17084/ DOPR/E2A(T&C) Dated 21.3.89.

2. These orders will take effect from 21.3.89 only.

3. This issues with the concurrence of Ministry of Finance (Dept. of Expenditure) vide their U.O. No. 21011/6/85/E.II(B) Vol(II) dated 14.5.91.

Yours faithfully,

(T.S. MADHAVAN)
AF(A)(C)

Copy to:-

1. The Ministry of Def(Fin/DAD-Coord), New Delhi.
2. Min. of Fin(Dept. of Exp.E.II B) New Delhi.
3. The Director of Audit Defence Services, New Delhi.
4. CDA, Border Roads, Kashmir House, New Delhi.
5. CDA(SC) Pune.
6. CDA(WC) Chandigarh.
7. CDA(NC) Jammu.
8. CDA Gauhati.
9. CDA Patna.
10. CDA(P) Allahabad (Auditing Controller).
11. The Lt. Director of Audit(DS) WC, Chandigarh.
12. Dy. Dir. of Audit(DS) E.C., Allahabad.
13. Library.

(T.S. MADHAVAN)
AF(A)(C)

Arrested
Kiran
Advocate

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No. F.45(2)/BRDN/88-Batt/17084/DRDN/R23(TAC)
Government of India
Ministry of Surface Transport
Border Roads Development Board
B Wing, 4th Floor, Sans Bhawan
New Delhi-110041
Dated the 21st March, 1989.

To

The Director General Border Roads,
Kashmir House,
New Delhi-110011. ~ 50 copies.

Subject: Grant of Special (Duty) Allowance to the civilian officers/subordinates of the General Reserve Engineer Force serving in North Eastern Region and Andaman & Nicobar Islands.

Sir,

The question of extending the benefit of various allowances admissible to other civilian employees of the Central Govt. serving in the North Eastern Region and Andaman & Nicobar Islands, to the civilian officers/subordinates of the GREF (BhO) serving in these areas, has been under consideration for some time past.

The President is now pleased to grant Special (Duty) Allowance to the civilian officers/subordinates of the General Reserve Engineer Force serving in the North Eastern Region and Andaman & Nicobar Islands, on the same terms and conditions, as have been laid down in Ministry of Finance (Doptt. of Exptdr.) OM No. 20014/3/83-BIV dated 14.12.1983 read with OM No. 20014/16/86/E.IV/L.II (B) dated 1.12.88 as amended from time to time.

This order will take effect from the date of issue of this letter.

This issue with the concurrence of Ministry of Defence (Fin. BIC) vide their U.O. No. DRB/401-HMU/2422/S dated 9/21.3.89.

Yours faithfully,

(Vijay Kumar)

Under Secretary to the Govt. of India.

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Attested
Under
Signature

Copy to:-

1. Min. of Dof. (Fin./DR)
2. CGDA, New Delhi. - 5 copies.
3. DADS, New Delhi.
4. Sr. DDA, DS SC, Puno.
5. Sr. DDA, DS WC, Chandigarh
6. Sr. DDA, DS EC, Patna.
7. CDA, EC, Patna.
8. CDA, NC, Jammu
9. PAO (GKEP), O/O CDA, SC, Puno.
10. CDA, CC, Moreut.
11. CDA, Gauhati
12. ODA HQ ro, New Delhi.
13. PAO. (LW), Min. of Surface Tpt.,
Now Delhi.
14. SO I, Inspection Unit, PWD, JK Puram, Now Delhi.
15. PAO/AO (DWA)-Local.
16. SO (Admin)-Local.
17. PAO (PDR)-Local.

6 copies each
(one signed in ink).

(Vijay Kumar)
Under Secretary to the Govt. of India.

To Shri D. S. RAJPUT 40/111

Mr. K. D. S.
Advocate.

AO
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Sub :- Special Duty Allowance for Civilian Employees of the Central Government serving in the States and Union Territories of North Eastern Region regarding.

