

FROM No. 4.
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 48/06

2. Misc Petition No.

3. Contempt Petition No.

4. Review Application No.

Applicant(S) AKan Kumar Dutta

Respondants U.O.I Gans.

Advocate for the Applicant(S) Adil Ahmed

Advocate for the Respondant(S) Addl.C.G.S.C. M. U. Ahmed

Notes of the Registry	Date	Order of the Tribunal
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	22.02.2006	Present: The Hon'ble Shri K.V.Sachidanandan, Vice-Chairman.
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This application is in form
is filed/No. 266/350404

depos

No. 266/350404

Dated 6.2.06

11c Dy. Registrar

for comply order
dated 22.2.06.

23.2.06

The issue involved in this case is regarding grant of SDA. The applicant had earlier approached this Tribunal by way of O.A.231/2005 wherein this Tribunal had given special directions. Further, the impugned order dated 30.1.2006 has been issued in total disregard of the order of the Tribunal in the said O.A., according to the applicant. On the strength of the impugned order the respondents are trying to recover the amount of SDA that has been drawn by the applicant, which is impugned in this O.A.

When the matter came up for admission, Mr.A.Ahmed, learned counsel for the applicant was present. Mr.M.U.Ahmed, learned Addl.C.G.S.C. submits that notice should be issued to the respondents. Issue notice.

Considering the issue involved in this case I am of the view that this case has to be admitted. Admit the O.A. Six weeks time is granted to the respondents.

Contd.

22.2.2006 to file reply statement.

By way of interim order in the interest of justice I order that no further recovery will be effected from the salary of the applicant for the alleged excess drawn towards SDA.
post on 6.4.2006.

Vice-Chairman

bb

6.4.06

Mr M.U.Ahmed, learned Addl.C.G.S.C wanted to get instruction and submit the written statement and seeks four weeks time.

Post on 8.5.06 for order.

Vice-Chairman

pg

08.05.2006

Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents wanted to file reply statement. Let it be done.
Post on 31.05.2006.

Vice-Chairman

mb

31.5.2006

Mr.M.U.Ahmed, learned Addl.C.G.S.C. submits that reply statement has been filed. Post the matter on 16.6.06. In the meantime applicant may file rejoinder, if any.

Vice-Chairman

bb

Order dt. 22/2/06
sent to D/section
for issuing to
resp, by hand.

24/02/06
D/No=246
Dt= 24/2/06.

Not'n & Order
recd. on 1/3/06

for
VDC

Notice duly served
on resp. nos. 1, 2, 3 & 4.

1/3/06

5-4-06

No Wks have been
billed.

24

5-5-06

NO Wks filed so far

for

30-5-06

No Wks have been
billed.

24

30.5.06

Written statement
has been filed by
The Addl. C.G.S.C, Mr.
M.U. Ahmed for
1 & 3.

O.A. 48/2006 3-

3

16.6.2006

Mr.A.Ahmed, learned counsel for the applicant seeks for further time to file rejoinder. Let it be done. Post on 3.7.2006.

Vice-Chairman

bb

03.07.2006

Post on 06.07.2006.

Vice-Chairman

mb

11.07.2006

Learned counsel for the applicant submitted that he has no rejoinder to be filed. Let the case be posted for hearing on 07.08.2006.

Vice-Chairman

mb

07.08.2006

Learned counsel for the applicant submitted that SDA granted to the applicant earlier and now it is stopped. Learned counsel for the applicant want to file rejoinder. Let it be done.

Post on 29.08.2006.

Vice-Chairman

Member

mb

29.8.06.

Though three weeks time was granted the ~~rejoinder~~ has not been filed. Post the matter on 25.9.06.

Vice-Chairman

in

15-6-06

No rejoinder has been filed.

30-6-06

No rejoinder has been filed.

28-8-06

No Rejoinder has been filed.

28.8.06

No Rejoinder has been filed.

19.9.06

O.A.48/2006

No Rejoinder has
been filed.

20
2.11.06

20.9.2006

Let the case be posted on
2.11.2006 granting time to the app.
cant to file rejoinder as a last
chance.

Vice-Chairman

1-11-06

bb

- ① WS filed by Regd. no. 1-3.
- ② No WS from Regd. no. 4.
- ③ No rejoinder filed.

2.11.06.

Counsel for the applicant
has submitted that he would
like to file rejoinder. Post
the matter on 21.11.06.

lm

Vice-Chairman

No rejoinder has
been filed.

20
20.11.06.

21.11.2006

Since this is a SDA matter,
Registry is directed to post this ma
ter for hearing alongwith other SDA
matters.

Vice-Chairman

No rejoinder has
been filed.

20
8.12.06

bb

11.12.06.

Since this is a SDA matter,
Registry is directed to post the
matter on 18.1.07. for hearing
with other connected matters.

Vice-Chairman

No rejoinder has
been filed.

20
5.1.07.

lm

8.1.07.

Post the matter on 31.1.07.

Vice-Chairman

No rejoinder has
been filed.

lm

20
6.2.07

7.2.2007

Ms. S. Bhattacharjee, learned counsel for the Applicant, expresses certain personal inconvenience and hence adjourned.

Post the matter alongwith the other SDA cases.

No rejoinder has been filed.

28.3.07.



Vice-Chairman

/bb/

29.3.07. Let this case be listed alongwith other cases.



Vice-Chairman

No rejoinder has been filed.

30.4.07.

lm

1.5.07

Post the matter on 7.5.07. alongwith O. A. No. 294 of 05.



Vice-Chairman

lm

No. rejoinder has been filed.

1.6.07.

7.5.2007

Mr M.U.ahmed, learned Addl.C.G.S.C has filed letter of absence.

Post the matter on 5.6.07 for hearing.



Vice-Chairman

/pg/

0A 48/06 - 2-

5.6.2007

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

No rejoinder has been filed.

12.6.07.

/bb/

✓
Vice-Chairman

13.6.2007

At the request for the Applicant the case is adjourned and posted on 2.7.2007 for hearing.

/bb/

✓
Vice-Chairman

Rejoinder not filed.

16.7.07.

02.07.07.

Post the matter on 17.7.07. for hearing.

Vice-Chairman

lm

17.7.2007

Part.

heard.

Post

on

18.7.2007.

✓
Vice-Chairman

pg

18.7.2007

Heard in part. List the case on 23.07.2007 for further hearing.

✓
Vice-Chairman

/bb/

23.7.07.

Pass over for the day.

O.A 48/06

1.8.07. O.A. No. 18/2006 Judgment pronounce in open Court. X

Kept in separate sheets. Application is
24.07.2007 allowed. No costs. Mr A. Ahmed, learned
counsel for the applicant and Mr M.U.
Ahmed, learned Addl Vice-Chairman
concluded. Judgment reserved.

ba

Vice-Chairman

nkm

1.8.07. Judgment pronounce in open Court.

Kept in separate sheets. Application is
allowed. No costs.

Vice-Chairman

lm

10/9/07

4

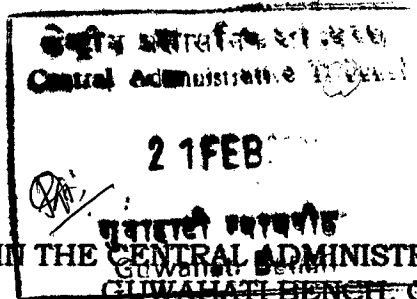
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:**

Original Application No. 48/06

1. a) Name of the Applicant:- A.K. Datta
b) Respondants:- Union of India & Ors.
c) No. of Applicant(S):-
2. Is the application in the proper form:- Yes / No.
3. Whether name & description and address of all the papers been furnished in cause title :- Yes / No.
4. Has the application been duly signed and verified :- Yes / No.
5. Have the copies duly signed :- Yes / No.
6. Have sufficient number of copies of the application been filed :- Yes / No.
7. Whether all the annexure parties are impleaded :- Yes / No.
8. Whether English translation of documents in the Language:- Yes / No.
9. Has the application is in time :- Yes / No.
10. Has the Vakalatnama/Memo of appearance /Authorisation is filed:- Yes / No.
11. Is the application by IPO/BO/for Rs. 50/- 260 350 404
12. Has the application is maintainable : Yes / No.
13. Has the Impugned order original duly attested been filed:- Yes / No.
14. Has the legible copies of the annexures duly attested filed:- Yes / No.
15. Has the Index of the documents been filed all available :- Yes / No.
16. Has the required number of enveloped bearing full address of the respondents been filed:- Yes / No.
17. Has the declaration as required by item 17 of the form:- Yes / No.
18. Whether the relief sought for arises out of the Single: Yes / No.
19. Whether interim relief is prayed for :- Yes / No.
20. Is case of Condonation of delay is filed is it Supported :- Yes / No.
21. Whether this Case can be heard by Single Bench/Division Bench:
22. Any other point :-
23. Result of the Scrutiny with initial of the Scrutiny Clerk:
The application is in order

SECTION OFFICER(J)

21/2/06
1/C DEPUTY REGISTRAR



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

ORIGINAL APPLICATION NO. 48 OF 2006.

Shri Akan Kumar Dutta

...Applicant

- Versus -

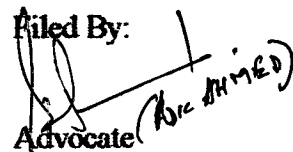
The Union of India & Others

...Respondents

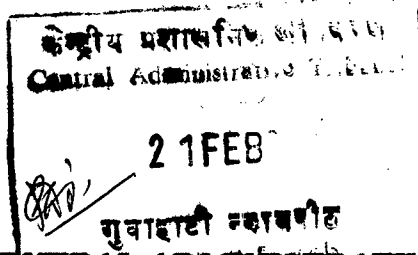
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Date:

Filed By: 
Advocate (By Mr. Dutta)





10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

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

ORIGINAL APPLICATION NO. 48 OF 2006.

Shri Akan Kumar Dutta

...Applicant

- Versus -

The Union of India & Others

...Respondents

LIST OF DATES

- 07.07.1995 Relieved Order to the applicant to join at J & K from Guwahati vide Office Memorandum No.21(9)/75-ACC/E-II dated 07.07.1975 issued by the office of the respondent No.4
- 24.04.1979 Transferred from J & K to Guwahati vide Office Order No.21(8)/79/SE I /Coord./Cal dated 24.04.1979.
- 14.12.1983 Office Memorandum issued by the Govt. Of India, Ministry of Finance, Department Of Expenditure for granting Special Duty Allowance to the Central Government Civilian Employees serving in North Eastern Region.
- 22.07.1998 Office Memorandum issued by the Govt. Of India, Ministry of Finance, Department Of Expenditure for granting Special Duty Allowance to the Central Government Civilian Employees serving in North Eastern Region.

- 02.05.2000 Cabinet Secretariat clarification regarding payment of Special Duty Allowance to Central Government Employees posted at North Eastern Region Vide Circular No.20-12-1999-EA-1-1799.
- 26.08.2005 Recovery of Special Duty Allowance from the Applicant vide letter No. Pay Bill /ACC-I/05/1426. The Applicant is also submitted a Representation before the Respondent No.4 against the Order.
- 30.08.2006 Rejection letter dated 30.08.2005 issued by the respondent No.4.
- 06.09.2005 Interim Order passed in O.A.No.231 of 2005 by this Hon'ble Tribunal.
- 09.01.2006 Order passed in C.P.No.28 of 2005 in O.A.No.231 of 2005 by this Hon'ble Tribunal and also the Judgment & Order passed in O.A.No.231 of 2005 by this Hon'ble Tribunal.
- 30.01.2006 Impugned Office Order No.Misc/CAT/OA-231/2005/AKD/ACCI/276 for recovery of Special Duty Allowance from the Applicant.

Hence this Original Application filed before this Hon'ble Tribunal for seeking justice in to this matter.



1

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.**

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

ORIGINAL APPLICATION NO. 48 OF 2006.

BETWEEN

Shri Akan Kumar Dutta
Son of Late Sistu Ram Dutta
Draftsman, Grade - I
Office of the Superintending
Engineer,
Assam Central Circle 1
Central Public Works
Department, Guwahati - 21.
...Applicant

- AND -

1. The Union of India represented by the Secretary to the Government of India, Ministry of Urban Affairs, Nirman Bhawan, New Delhi-110011.
2. The Director General Works, Central Public Works Department, 118-A, Nirman Bhawan, New Delhi- 10011.
3. The Chief Engineer (NEZ) Central Public Works Department, Cleves Colony, Dhankheti Shillong - 3.
4. The Superintending Engineer Assam Central Circle 1, Central Public Works Department, Bamunimaingan, Guwahati - 21.

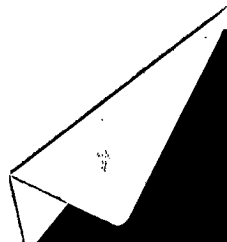
...Respondents

DETAILS OF THE APPLICATION

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

This application is made against the impugned office order No.Misc/CAT/OA-231/2005/AKD/ACCI/276 dated

Filed by
Shri Akan Kumar Dutta
Applicant
Through M. 12
(Abir Ahmed)
Advocate



30.1.06 issued by the respondent No.4 i.e. the office of the Superintending Engineer, Assam Central Circle 1, CPWD wherein it is directed to recover Special Duty Allowance from the applicant for the period w.e.f. 5.10.2001 onward to be recovered from his Pay Bill and Gratuity Bill, as the case may be. The office order issued by this office to discontinue the payment to Shri A. K. Dutta, Draftsman, Gd I and recover SDA paid to him after 5-10-2001 shall remain unchanged.

2. JURISDICTION OF THE TRIBUNAL :

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

3. LIMITATION :

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

4. FACTS OF THE CASE :

Facts of the case in brief are given below:

4.1 That your humble Applicant is Indian Citizen by birth and as such he is entitled to get all the rights and privileges guaranteed under the Constitution of India.

4.2 That your Applicant begs to state that that he is working as Draftsman Grade - I under the respondent No.4 i.e. the office of the Superintending Engineer, Assam Central Circle 1, CPWD, Guwahati - 21. It is to worth to mention here that the applicant is drawing the pay scale of Chief Estimator as per second ACP w.e.f. 09.08.99 in the scale of Rs.6500-200-10500. He will retire from his service from superannuation in the month of February 2006.



4.3 That your Applicant begs to state that the Applicant belongs to North Eastern Region and he was appointed as Draftsman Grade -II (Direct) on 16.07.1966. He was transferred from Superintending Engineer, Assam Central Circle 1, CPWD, Guwahati - 21 on deputation to office of the Chief Engineer, Salal Hydro Electrical Project, Jyotipuram (Raisi), J & Kashmir vide order issued by the Superintending Engineer (Coord.) Calcutta Memorandum No.21(87)/75/SEI/Coord./Cal dated 07.04.1975. He was relieved from his duty on 07.07.1975 vide office Memorandum No.21(9)/75-ACC/E-II issued by the office of the respondent No.4. He was transferred from Salal Hydro Electrical Project, J & K to Assam Central Circle 1, CPWD, Guwahati vide office order No.21(8)/79/SE I /Coord./Cal dated 24.04.1979. He was promoted to the post of Draftsman Grade - I on 22.02.1992 in the pay scale of Rs.5500-175-9000/-. He was again transferred to Malda Central Circle, West Bengal, CPWD vide office order No.9(57)/Coord./GENL/697 Dated 18.05.1993 from office of the Superintending Officer, Assam Central Circle 1, CPWD, Guwahati and after serving at Malda Central Circle, West Bengal the applicant was transferred to North Eastern Region i.e. Guwahati Central Division in the year 1994.

Annexure - A is the photocopy of the office Memorandum No.21(9)/75-ACC/E-II dated 07.07.1975 issued by the office of the respondent No.4

Annexure - B is the photocopy of the office order No.21(8)/79/SE I /Coord./Cal dated 24.04.1979.

4.4 That your Applicant begs to state that the Government of India, Ministry of Finance, Department of Expenditure granted certain improvements and facilities to the Central Government Civilian Employees of the Central Government serving in the States and Union Territories of North Eastern Region vide Office Memorandum No.20014/3/83-IV dated 14-



12-1983. In clause II of the said Office Memorandum Special (Duty) Allowance was granted to Central Government Civilian Employees, who have All India Transfer liability at the rate of Rs.25% of the basic pay subject to ceiling of Rs.400/- (Rupees Four Hundred) only per month on posting to any station in the North Eastern Region. The relevant portion of the Office Memorandum dated 14.12.1983 is quoted below:


(iii) Special (Duty) Allowance: -

"Central Government Civilian employee who have All India Transfer liability will be granted a Special (Duty) Allowance at the rate of Rs.25% of basic pay subject to a ceiling of Rs.400/- (Rupees Four Hundred) only per month on posting to any station in the North East Region. Such of these employees who are exempted from payment of Income Tax, will however not be eligible for the Special (Duty) Allowance. Special (Duty) Allowance will be in addition to any Special Pay and for allowances already being drawn subject to the condition that the total of such Special (Duty) Allowance plus Special Deputation (Duty) Allowance will not exceed Rs.400/- (Rupees Four Hundred) only per month. Special Allowance like Special Compensatory (Remote) Locality Allowance, Construction Allowance and Project Allowance and Project Allowance will be drawn separately."

The Govt. of India, Ministry of Finance, Department of Expenditure vide its Office Memorandum No.F.No.11 (2)/97-E-II (B) dated 22-07-1998 continued the said facilities as per recommendation of the Fifth Central Pay Commission.

Annexure - C is the photocopy of extract of Office Memorandum dated 14-12-1983.

Annexure -D is the photocopy of Office Memorandum No.F.No.11 (2)/97-E-II (B) dated 22-07-1998.



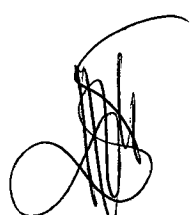
4.5 That your Applicant begs to state that he is saddled with All India Transfer liability in terms of his offer of appointment and with the said liabilities he had accepted the All India Transfer liability as per his appointment letter. It is worth to mention here that as per the said All India Transfer Liability he was transferred to J & K and Malda, West Bengal from North Eastern Region and he was reposted to North Eastern Region from outside of North Eastern Region. Therefore, the Applicant is in practice saddled with All India Transfer Liability and in terms of Office Memorandum dated 14-12-1983 and he is legally entitled for grant of Special (Duty) Allowances. Accordingly the applicant was paid Special Duty Allowance.

4.6 That your Applicant begs to state that as per Cabinet Secretariat Letter No.20-12-1999-EA-1-1799 dated 02-05-2000 it has been further clarified that an employee hailing from NE Region and subsequently posted to outside of NE Region and reposted from outside of NE Region to NE Region will also be entitled for Special Duty Allowance.

Annexure - E is the photocopy of Letter No.20-12-1999-EA-1-1799 Dated 02-05-2000.

4.7 That most surprisingly the office of the respondent No.4 vide his office order issued under letter No. Pay Bill /ACC-1/05/1426 Dated 26.08.2005 wherein it was directed to recover Special Duty Allowance from the applicant for the period w.e.f. 7/2002 to 7/2005 amounting to Rs.54,284/-, the recovery of the amount shall be effected from the month of August 2005 to February 2006 (as the applicant is retiring on Superannuation in the month of February 2006) on monthly installment @Rs.7750/- per month from August 2005 to January 2006 and @Rs.7784/- for February 2006.

Annexure - F is the photocopy of letter No. Pay Bill /ACC-1/05/1426 Dated 26.08.2005.