Following Documents enclosed :-

1. Clarification issued by the Cabinet Secretariat vide their UO NO. 20/12/99-EA-1-1799 Dated 02.5.2000.
2. Central Administrative Tribunal, Guwahati Bench Order dated 19th Day of December 2001.
3. Ministry of Law, Justice & Co. Affairs, Branch Secretariat, Kolkata, Dy No. 1141/02-Adv. (Cal) dt. 18.4.2002, Opinion dt. 2.5.2002.
4. All India Service liability appointment letter No. 360011 LCI/B dated 20 January 1972, of Shri Jibon Dhan Bhattacharjee, LDC (New UDC) issued by the then Deputy Director, M.L.C. Fort William Calcutta.
5. Posting & Transfer of Shri J.D. Bhattacharjee, LDC, from MEO Gauhati to the Office of the MEO Siliguri (WB) outside N.E. Region issued by the Director, Defence Lands & Cantonment, Eastern Command, Calcutta, vide their No. 360009/LCI/ Vol. XXII, Dt. 29.1.1981.
6. Transfer & Posting of Shri J.D. Bhattacharjee, LDC (New UDC) from Defence Estates Office, Siliguri (WB) to Asstt. Defence Estates Office, Agartala (N. Tripura) (Posting from outside N.E. Region to N.E. Region) issued by the Director, Defence Lands & Cantonment, EC Calcutta, vide No. 360009/LCI/XXIII dated 17th May 1984.
7. Appointment Order No. 20204/Civ. dated 3rd May 1983 of Shri M. SARKAR, LDC, issued by the No. 1 Adv Base Wksp EME, C/O 99 APO, and Extract of Service Book.
8. Extract of Service Book regarding posting transfer from No. 1 AB Wksp, Gauhati to EMEO (Civ) 512 Army Base Wksp, Pune.
9. Extract of Service Book regarding posting transfer from 512 Army Base Wksp, Pune to Defence Estates Office, Jerhati, Assam.
10. Extract of Service Book regarding posting transfer from Defence Estates Office, Jerhati, Assam to Asstt. Defence Estates Office, Agartala.

Contra.../.../...

Advocate
U.Das

57
COURT CASE
MOST IMMEDIATE

Cabinet Secretariat
(EA.I.Section)

U.O. No. 20/12/99-EA-I-1792 Dated 02.5.2000.

Subject :- Special Duty Allowance for Civilian employees of the Central Government serving in the States and Union Territories of North Eastern Region - regarding.

SSB Directorate may kindly refer to their UO No.42/SSB/AT/99(1B)-2269 dated 31.3.2000 on the subject mentioned above.

2. The points of doubt raised by SSB in their UO No.42/SSB/AT/99(1B)-5282 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Department of Expenditure) and clarification to the points of doubt is given as under for information, guidance and necessary action :

- (i) The Hon'ble Supreme Court in their judgement delivered on 26.11.96 in Writ Petition No.794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. region from outside the region, and in the following situation whether a Central Govt. employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their UO No.11(3)/95.E.II(B) dated 7.5.97.
- (ii) A person belongs to outside N.E. region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer liability.
- (iii) An employee hailing from the NE Region selected on the basis of an All India recruitment test and borne on the Centralised cadre/service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer liability.
- (iv) An employee belongs to N.E. Region was appointed as Group 'C' or 'D' employee based on local recruitment when there were no cadre rules for the post (prior to grant of SDA vide Ministry of Finance OM No.20014/2/83-E.IV dated 14.12.83 and 20.4.87 read with

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Arrested
W.D.
Advocate.