4.8 That your applicant begs to state that after receiving the above said order (At Annexure-F) of stoppage and recovery of Special Duty Allowance he immediately on 26.08.2005 filed a representation before the Respondent No.4. The respondent No.4 vide his letter dated 30.08.2005 rejected the representation of the applicant dated 26.08.2005. In this rejection letter it has been stated by the respondent No.4 that it was a mistake by the authority regarding payment of Special Duty Allowance to the applicant. Being aggrieved by this your Applicant immediately filed an Original Application No.231 of 2005 before this Hon'ble Tribunal. The Hon'ble Tribunal vide its Order dated 06.09.2005 passed in O.A.No.231 of 2005 stayed the recovery of Special Duty Allowance issued by the Respondents as per communication dated 26.08.2005. However, there is no stay of stoppage of Special Duty Allowance. But in spite of this Hon'ble Tribunal's stay order dated 6.9.2005 the instant Respondent No.4 continued the recovery of Special Duty Allowance from the Applicant. The Applicant filed a Contempt Petition No.28 of 2005 in O.A.No.231 of 2005 before this Hon'ble Tribunal. The notice was issued to the Respondents. On 9.1.2006 the Respondents submitted before this Hon'ble Tribunal that they have complied the interim direction issued by this Hon'ble Tribunal. Hence the Contempt Petition was closed by this Hon'ble Tribunal. The Hon'ble Tribunal finally heard the Original Application No.231 of 2005 on 9th January 2006. The Hon'ble Tribunal vide its Order dated 9th January 2006 disposed the said Original Application with following observation. "The applicant has stated the factual situations in paragraph 4.3 of the application and mentioned in this order above. The respondents will verify as to whether the said facts are correct and thereafter, take a decision in the light of the common order dated 31.05.2005 passed in O.A.No.170/1999 and connected cases. Paragraphs 52 and 53 of the said order are reproduced below:

" 52. The position as it obtained on 5.10.2001 by virtue of the Supreme Court decisions and the 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 NE region if he is retransferred to NE 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 resident of North Eastern region originally recruited from outside of the region and later transferred to North Eastern region by virtue of the All India Transfer Liability provided the promotion are also based on an All India Common Seniority.

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

A decision as directed will be taken within 3 months from the date of the receipt of this order".

Annexure - G is the photocopy of representation dated 26.8.2005 submitted by the applicant before the Respondent No.4.

Annexure - H is the photocopy of rejection letter dated 30.8.2005.

Annexure - I is the photocopy of Order dated 6.9.2005 passed in O.A.No.231 of 2005 by this Hon'ble Tribunal.

Annexure - J is the photocopy of Order dated 9.1.2005 passed in C.P.No.28 of 2005 in O.A.No.231 of 2005 by this Hon'ble Tribunal.



Annexure - K is the photocopy of Order and Judgment dated 9th January 2006 passed in O.A.No.231 of 2005 by this Hon'ble Tribunal.

4.9 That your applicant begs to state that the Office of the Respondent No.4 vide its impugned Office order No.Misc/CAT/OA-231/2005/AKD/ACCI/276 dated 30.1.06 rejected the claim of the applicant for payment of Special Duty Allowance and also directed to recover the Special Duty Allowance from the Applicant paid to him after 5.10.2001. The extract and relevant portion of the said order as under for kind perusal of this Hon'ble Tribunal.

"Sl. No.2 whether posted to North Eastern Region from outside the region. No.

"Sl. No.3 Whether subsequently posted to outside NE region and retransferred to NE region.....Yes, was transferred to Malda in 1993 and was retransferred to Guwahati in respect of regional (limited) transfer liability which covered NE region, and states of West Bengal, Bihar and Orissa only.

"Sl. No.4 Does he have promotional avenues based on a common All India Seniority?..... Yes

"Sl.No.5 Does he have All India Transfer Liability in the present grade ?.....No.

Impact of the Judgment:

"Shri Akan Kr. Dutta, Draftsman Grade-I is not entitled for SDA benefits as he fails the test for All India Transfer Liability in the present grade.

Annexure - L is the photocopy of impugned Office Order No.Misc/CAT/OA-231/2005/AKD/ACCI/276 dated 30.1.06.

4.10 That your Applicant begs to state that the impugned Office Order dated 30.1.2006 (at Annexure - L) is prima-facie illegal, mala-fide and not sustainable before the eye of law as well as facts of the case. The contention of the Respondents in their Order dated 30.1.2006 in Sl.No.2 that Applicant was not posted to North Eastern region from outside of the region. But it is false and also misleading. It is admitted facts and position that North Eastern region consists of 8 (eight) states i.e. Assam, Nagaland, Meghalaya, Manipur, Tripura, Arunachal Pradesh, Mizoram and Sikkim). It is to be noted that Sikkim was a new entry to the North Eastern region. The applicant was transferred to Malda (West Bengal) from Guwahati (Assam) in the year 1993 and again he was retransferred to Guwahati (Assam) from Malda (West Bengal) in the year 1994. The Malda (West Bengal) is not under North Eastern Region. Moreover, the Office Memorandums regarding payments of Special Duty Allowance to the Central Government Employees it is clearly stated that the person who is posted to the North Eastern region from outside the region are entitled to get the benefits of Special Duty Allowance. Outside of the North Eastern region means which states are not included in the North Eastern Regions. The applicant was transferred from West Bengal (Malda) to North Eastern Region, as such he is entitled for Special Duty Allowance. The Office of the Respondents in a very cryptic manner has also admitted in Sl. No.3 and 4 that the applicant was subsequently posted to outside NE region and retransferred to NE region and the applicant has also promotional avenue based on a Common All India Seniority. Lastly the Respondents has denied that the applicant has All India Transfer Liability in the present grade. This is not the facts and position of the case. The applicant with the All India Transfer Liability was transferred to West Bengal and subsequently reposted to North Eastern Region.

4.11 That your applicant begs to state that the Special Duty Allowance paid to the applicant by the respondents



authorities itself after full satisfaction of criteria laid down in different memorandum regarding payment of Special Duty Allowance. After receiving the same the applicant spent the said allowance in maintaining his dependent family members. He has not obtained the said allowance by way of fraud rather the allowance was duly paid to him by the respondents themselves. It may also be stated that the respondent No.4 has also admitted in their letter dated 30.8.2005 (at Annexure - H) that they have committed mistake regarding payment of Special Duty Allowance to the applicant. Hence your applicant cannot be held responsible for the mistake committed by the respondent authorities. Moreover, it will cause great financial hardship to the applicant if the same is allowed to recover from the applicant. The applicant has not committed any fraud in receiving the Special Duty Allowance. Therefore, the impugned order is not sustainable in the eye of law.

It is further submitted that the applicant is likely to suffer due to discontinuation of the Special Duty Allowance as he has fulfilled all the criteria laid down in various memorandums and judgment & order passed by this Hon'ble Tribunal.

4.12 That your applicant states that the respondent has already started the recovery of Special Duty Allowance from the applicant from his Pay Bill immediately after issuing the impugned Office Order dated 30.1.2006. As such it is now necessary for the applicant for seeking an interim order from this Hon'ble Tribunal for stay of impugned recovery order dated 30.1.2006 issued by the Office of the respondent No.4.

4.13 That your applicant begs to state that the impugned Office Order dated 30.1.2006 is arbitrary, illegal, whimsical and also colourable exercise of power by the Respondents.

4.14 That your Applicant begs to state that he has fulfilled all the criteria laid down in the aforesaid Memorandum



regarding payment of Special Duty Allowance, hence the Respondents cannot deny the same to the Applicants without any justification.

4.15 That your Applicant begs to state that similarly situated persons are enjoying the same benefit without any interruption, as such the action of the Respondents is arbitrary, malafide, whimsical and also not sustainable in the eye of law as well as on facts.

4.16 That your Applicant begs to state that the Respondents have violated the principle of Natural Justice and also Articles 14, 16 and 21 of the Constitution of India

4.17 That your Applicant submits that there is no other alternative remedy and the remedy sought for if granted would be just, adequate and proper.

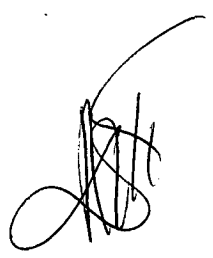
4.18 That this application is filed bonafide and for the cause of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, due to the above reasons and facts, which are narrated in details, the action of the Respondents is prima facie illegal, malafide, arbitrary and without justification. As such the impugned Office Order dated 30.1.2006 is liable to be set aside and quashed.

5.2 For that, the Applicant is practically having All India Transfer liability and as such, he is legally entitled to draw Special Duty Allowance as per various office memorandums in this regard. As such the impugned Office Order dated 30.1.2006 is liable to be set aside and quashed.

5.3 For that, similarly situated persons who are working under the same Ministry have been granted the Special Duty Allowance but the Respondents are not giving the same relief to the instant Applicant. The actions of the Respondents are



bad in the eye of law and also not maintainable. As such the impugned Office Order dated 30.1.2006 is liable to be set aside and quashed.

5.4 For that, the applicant fulfilled all the criteria laid down by this Hon'ble Tribunal for payment of Special Duty Allowance to the Central Government Employees serving in the North Eastern Region.

5.5 For that, being a model employer the Respondents cannot deny the same benefits to the instant Applicant, which have been granted to the other similarly persons. The Respondents should extend this benefit to the Instant Applicant without approaching this Hon'ble Tribunal. As such the impugned Office Order dated 30.1.2006 is liable to be set aside and quashed.

5.6 For that, it is unjust to discriminate among the employees who are similarly placed in the same ministry and also it is not proper to insist on every aggrieved employee to approach the court of law when the cause of action is identical. As such the impugned Office Order dated 30.1.2006 is liable to be set aside and quashed.

5.7 For that, in receiving the Special Duty Allowance the applicant did not commit any fraud or misrepresentations and as such he is not responsible for grant of the Special Duty Allowance by the authorities.

5.8 For that, applicant is legally entitled to payment of Special Duty Allowance in terms of the various judgments of this Hon'ble Tribunal.

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

The Applicants crave leave of this Hon'ble Tribunal advance further grounds the time of hearing of this instant Application.

6. DETAILS OF REMEDIES EXHAUSTED :

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

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


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

8. RELIEF PRAYED FOR :

Under the facts and circumstances stated above, the Applicant most respectfully prayed that Your Lordships may be pleased to admit this application, call for the records of the case, issue notices to the Respondents as to why the relief and relieves sought for the Applicant may not be granted and after hearing the parties may be pleased to direct the Respondents to give the following relief (s) : -

8.1 That the Hon'ble Tribunal may be pleased to set aside and quashed the impugned office order No.Misc/CAT-231/2005/AKD/ACCI/276 dated 30.1.2006 (at Annexure - I) issued by the Office of the Respondent No.4.

8.2 That the Hon'ble Tribunal may be pleased to direct the respondents to continue the payment of Special Duty Allowance to the applicant.



8.3 To Pass any other relief or relieves to which the Applicant may be entitled and as may be deem fit and proper by this Hon'ble Tribunal.

8.4 To pay the costs of the application.

9. INTERIM ORDER PRAYED FOR :

During the pendency of this application, the applicant most respectfully pray for the following relief : -

9.1 That the Hon'ble Tribunal may be pleased to stay the operation of the impugned order issued under office order No. No.Misc/CAT-231/2005/AKD/ACCI/276 dated 30.1.2006 (at Annexure - L) issued by the Office of the Respondent No.4 till disposal of this Original Application.

10. THIS APPLICATION IS FILED THROUGH ADVOCATE.

11. PARTICULARS OF I.P.O.

I.P.O. No. :- 266-350404
Date of Issue :- 6-2-06
Issued from :- G.P.O.
Payable at :- Guwahati

12. LIST OF ENCLOSURES:

As stated in Index.

Verification



V E R I F I C A T I O N

I, Shri Akan Kumar Dutta, Son of Late Sistu Ram Dutta, Draftsman, Grade - 1, Office of the Superintending Engineer, Assam Central Circle 1, Central Public Works Department, Guwahati - 21, aged about 59 years do hereby solemnly verify that I am the Applicant No. 2 of the instant application and I am authorized by the other applicant to sign this verification. That the statements made in paragraph 4.1, 4.2, 4.5, 4.10, 4.11, 4.12 to 4.16 are true to my knowledge, those made in paragraph Nos. 4.3, 4.4, 4.6, 4.7, 4.8, 4.9 are being matters of record are true to my information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and the rests are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 21st day of February 2006 at Guwahati.



DECLARANT

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ANNEXURE A

Government of India
Central Public Works Department

No. 31(92)/75-ACC/E-II

Dated Gauhati, the 7 -7-1975.

OFFICE MEMO

In pursuance of Superintending Engineer (Co-ordination) Calcutta Central Circle No. II, C.P.W.D., Calcutta's Office Memorandum No. 21(87/75/SKI/Coord/Cal, dated 7-4-1975, Shri A.K. Dutta, Draftsman Grade II attached to this office is hereby relieved of his duties to-day the 7-7-1975 Afternoon and is directed to report for duty to the Chief Engineer, Salal Hydro Electrical Project, Jyotipuram (Raisi), J & Kashmir.

E.A. to Superintending Engineer
Assam Central Circle
C.P.W.D., Gauhati-21.

Copy forwarded to:-

- 1) The Chief Engineer, Salal Hydro Electrical Project, Jyotipuram, (Raisi) J. & Kashmir.
- 2) The Superintending Engineer (Coord), Calcutta Central Circle I, C.P.W.D., Calcutta-20.
- 3) The Surveyor of Works, Assam Central Circle, CPWD, Gauhati.
- 4) The Cashier, Assam Central Circle, CPWD, Gauhati. The L.P.C. of the incumbent may please be issued immediately after receipt of a no demand certificate.
- ✓ 5) Shri A.K. Dutta, Draftsman Grade II, Assam Central Circle, CPWD., Gauhati-21.

E.A. to Superintending Engineer.

Kr. 7/7/1975

J. A. Dutta

CENTRAL PUBLIC WORKS DEPARTMENT

NO:21(S)/79/SHI/Coord/Cal.

Dated Cal, the 24/4/79.

OFFICE ORDER

The following transfers are hereby ordered with immediate effect in the interest of public service.

S.No.	Name & Designation	From	To	Remarks
1)	Shri A.K.Dutta, D/M.II	Salal Hydro-Electric Project, Jyotipuram.	A.C.C. Gauhati	Against Sh. T.P.Singh transferred
2)	Smt. Chandra Kala Dutta, L.D.C.	-do-	G.E.D.II, Gauhati.	Against existing vacancy

Sd/-
Superintending Engineer(Coord)
Calcutta Central Circle No.I,
C. P. W. D., Calcutta.

Government of India
Office of the General Manager
Salal Hydro Electric Project
Jyotipuram

No.GMSP/PF-776/79/15337-37 Dated, the 2 May, '79.

Copy forwarded for information and necessary action to:-

- 1/ The Superintending Engineer, Salal Civil Circle No.III, Jyotipuram.
- 2/ Shri A.K. Dutta, Draftsman.
- 3/ Smt. Chandra Kala Dutta, L.D.C.

(R. P. Saini)
EXECUTIVE ENGINEER(Admn.)
for GENERAL MANAGER

Attd/-
Sd/-

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(Typed Copy)
Relevant portion

ANNEXURE - C

No. 20014/2/83/B.IV
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 14th Dec '83

OFFICE MEMORANDUM

Subj: Allowances and facilities for civilians employees of the Central Government serving the States and Union Territories of North Eastern Region - improvements 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 had appointed a Committee under the Chairmanship of Secretary, Department of Personnel and Administrative Reforms, to review the existing allowances & 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 not pleased to decide as follows:-

1) Tenure of posting/deputation

There will be a fixed tenure 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, periods of leave, Training etc. in the excess of 15 days per year will be excluded in counting the tenure period of 2 / 3 years. Officer 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 station / 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.

A. K. J. / J. K. J.

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- ii) Weightage for Central deputation / training abroad and special mention in confidential records.

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- iii) Central Government Civilian employees who have all India transfer liability will be granted a special (Duty) Allowance at the rate of 25 percent of basic pay subject to any ceiling of Rs. 400/- per month on postings to any station in the North Eastern Region. Such of those employees who are exempted 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 pre 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.

Sd/- eligible

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Sh. Arvind
Deputy

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(Typed Copy)

ANNEXURE - D

Government of India
Ministry of Finance
Department of Expenditure

New Delhi dated July, 22, 1998

OFFICE MEMORANDUM

Subject : Allowances and Special Facilities for Civilian Employees of the Central Government serving in the States and Union Territories of the North Eastern Region and in the Andaman and Nicobar and Lakshadweep Groups of Island - Recommendation of the Fifth Central Pay Commission.

With a view to attracting and retaining competent officers for serving in the North Eastern Region, comprising of the territories of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura orders were issued in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983 extending certain allowances and other facilities to the Civilian Central Government employees serving in this region. In terms of paragraph 2 thereof, these orders other than those contained in paragraph 1(iv) *ibid* were also to apply *mutatis mutandis* to the Civilian Central Government employees posted to the Andaman & Nicobar Islands. These were further extended to the Central Government employees posted to the Lakshadweep Islands in this Ministry's O.M. of even number dated March 30, 1984. The allowances and facilities were further liberalized in this Ministry's O.M. No. 20014/16/86/E.IV/E.II(13) dated December 1, 1988 and were also extended to the Central Government employees posted to the North Eastern Council when stationed in the North Eastern Region.

2. The Fifth Central pay Commission have made certain recommendations suggesting further improvements in the allowances and facilities admissible to the Central Government employees, including Officers of the All India Services posted in the North Eastern Region. They have further recommended that these may also be extended to the Central Government employees, including Officers of the All India Services, posted in Sikkim. The recommendations of the Commission have been considered by the Government and the President is now pleased to decide as follows: -

(1) Tenure of Posting/Deputation]

The provisions in regard to tenure posting/deputation contained in this Ministry's O.M. No. 20014/3/83-E.IV dated December 14, 1983, read

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with O.M. No. 20014/16/86-E.II(8) dated December 1, 1988, shall continue to be applicable.

- (ii) Weightage for Central Deputation/Training Abroad and Special Mention in Confidential Records. The provisions contained in this Ministry's O.M. No. 200014/3/83.E.IV date December 14, 1983, read with O.M. No. 20013/16/86-E.II(B) dated December 1, 1988 shall continue to be applicable.

- (iii) Special (Duty) Allowance

Central Government Civilian Employees having an "All India Transfer Liability" and posted to the specified Territories in the North Eastern Region shall be granted the Special (Duty) Allowance at the rate of 12.5 percent of their Basic pay as prescribed in this Ministry's O.M. No. 20014/16/86-E.IV/E.II(B) dated December 1, 1988 but without any ceiling on its quantum. In other words, the ceiling of Rs. 1,000 per month currently in force shall no longer be applicable and the condition that the aggregate of the Special (Duty) Allowance plus Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs. 1,000 per month shall also be dispensed with. Other terms and conditions governing the grant of this Allowance shall, however, continue to be applicable.

In terms of the orders in this Ministry's O.M. No. 20022/2/88.E.II(13) dated May 24, 1989, Central Government Civilian employees having an All India Transfer Liability" and posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands are presently entitled to an Island Special Allowance at varying rates in lieu of the Special (Duty) Allowance admissible in the North-Eastern Region. This Allowance shall continue to be admissible to the specified category of Central Government employees at the same rates as prescribed for the different specified areas in the O.M. dated May 24, 1989, but without any ceiling on its quantum. This Allowance shall also henceforth be termed an Island Special (Duty) Allowance. Separate orders in regard to this Allowance have been issued in this Ministry's O.M. No. 12(1)/98-E.II(8) dated July 17, 1998.