014/16/86 E.II(B) dated 1.12.86)
 subsequently the post/cadre was
 centralised with common seniority list/
Promotion/All India Transfer Liability
 etc. on his continuing in the NE Region
 though they can be transferred out to
 any place outside the NE Region having
All India Transfer Liability.

iii) An employee belongs to NE Region and
 subsequently posted outside NE Region,
 whether he will be eligible for SDA if
 posted/transferred to NE Region. He is
 also having a common All India seniority
 and All India Transfer Liability. YES

iv) An employee hailing from NE Region, posted
 to NE Region initially but subsequently
 transferred out of NE Region but re-posted
 to NE Region after sometime serving in non-
 NE Region. YES

v) The MOF, Deptt. of Expdr. vide their UO
 No.11(3)/95-E.II(B) dated 7.6.97 have
 clarified that a mere clause in the
 appointment order to the effect that
 the person concerned is liable to be
 transferred anywhere in India does not
 make him eligible for the grant of
 Special Duty Allowance. For determi-
 nation of the admissibility of the
 SDA to any Central Govt. Civilian
 employees having All India Transfer
 Liability will be by applying tests
 (a) whether recruitment to the
 Service/Cadre/Post has been made
 on All India basis (b) whether
 promotion is also done on the basis
 of All India Zone of promotion based
 on common seniority for the service/
 Cadre/Post as a whole (c) in the case
 of SSB/DGS, there is a common recruit-
 ment system made on All India basis
 and promotions are also done on the
 basis of All India Common Seniority
 basis. Based on the above criteria/
 tests all employees recruited on the
 All India basis and having a common
 seniority list of All India basis
 for promotion etc. are eligible for
 the grant of SDA irrespective of the
 fact that the employee hails from NE
 Region or posted to NE Region from
 outside the NE Region.

In case the
 employee,
 hailing from
 NE Region is
 posted within
 NE Region he
 is not entitled
 to SDA till he
 is once trans-
 ferred out
 of that Region.

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Attested
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ed on point (iv) above, some of the units of SSB/DGS have authorised payment of SDA to the employees hailing from NE Region and posted within the NE Region while in the case of others, the DACS have objected payment of SDA to employees hailing from NE Region and posted within the NE Region irrespective of the fact that their transfer liability is All India Transfer Liability or otherwise. In such cases what should be the norm for payment of SDA i.e. on fulfilling the criteria of All India Recruitment Test & to promotion of All India Common Seniority basis having been satisfied are all the employees eligible for the grant of SDA.

vii) whether the payment made to some employees hailing from NE Region and posted in NE Region be recovered after 20/9/1991 i.e. the date of decision of the Hon'ble Supreme Court and/or whether the payment of SDA should be allowed to all employees including those hailing from NE Region with effect from the date of their appointment if they have All India Transfer Liability and are promoted on the basis of All India Common Seniority List.

It has already been clarified by MOF that a mere clause in the appointment order regarding All India Transfer Liability does not make him eligible for grant of SDA.

The payment made to employees hailing from NE Region & posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employees hailing from NE Region and posted in NE Region be recovered from the date of payment or after 20th Sept. 94 whichever is later.

3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1349 dated 11.10.99 and Ministry of Finance (Expenditure)'s I.D. No. 1204/E-II(B)/99 dated 30.3.2000.

Sd/-
(P.N. THAKUR)
DIRECTOR (GR)

17/11/2000

Attested
by
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 148 of 2001. 24

Date of Order : This the 19th Day of December, 2001

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Shri Nagendra Nath Talukdar
S.D.O. - III
2. Shri Biswanath Brahma
UDC.
3. Shri Ramesh Das
Daftary.
4. Shri Surjesh Borgohain
SDO-I.
5. Shri Rothin Bhattacharjee
SDO-I.
6. Shri Barid Baran Purkayastha
UDC. . . . Applicants.

By Mr.B.K.Sharma, Mr.S.Sarma & Mr.U.K.Nair.

- Versus -

1. Union of India
Represented by the Secretary to the
Govt. of India, Ministry of Defence
South Block, New Delhi.
2. Union of India
Represented by the Secretary to the
Govt. of India, Ministry of Finance
North Block, New Delhi.
3. The Controller General of Defence Accounts
R.K.Puram, Sector-I
New Delhi-66.
4. The Controller of Defence Accounts
Udayan Bihar, Narangi
Guwahati-781171.
5. The Area Accounts Officer
River Road, Shillong. . . . Respondents.

By Mr. B.C.Pathak, Addl.C.G.S.C.

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Attested
W.M.
Advocate.