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Attention is also invited in this connection to the clarificatory orders contained in this Ministry's O.M. No. 11(3)/93-12.11(13) dated January 12, 1996, which shall continue to be applicable not only in respect of the Central Government employees posted to serve in the North Eastern Region but also to those posted to serve in the Andaman & Nicobar and Lakshadweep Groups of Islands.

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3. The President is also pleased to decide that these orders, in so far as they relate to the Central Government employees posted in the North - Eastern Region, shall also be applicable mutatis mutandis to the Civilian Central Government Employees, including Officers of the All India Services, posted to Sikkim.

4. These orders will take effect from August 1, 1997.

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

6. Hindi version will follow.

Sd/-
(N. SUNDER RAJAN)
Joint Secretary to the Government of India

To

All Ministries / Department of the Government of India (As per standard Distribution List)
Copy [(with usual number of spare copies) (forwarded to C&AG, UPSC, etc. (As per standard Endorsement List))]
Copy also forwarded to Chief Secretary, Andaman & Nicobar Islands and Administrator, Lakshadweep.

A. H. J.
Sd/-
Date

COURT CASE

MOST IMMEDIATE

Cabinet Secretariat
(E.A. Section)

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

1. SSB Directorate may kindly refer to their UO No. 42/SSB/AT/99(18)- 2369 dated 31.03.2000 on the subject mentioned above.
2. The points of doubt raised by SSB in their UN No. 42/SSB/AT/99(18) - 5282 dated 2.9.1999 have been examined in consultation with our Integrated Finance and Ministry of Finance (Department of Expenditure) and clarification to the points doubt is given under for information, guidance and necessary action :

i)	The Hon'ble Supreme Court in their Judgment delivered on 26.11.96 in Writ Petition No. 794 of 1996 held that civilian employees who have All India transfer liability are entitled to the grant of SDA on being posted to any station in the N.E. Region from outside the region and in the following situation whether a Central Government employee would be eligible for the grant of SDA keeping in view the clarifications issued by the Ministry of Finance vide their no. No. 11(3)/95.E.II(B) dated 7.5.97	
a)	A person belongs to outside N.E. Region but he is appointed and on first appointment posted in the N.E. Region after selection through direct recruitment based on the recruitment made on all India basis and having a common/centralised seniority list and All India Transfer Liability.	No
b)	An employee hailing from the N.E. Region selection on the basis of an All India recruitment test and borne on the Centralised cadre/service common seniority on first appointment and posted in the N.E. Region. He has also All India Transfer Liability.	No
ii)	An employee belongs to N.E. Region was appointed as Group "C" or "D" employee based	No

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	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-II.V dated 14.12.1983 and 20.4.87 read with O.M. 20014/16/86E-II(B) dated 1.12.1988) but subsequently the post/cadre was centralised with common seniority list/promotion/All India Transfer Liability etc. on his continuing in the N.E.Region though they can be transferred out to any place outside the NE Region having All India Transfer Liability.	
iii)	An employee belongs to N.E.Region and subsequently posted outside N.E.Region, whether he will be eligible for SDA if posted/transferred to N.E.Region. He is also having a common All India seniority and All India Transfer Liability	YES
iv)	An employee hailing from NE Region, posted to NE region initially but subsequently transferred out of NE Region but reposted to NE Region after sometime serving in non NE Region	YES
v)	The MOF, Deptt. Of Exptr. Vide their UO No. 11(3)/95-L.II(B) dated 7.6.97 have clarified that a mere clause in the appointment order to the effect that the person concerned is liable to be transferred anywhere in India does not make him eligible for the grant of Special Duty Allowance. For determination of the admissibility of the SDA to any Central Govt. Civilian employees having All India Transfer Liability will be by applying tests (a) whether recruitment to the Service/Cadre/Post has been made on All India basis (b) whether promotion is also done on the basis of All India Zone of promotion based on common seniority for the service/cadre/post as a whole (c) in the case of SSB/DGS, there is a common recruitment system made on All India basis and promotions are also one on the basis of All India Common Seniority. Based on the above criteria/tests all employees recruited on the All India basis and having a common seniority list of All India basis for promotion etc. are eligible for the grant of SDA irrespective of the fact that the employee hails from N.E.Region or posted to N.E.Region from outside the N.E.Region	In case the employee hailing from NE region is posted within NE Region he is not entitled to SDA till he is once transferred out of that Region
vi)	Based on point (iv) above, some of the units of SSB/DGS have authorised payment of SDA to other employees hailing from NE Region and posted within the N.E.Region while in the case of others, the DACS have objected payment of SDA	It has already been clarified by MOF that clause in the appointment order regarding All India

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J. I. Smt

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	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	transfer Liability does not make him eligible for grant of SDA
vii)	Whether the payment made to some employees hailing from NE Region and posted in NE Region be recovered after 20.9.1994 i.e. the date of decision of the Hon'ble Supreme Court and/or whether the payment of SDA should be allowed to all employees including those hailing from N.E. Region with effect from the date of their appointment if they have All India Transfer Liability and are promoted on the basis of All India Common Seniority List.	The payment made to employees hailing from NE Region & Posted in NE Region be recovered from the date of its payment. It may also be added that the payment made to the ineligible employee hailing from NE Region and posted in NE region be recovered from the date of payment or after 20th Sept., 94 whichever is later.

3. This issues with the concurrence of the Finance Division, Cabinet Secretariat vide Dy. No. 1349 dated 11.10.1999 and Ministry of Finance (Expenditure)'s I.D. No. 1204/E.II(B) dated 30.3.2000.

Sd/-
Illegible
(P.N. THAKUR)
DIRECTOR(SR)

1. Shri R.S. Bodi, Director ARC 994
2. Shri R.P. Kureel, Director 1349
3. Brig. (Retd) G.S. Uban, IG, STF
4. Shri S.R. Mehra, JD(P&C), DGS
5. Shri Ashok Chaturvedi, JS(Pers), R&AW,
6. Shri B.S. Gill, Director of Accounts, DACS
7. Shri J.M. Menon, Director Finance(S), Cab. Sectt.
8. Col. K.L. Jaspal, CIOA, CIA

Cab. Sectt. UO. No. 20/12/99-EA-1-1799 dated 2.5.2000.

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ANNEXURE - F

Government of India
Office of the Superintending Engineer
Assam Central Circle-I, C.P.W.D.,
Guwahati - 781 021

No. Pay Bill/ACC-I/05/ 1726.

Dated, Guwahati, the 26/10/05

Office Order

Subject:- Recovery of payment made towards Special(duty)
Allowances in respect of Shri A.K.Dutta, Draftsman, Grade-I

An amount of Rs.54,284/- (Rupees fifty four thousand two hundred & eighty four) only was paid to Shri Akan Kumar Dutta, Draftsman, Grade-I, ACC-I, CPWD, Guwahati on account of Special(Duty) Allowances w.e.f. 7/2002 to 7/2005.

As the transfer liabilities of Draftsman, Grade-I are not on All India basis and their recruitment and transfer are regionalized. In accordance with Govt. of India's Order, any civilian employees having all India Transfer liability on posting to any station in the North-Eastern Region from outside the Region is eligible for drawal of Special(Duty) Allowances.

As payment made to Shri A.K.Dutta, Draftsman, Grade-I on account of SDA is not admissible to him for the period w.e.f. 7/2002 to 7/2005 amounting to Rs.54,284/-, the recovery of the amount shall be effected from the month of August/2005 to February/2006 (As Shri Dutta, D/Man-I is retiring on superannuation in the month of February/2006) monthly instalments as under :-

- 1) From August/2005 to January/2006 @ Rs.7750/- per month
- 2) February/2006 @ Rs.7784/-

Superintending Engineer

Copy to:-

- 1) The Chief Engineer (NEZ), CPWD, Cleave's Colony, Shillong-793003.
- 2) The Pay & Accounts Officer, CPWD (NEZ), Shillong-I.
- 3) The Bill Clerk/ACC-I in duplicate.
- 4) Shri A.K.Dutta, Draftsman, Grade-I, ACC-I.

Superintending Engineer

Attested
[Signature] [Stamp]

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ANNEXURE 38 4+6

Date: 26/08/2005

To
The Superintending Engineer
Assam Central Circle No.1
C.P.W.D., Guwahati-21.

Subject:- Recovery of payment made towards special duty allowances in respect of
Shri A.K. Dutta, Draughtsman Gr.I

Sir,

Kindly refer your Office Order No. Pay bill/ACC-I/05/1426 dt Guwahati the 26th
August, 2005 on the subject.

The Special (duty) Allowance w.e.f. 7/2002 to 7/2005 have been paid to the undersigned
by the authority and not on my personal request. Sir, the amount which you have
mentioned shall not be deducted until and unless the case is decided by the Central
Administrative Tribunal(C.A.T). Sir, being a Central Govt. Employee I have every liberty to
protest against the order and shall abide by as per the decision of the Court of Law spells out in
order. In this context, I like to mention that if I am not entitled for SDA then why I have been
allowed to draw the SDA since 7/2002 till now. It is also to be mentioned here that I have been
granted 2nd ACP w.e.f. 9.8.99 in the Scale of 6500-200-10,500 in the scale of Chief Estimator.
The post of C.E. is regarded by you having All India Transfer Liability. Sir, I was transferred
from Guwahati to Kashmir for services and also I was transferred from Guwahati to Malda on
public interest. It was done due to the fact that I have all India Transfer Liability. In the
appointment offer it is clearly mentioned that as and when required I may be transferred to any
place of duty all over India.

It is also to be mentioned from the appointment criteria of the employees who did not
serve here and drawing SDA on promotion to the higher grade i.e. on appointment criteria they
are also getting the incentive even though they were not entitled earlier to their promotion having
no transfer liability all over India.

It is, therefore, requested that the final decision may be made after it is decided by the
Court of law in the C.A.T. My SDA is considered in the pay scale of Chief Estimator under ACP,
and not in the pay scale of Draughtsman Gr.I at present and the upgradation with All India Transfer
Liability.

It is the authority that allowed me to draw the SDA and hence question of deduction does
not arise until Court of law gives the order and till then it is requested to kindly continue the SDA
and oblige.

Thanking you,

Yours faithfully,

(A.K. Dutta)
Draughtsman Gr.I
ACC-I/CPWD

Attnl
SI - Datta

- 28 -
Government of India
Office of the Superintending Engineer
Assam Central Circle-I
CPWD, Guwahati-21.

No. Pay Bill/ACC-1/05/1442

Dated, Guwahati, the 30.8.05

To
Shri A.K. Dutta, Draftsman, Grade-I,
Assam Central Circle-I,
CPWD, Guwahati- 781 021.

Subject:- Recovery of payment made towards Special(Duty) Allowance in
respect of Shri Akan Kumar Dutta, Draftsman, Grade-I

Ref:- Your letter dated 26-8-05

In reference to your above cited letter on the subject, the line-wise replies of
this office are furnished as under:-

- 1) Not disputed. The same authority has decided that it was not payable to you.
 - 2) It is agreed that you are at liberty to challenge the order and are bound to
follow the decision of the Court of Law, but this office is not bound to wait for such a
decision before implementing its decisions.
 - 3) It was a mistake. Moreover, Chief Engineer(NEZ), CPWD Office has
opined now that Draftsman, Grade-I have Regional posting.
 - 4) It is not disputed that you have been granted 2nd ACP which equates to the
pay scale of Chief Estimator and the post of Chief Estimator carries "All India Transfer
liabilities". It is however, informed that irrespective of 2nd ACP, you hold lien as
Draftsman, Grade-I and not Chief Estimator, therefore, Chief Estimator's Recruitment
Rules cannot be extended to you.
 - 5) Transfers were effected as per transfer policy prevalent then based on the
definition of Region at that point of time. You were posted to Kashmir on deputation on
your reckoning and Malda is within the same Region. It is therefore, clear that your posting
have been regional so far except for deputation to Kashmir, which was on your choice.
 - 6) It is already a settled issue that mere mention in appointment letter is not
sufficient, the posting should be speaking of all India transfer liabilities which is not so in
your case.
 - 7) The provision does not grant any relief to you.
- In light of above, your request to defer the recovery of over-payment on
account of SDA is hereby rejected.

Superintending Engineer

A. H. H. (H)
S. I. /
S. I. /

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Annexure - i

FORM NO. 4.
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 231/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(S): A. K. Dutta

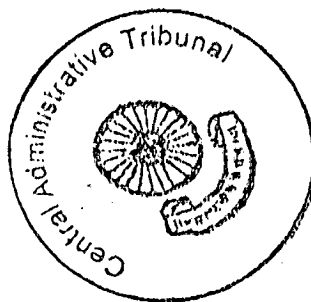
Respondant(S): U. O. I. Jans

Advocate for the Applicant(S): Adil Ahmed

Advocate for the Respondant(S): Case

Notes of the Registry	Date	Order of the Tribunal
	6.9.2005	Heard Mr. A. Ahmed, learned counsel for the applicant and Mr. M. U. Ahmed, learned Addl. C.G.S.C. for the respondents. Issue notice to the respondents. Post on 7.10.2005. Recovery of the amount ordered as per communication dated 26.8.2005 (Annexure - F) is stayed. However, there is no ^{stay} of stopage of SDA.

SD/VICE CHAIRMAN



Date of Application : 1.9.05
Date on which copy is ready : 7.9.05
Date on which copy is delivered : 7.9.05
Certified to be true copy

Section Officer (Judl)
C. A. T. Guwahati Bench
Guwahati 5.

Adil
Jal
Adil

-30-

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FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ANNEXURE - J

ORDER SHEET

Original Application No. _____

Misc. Petition No. _____

Contempt Petition No. 28 / 05 W.O.A 231/05

Review Application No. _____

Applicant(S) : A. K. Datta

Respondant(S) : E.R. Mishra, E.R. B. Nagda, E.R. D.C. Goel Cont.

Advocate for the Applicant(S) : Adil Ahmed
Mrs. M. U. Ahmed

Advocate for the Respondant(S) : Adil Ahmed

Notes of the Registry

Date

Order of the Tribunal

bb

09.01.2005

This contempt petition is filed alleging that the interim direction issued by this Tribunal on 6.9.2005 in O.A. No. 231/2005 has not been complied with. Mr. M.U. Ahmed, learned Adl. C.G.S.C. for the respondents submits that interim direction has been complied with. Mr. A. Ahmed, learned counsel for the applicant also agrees with the ~~same~~. Hence, the C.P. is closed.



9
Sd/ VICE CHAIRMAN

TRUE COPY

प्रतिनिधि

17/1/06

अनुभाग अधिकारी

Section Officer (Judl)

Central Administrative Tribunal

गुवाहाटी न्यायपीठ

GUWAHATI BENCH

गुवाहाटी, Guwahati-5

17/1/06

Adil Ahmed
Sd/

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ANNEXURE - K

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 231 of 2005.

Date of Order : This the 9th January 2006.

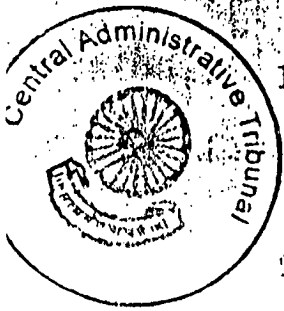
The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

Shri Akan Kumar Dutta
Son of Late Sistu Ram Dutta
Draftsman, Grade - I
Office of the Superintending Engineer,
Assam Central Circle 1,
Central Public Works Department,
Guwahati - 21.

Applicant

By Advocate Mr. Adil Ahmed.

- Versus -



1. The Union of India, represented by the Secretary to the Government of India, Ministry of Urban Affairs, Nirman Bhawan, New Delhi - 110 011.
2. The Director General Works, Central Public Works Department, 118-A, Nirman Bhawan, New Delhi - 110 011.
3. The Chief Engineer (NEZ) Central Public Works Department Cleves Colony, Dhankheti, Shillong - 3.
4. The Superintending Engineer, Assam Central Circle 1, Central Public Works Department, Bamunimaidam, Guwahati - 21.

Respondents

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

Adil Ahmed
Sd/-
Date

32

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ORDER (ORAL)

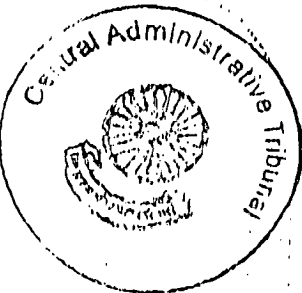
SIVARAJAN. J. (V.C.)

Heard Mr. A. Ahmed, learned counsel for the applicant and Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents

2. The matter relates to grant of Special Duty Allowance (SDA for short) to the applicant. The case of the applicant is as follows: -

3. He belongs to North Eastern Region. He was appointed as Draftsman Grade II on 16.07.1966. He was transferred from Assam on deputation to Jammu & Kashmir in the year 1975. He was re-transferred on 24.04.1979. He was again transferred to West Bengal in the year 1993 from where he was transferred back to Assam. The grievance of the applicant is that though the applicant was paid SDA for period upto August 2005, the respondents by communication dated 26.08.2005 (Annexure - F) sought to recover the same from the applicant and is also not paying SDA from August 2005. The applicant has filed this application seeking to quash the communication dated 26.08.2005 (Annexure - F) and also for direction to the respondents to continue payment of SDA to the applicant.

4. The respondents have filed their written statement in which they have denied the liability. It is stated that they have not seen the judgment of this Tribunal dated 31.05.2005 passed in O.A. 170/1999 and connected cases.

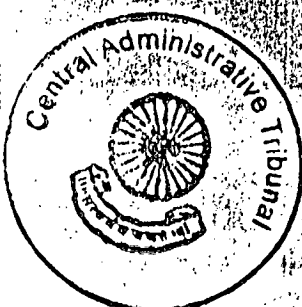


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5. Mr. A. Ahmed, learned counsel for the applicant submits that this Tribunal in a common order dated 31.05.2005 had considered the entire matter and have summarized the principle regarding admissibility of SDA in respect of officers of various Central Government departments. Counsel also submits that in view of the principle laid down in the said decision the applicant is entitled to get SDA.

6. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that the question as to whether the applicant is entitled to SDA in the light of the orders passed by this Tribunal is a matter for consideration by the respondents with reference to the factual situations.



7. In these circumstances, I am of the view that this application can be disposed of as follows: -

The applicant has stated the factual situations in paragraph 4.3 of the application and mentioned in this order above. The respondents will verify as to whether the said facts are correct and thereafter, take a decision in the light of the common order dated 31.05.2005 passed in O.A. No. 170/1999 and connected cases. Paragraphs 52 and 53 of the said order are reproduced below: -

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

[Handwritten signature]

[Handwritten signatures: Ahmed, Jil, Datta]

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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 NE 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 an All India Common Seniority.

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

A decision as directed will be taken within three months from the date of receipt of this order.