ORDER

CHOWDHURY J. (V.C.) :

This application pertains to the same familiar issue as to the payment of Special Duty Allowance. These six applicant are working under the respondents and posted in the Office of Defence Estate, Guwahati Circle. In this application the applicants stated that they were provided with the Special Duty Allowance till July, 1998, but after July, 1998 the respondents in a most illegal fashion stopped the payment of SDA on the ground that they belong to N.E.Region. As per the pleadings these applicants though belong to N.E.Region initially, they were subsequently transferred out of N.E.Region but re-posted to N.E.Region after some that they are serving in N.E.Region.

2. The respondents filed its written statement denying and disputing the averment made by the applicants. On later stage at our instance Mr.B.C.Pathak, learned Addl.C.G.S.C. took further instruction from the office of the Defence Estate, Guwahati Circle and he submitted a statement showing the service particulars, more particularly, the transfer of these applicants. The statement to that effect is placed on record. From the aforementioned statement it appears that the applicant No.1 Nagendra Nath Talukdar was appointed in Group-C and

Attested
W.Das
Advocate.

64

and his initial posting was in N.E. Region. He continued to work as such since his date of joining on 1.6.1976 till 12.5.1980. He was posted outside N.E. Region at Siliguri on 13.5.1980 and he worked there to 1.2.1989. Similarly, the other applicants though initially appointed in N.E. Region, they were posted outside N.E. Region and re-posted to N.E. Region. In that view of the matter all these applicants are eligible for the SDA on their re-posting. Mr. B.C. Pathak, however, stated that the applicant No. 4 & 5 would not be eligible for payment of SDA since both of them were transferred out prior to coming into force 1983 Scheme. Mr. Pathak pointed out that Sri Ramesh Das was transferred to Kolkata on 16.7.1975 and he worked there till 30.4.1977. Similarly, Rathin Bhattacharjee was transferred to Secendrabad on 22.11.1974 and he continued there till 23.10.1978. Mr. Pathak submitted that since they were transferred before coming into force of 1983 Scheme, they would not be entitled for SDA. The said contention of Mr. Pathak cannot be accepted. The question is the admissibility of SDA and for that purpose it is to be ascertained as to whether they were ever posted out of N.E. Region and thereafter they were re-transferred. As per the clarification issued by the Cabinet Secretariat in this regard it did not limit the benefit only to those

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N.S. Advocate.

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transferred after 1983 Scheme came into force. The applicant Nos. 4 & 5 were employees belonging to N.E.Region, posted to N.E.Region initially, but subsequently transferred out of N.E.Region but re-posted to N.E.Region after sometime. In this circumstance, all these applicants including the applicant Nos. 4 & 5 are eligible for SDA.

We have also heard Mr. S. Sarma, learned counsel for the applicants. The application is accordingly allowed. The respondents are directed to pay the applicants SDA from July, 1998. The respondents are also ordered to pay the arrears within four months from the date of receipt of this order.

There shall, however, be no order as to costs.

Sd / VICE-CHAIRMAN
Sd / MEMBER(A)

bb

Parikh (Signature)
Ex-Officer (D)
Chittaranjan Taluk
Chittaranjan

10/4/12 (initials)

Attested
W. D. D.
Advocate.

68
Date - 24/4/2004
Annexure-K

To
The CDA
Guwahati.

Sub: Payment of SDA -

Sir,

With due respect and profound submission we beg to state that since long we have been deprived of our legitimate claim of SDA. Very recently some of our colleagues filed OA No.148/01 before CAT/Guwahati and same has been allowed vide judgment dated 19.12.01. One Mr. Talukdar who was also an applicant, and by now, he has received the benefit of the said judgment. That Sir, we are also similarly situated employees having all India Transfer liability and during our service tenure we have been transferred out from N.E.Region.

In that view of the matter we may also be allowed to have the benefit of SDA as well as arrears.

Thanking you.

Sincerely yours

Sd/-
1. P.C.Hazarika, Stenographer
2. Munindra Sarkar, LDC
3. Jiban Dhan Bhattacharjee, LDC

Attested
by
Advocate