The O.A. is disposed of as above. The applicant will produce a copy of this order alongwith copy of the judgment dated 31.05.2005 passed in O.A. No. 170/1999 and connected cases before the respondents for compliance.

sd/ VICE CHAIRMAN

TRU - COPY

प्रतिलिपि

अनुभाग अधिकारी

Section Chief (Jud)

Central Administrative Tribunal

मुंबई न्यायालय

(1)W

17/11/06

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ANNEXURE - C

Government of India
Office of the Superintending Engineer
Assam Central Circle-I, C.P.W.D.,
Guwahati - 781 021

No.Misc/CAT/OA-231/2005/AKD/ACCI/296

Dated, Guwahati, the 20.1.06

Office Order

In compliance of Hon'ble CAT, Guwahati Bench's Order dated 9-1-2006 in OA No.231 of 2005 in respect of Shri A.K.Dutta, Draftsman, Grade-I, Assam Central Circle-I, CPWD, Guwahati-21 Vs Union of India and the provisions prescribed in Hon'ble CAT Guwahati's common order dated 31-5-2005 passed in OA No.170/1999 (Paragraph 52 and 53) reiterated by Hon'ble CAT, Guwahati in its order dated 9-1-2006 also, which are applied as hereunder :-

Sl.No.	Issue under consideration as per Hon'ble CAT, Guwahati's decision under 170/1999	As it applies to Shri Akan Kumar Dutta, Draughtman, Grade-I	Impact of the judgement
1	Whether Central Government Employee	Yes	Shri Akan Kumar Dutta, Draftsman, Grade-I is not entitled for SDA benefits as he fails the test for All India transfer liability in the present grade.
2	Whether posted to North Eastern Region from outside the region	No.	
3	Whether subsequently posted to outside NE Region and re-transferred to N.E.Region.	Yes. Was transferred to Malda in 1993 and was re-transferred to Guwahati in respect of regional(limited) transfer liability, which covered NE Region, and states of West Bengal, Bihar and Orissa only.	
4	Does he have promotional avenues based on a common All India Seniority?	Yes	
5	Does he have all India Transfer liability in the present grade?	No,	

Hence, it is decided by the competent authority that the entire amount of Special(Duty) Allowances drawn by Shri Akan Kumar Dutta, Draftsman, Grade-I from the date of 5-10-2001 onwards be recovered from his pay bill and gratuity bill, as the case may be. The office order issued by this office to discontinue the payment to Shri A.K.Dutta, Draftsman, Gd.I and recover SDA paid to him after 5-10-2001 shall remain unchanged.

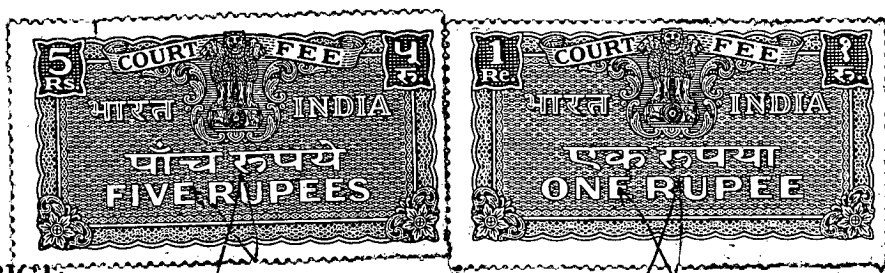
This issues with the approval of Superintending Engineer, Assam Central Circle-I, CPWD, Guwahati

Sd/ —
Executive Engineer(Admin)

Akan
Sd/ —
Akan

- Executive Engineer (Admin)

Attorney
J. L. [Signature]
[Signature]



DISTRICT:

-VAKALATNAMA-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA NO.

48

OF

2006

Shri Aham Kumar Dutta

APPLICANT

PETITIONER

-Versus-

U.O.I. 2005

Respondent
Opposite party

Know all men by these presents that above named... Shri Aham Kumar Dutta
do hereby nominate, constitute and appoint Shri... Adil Ahmed...
Advocate and such of the under mentioned Advocates as shall accept this
Vakalatnama to be my/our true and lawful Advocates to appeal and act for me/us
in the matter noted above and in connection therewith and for that purpose to do
all acts whatsoever in that connection including depositing of drawing money,
filing in or taking out deeds of composition, etc. for me/us and on my/our behalf
and I /We agree to ratify and confirm all acts so done by the Advocates as
mine/ours to all intents and purpose. In case of non-payment of the stipulated fee
in full, no Advocate will be bound to appear and on my/our behalf.

In witness whereof I/We hereunto set my/our hand this the 21st day
2006.

ADVOCATES

A.R.Barooah

J.M.Choudhry

A.S.Bhattacharjee

N.M.Lahiri

G.K.Joshi

✓ Adil Ahmed

A.K.Chaudhuri

R.P.Sharma

P.Sarma

S.A.Laskar

M.H.Choudhry

Sanjoy Mudoi

Sukumar Sarma

S.Jain

A.J.Atia

Received from the executants and accepted.

Advocate

(Adil Ahmed)

Aham Kumar Dutta

Notice

Date - 21-2-06

49

From, Mr. A. Ahmed, Advocate.


To, The Addl. CGSC,
CAT/CHY-5.

Subj: - OA No. 106 Sri Ak. Dutt,
Sir,

Please find enclosed herewith a
copy of the OA. This is for your
information and necessary action.

Please acknowledge receipt
of the same.

Yours faithfully


(ABUL AHMED)
Advocate

Recd copy
21/2/06

305-06

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

IN THE MATTER OF :

O.A.No. 48 of 2006

Shri Akan Kr. Dutta

...Applicant

- Vs -

The Union of India & Ors.

....Respondents

- AND -

IN THE MATTER OF :

Written statement submitted by the respondents

No. 1 to 3.

WRITTEN STATEMENT

The humble answering respondents submit their
written statements as follows :

1.(a) That I am SH. GAJB SINGH, EXECUTIVE ENGINEER (ADMIN.)
AGE ABOUT 41 YRS.

_____ and respondent No. _____ in the above case.

I have gone through a copy of the application served on me and have understood the contents thereof. Save and except whatever is specifically admitted in this written statements, the contentions and statements made in the application may be deemed to have been denied. I am competent and authorized to file the written statement on behalf of all the respondents.

(b) The application is filed unjust and unsustainable both on facts and in law.

© That the application is bad for non-joinder of necessary parties and misjoinder of unnecessary parties.

Executive Engineer (Admin.)
Assam Central Circle No.1
C.P.W.D., Guwahati-781001

filed 57

Shri Akan Kr. Dutta

(d) That the application is also hit by the principles of waiver estoppel and acquiescence and liable to be dismissed.

(e) That the any action taken by the respondents was not stigmatic and some were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicant had suffered from vice of illegality.

2. That with regard to the statements made in paragraphs 2,3, 4.1, 4.17, 4.18 and 6 and 7 of the application, the answering respondents do not admit anything except those are in record.

3. That with regard to the statements made in paragraph 1 of the application, the answering respondents beg to submit that in compliance of Hon'ble CAT, Guwahati Bench order dated 9.1.06 in O.a.231/2005 in respect of the applicant and the provision prescribed in the Hon'ble CAT, Guwahati's common order dated 31.5.05 passed in O.A.No.170/1999 (Paragraph 52 & 53) reiterated by Hon'ble CAT, Guwahati in its order dated 9.1.06, Respondent No.4 has decided that the applicant fails the test for All India Transfer Liabilities in the present grade. Hence, he is not entitled for SDA benefit and ordered that recovery on account of SDA made to the applicant from the date of 5.10.2001 onwards be recovered from his pay & gratuity bill.

4. That with regard to the statements made in paragraph 4.2 of the application, the answering respondents beg to submit that the applicant is working as D/Man Gr.I in the office of respondent No.4. The applicant has been granted pay scale of Rs.6500-200-20500 under Assured Career Progression (ACP) Scheme on completion of 24 years of service, which is next pay scale in hierarchy of cadre of applicant. Grant of ACP is purely financial upgradation in existing hierarchy and is not a promotion. The benefits under ACP do not confer designation, duties and responsibilities

of higher post. The transfer liability is remains same as that of post held and is not governed on the basis of scale of pay enjoyed. Therefore, the applicant remains D/man Grade I and not as Chief Estimator irrespective of grant of ACP in the pay scale of Rs.6500-200-10500/- as per clarification issued by Ministry of Personnel, Public Grievances and Pensions (DOPT) vide No. 35034/1/9A-Estt.(D Vol.IV) dated 10.02.2000 (Annexure A). The applicant's submission with respect to his enjoyment of Chief Estimator's scale, are therefore of little relevance in so far as application of tests for drawal of SDA is concerned.

5. That with regard to the statements made in paragraph 4.3 and 4.10 of the application, the answering respondents beg to submit that it is denied that the applicant was transferred on deputation, in fact the applicant was nearly relieved on deputation. Similarly on completion of deputation term, the applicant was repatriated back to the parent department but was never transferred. Superintending Engineer (Coord) issued the order of transfer upon repatriation. Therefore, the Respondents deny that the applicant was transferred to and from Salal Hydro Electric Project. Such foreign/deputation service from parent department cannot be attributed as transfer. The transfer to Malda is however accepted. The same was within the service condition of the applicant which restrict his liability to the state of Assam, Arunachal Pradesh, Mizoram, Nagaland, Meghalaya, Tripura, Manipur, Sikkim, West Bengal, Bihar, Jharkhand and Orissa only. Posting liabilities to these States do not confer All India Service Liability to the applicant. Therefore, transfer to and from Malda does not change the status of the applicant is so far as drawal of SDA is concerned.

6. That with regard to the statements made in paragraph 4.4 of the application, the answering respondents beg to submit that they have no

comment as it is a matter of record. But they do not apply on the applicant as he hails from the same region and has limited regional transfer liability and never been posted outside N.E. Region.

7. That with regard to the statements made in paragraph 4.5 of the application, the answering respondents beg to draw the attention on the judgment of Hon'ble Supreme Court delivered on 20.9.1994 (in Civil Appeal No.3251 of 1993 in the case of Union of India & Others Vs. Sri S.Vijaya Kumar & Others) wherein the Hon'ble Supreme Court was pleased to decide that Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liabilities. The applicant was never transferred to J&K. He proceeded on deputation to J&K. The applicant was transferred to Malda under limited regional transfer liabilities as spelt in Para 4.3 above. Subsequent posting to North Eastern Region has limited role to allow him the solicited benefit as the same is applicable to those native incumbents of the North East Region who are transferred out of the North East Region on All India Transfer Liability instead of limited regional transfer liability and are again posted back to the North East Region. The applicant does not pass this test and is therefore not found fit for drawal of SDA. The applicant was paid SDA alongwith other staff members. Whereas the payment of SDA to other similarly placed staff members has been stopped earlier, the same has been done so in the case of the applicant now. This action of the Respondent alongwith the recovery of SDA paid after 5.10.2001 is in compliance with the decision of Hon'ble Supreme Court as circulated by Department of Expenditure, Ministry of Finance vide O.M.No.10(5)/97-E-II(B) dated 29/5/2002 wherein it has been decided as under :-

(i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria specified on or before 05/10/2001, which is the date of judgment of Supreme Court will be waived. However, recoveries, if any, already made not be refunded.

(ii) The amount paid on account of Special Duty Allowance to ineligible persons after 05/10/2001 will be recovered. That in the matter of payment of SDA to the Civilian Employees in the Central Govt. serving in the North Eastern States, the office of the respondent No.3 issued O.M.No.71/2/2002-Admn. Dated 17.07.2002. (Annexure B). Wherein it was stipulated that all cases of SDA were to be regulated strictly in accordance with the office memo No. 11(5)/95-E-II (B) dated 29.05.2002 issued by the Ministry of Finance, Deptt. Of Expenditure, Govt. of India and the O.M. No.1069/DOI/W&E/02 dated 06.06.2002 issued by the Ministry of Urban Development and Poverty Alleviation Govt. of India (Annexure-C). It was also stipulated in the said O.M. dated 17.07.2002 that as per instructions contained in the aforesaid O.M. and on examination of matter of payment of SDA, it was found that the Group 'C', 'D' and 'Work Charged Employees' of the North Eastern Region are not entitled for SDA irrespective of being posted in the North Eastern Region from outside the region as the employees falling in the above categories do not fulfill the condition stipulated in the O.M. dated 12.01.1996 issued by the Ministry of Finance, Govt. of India, except Office Superintendent, Junior Engineer and Steno Grapher Gd. belonging to outside of the North Eastern Region as clarified by the Respondent No.3 vide No.71/2/2002-Admn dated 17.7.2002 (Annexure D).

The matter regarding payment of SDA to the applicant has been considered in accordance with the O.M. mentioned in the foregoing para

and found ineligible for grant of SDA w.e.f. 07.02.2002 (i.e. the joining dated of the applicant in the office of Respondent No.4) after transfer from Malda as the applicant has no All India Transfer Liability. His transfer liability is restricted within Eastern Region. The applicant was relieved from the Department to serve the Salai Hydro Electric Project (J&K State) on deputation as per his option/willingness and transferring from Malda station to Guwahati falls within the same region (Eastern Region) for the purpose of recruitment/promotion and transfer. The seniority list of Draughtsman Grade-I maintained for the purpose of recruitment/promotion and transfer is restricted to Eastern Region only and is not on All India basis. Moreover applicant is bonafides resident of the State of Assam (Guwahati) as per his service records. The SDA was required to be paid to those Central Govt. Civilian Employees who had been posted in North Eastern Region from outside the region and not to those who are bonafides residents of N.E.Region (save upon North East Region native incumbents having effective All India transfer Liability when posted back to North East Region from outside North East Region). The O.M. dated 20.04.87 (annexure E) has clearly stated that the allowance would not become payable merely because of the clause in the appointment letter to the effect that person concerned is liable to be transferred anywhere in India. The O.M. dated 20.04.1987 clearly mentioned that SDA was meant to attract the Civilian Employees from outside of North Eastern Region to work in that region because of inaccessibility and difficult terrain. Therefore, the applicant's contention and claim for possessing All India Transfer liability is refuted and is denied.

8. That with regard to the statements made in para 4.6 of the application, the answering respondents beg to submit that the quoted

reference is specific to the quarries of SSB and can therefore not be applied as a rule. The service conditions and recruitment rules of staff of SSB are different from that of CPWD. Therefore, no relief is tanable to the applicant. Nevertheless, the applicant was posted outside North East Region but not outside from his limited transfer liability zone. In SSB (unlike CPWD) employees do not have limited transfer liability (they can be transferred anywhere in India). The decision of the Cabinet Secretariat is therefore not applicable to CPWD staff.

9. That with regard to the statements made in para 4.7, 4.8 and 4.9 of the application, the answering respondents beg to submit that as the applicant do not fulfill the All India Transfer Liability criteria as mentioned in Para No.4.5, therefore the respondent No.4 has issued the recovery order of the said SDA. The matter of grant of SDA to the applicant has been examined in the light of Hon'ble CAT, Guwahati Bench's order dated 9.1.06 in O.A.231/2006 in respect of the applicant and it was decided by the Respondent No.4 that applicant fails the prescribe test for All India Transfer Liabilities. Hence, he is not eligible for grant of SDA. The facts stated by the applicant that he is saddled with All India Transfer Liability is incorrect. Since the applicant was originally recruited and placed in North East and due to limited transfer liability remained within the Eastern Region. D.O.P.T., Govt. of India issued vide O.M.No. 35034/1/9A-Estt.(D Vol.IV) dated 10.2.2000 has clearly instructed to pay SDA to only those employee of North East Region who has All India Transfer Liability instead All India transfer liability on the basis of promotional avenue. The other employees of the Department like Head Clerks, Assistant Engineers are also having All India Transfer Liability on the basis of promotional avenue of Office Superintendent and Executive Engineer. But they are not being paid any

SDA. Since the similarly placed persons are not paid any SDA owing to regional transfer liability and therefore SDA should not be allowed to the applicant. The decision taken by the respondents is strictly in accordance of Government of India, D.O.P.T instructions in this regard.

The quoted reference is specific to the quarries of SSB and can therefore not be applied as a rule. The service conditions and recruitment rules of staff of SSB are different from that of CPWD. Therefore, no relief is tenable to the applicant. Nevertheless, the applicant was posted outside North East Region but not outside from his limited liability zone. In SSB (unlike CPWD) employees do not have limited transfer liability (they can be transferred anywhere in India). The decision of the Cabinet Secretariat is therefore not applicable to CPWD staff.

SDA paid to the applicant till 5.10.2001 has been waived as per Hon'ble Supreme Court Judgment.

It is stated that respondent No.4 has took the decision after considering the Hon'ble CAT judgment and accordingly issued Office Order for recovery of SDA as the applicant has failed to qualify the All India Transfer Liability.

10. That with regard to the statements made in para 4.11 of the application, the answering respondents beg to submit that Special Duty Allowance was paid to the applicant w.e.f. July 2002 to July 2005 inadvertently and it has been corrected by the respondent No.4 vide Office Order No. Pay Bill/ACC-1/05/1426 dated 26.08.2005 to safeguard the Govt. interest as per decision of Hon'ble Supreme Court. It can be checked even now that merits do not permit payment of SDA to the applicant. It is also not denied that payment of the disputed allowance was not based on any fraud by the applicant but the enrichment were not due to him legally. The respondents are administratively bound to

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recover the excess payment as per Department of Expenditure, Ministry of Finance O.M. No. 11(5)/95-E-II (B) dated 29.05.2002. Therefore, the impugned order is sustainable in the eye of law. The contention of the applicant that the payment has been made to him after full satisfaction of the laid down criteria is not correct.

11. That with regard to the statements made in para 4.14 of the application, the answering respondents beg to submit that the contents are denied as the applicant fails to satisfy All India Transfer Liability requirement.

12. That with regard to the statements made in para 4.15 of the application, the answering respondents beg to submit that the contents are denied. The similarly placed person in the category of Draughtsman who hail from North East Region and are posted in the North East are not being paid any SDA since all of them are having limited regional transfer liability, regional recruitment and regional promotion rules and there seniority is being maintained on regional basis. The applicant may be called upon to substantiate his submission with cogent evidence.

13. That with regard to the statements made in para 4.16, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 8.1 to 8.3, 8.4 and 9.1 of the application, the answering respondents beg to submit that the respondent No.4 has took the decision in accordance with the Government instructions for grant of SDA. The office order dated 30.1.2006 of respondent No.4 is based on justification & merit. Therefore, liable for recovery of SDA from the applicant. The applicant has limited transfer liabilities & SDA is payable only to those Central Govt. Employees who are having All India Transfer liabilities. Hence, question for quashing the Office Order dated 30.1.2006 of the respondent No.4 does not arise. The respondents denied the contentions made in para 5.3 and 5.5 of the application. The

similarly placed person in the category of Draughtsman who hail from North East Region and are posted in the North East are not being paid any SDA since all of them are having limited regional transfer liability, regional recruitment and regional promotion rules and their seniority is being maintained on regional basis. The applicant may be called upon to substantiate his submission with cogent evidence. Contents made in para 5.4 are denied as the applicant fails to satisfy All India Transfer Liability requirement. No discrimination has been made with the applicant. The decision has been taken by respondent No.4 is according to the Govt. of India's Orders and Hon'ble CAT judgment. It is also denied that payment of the disputed allowance was not based on any fraud by the applicant but the enrichment were not due to him legally. The Respondents are administratively bound to recover the excess payment as per Department of Expenditure, Ministry of Finance O.M.No.11(5)/95-E-II (B) dated 29.5.2002. Under the facts and circumstances as stated above the relief sought for by the applicant is not tenable & liable for rejection.

Hon'ble Tribunal may be pleased to set aside the stay order of recovery of SDA to the applicant & dismiss the O.A with cost of applicant, as respondent No.4 has took the decision after considering all Government instructions & Hon'ble CAT judgment in this regard & found the transfer liability of the applicant is not on All India basis.

14. That the respondents submit that the application is devoid of merit and as such the same is liable to be dismissed.

17. That this written statement is made bona fide and for the ends of justice and equity.

VERIFICATION


I. Sh. Gaje Singh. EXECUTIVE ENGINEER (Admn.)

Age about 41 years. do hereby

solemnly affirm and verify that the statements made hereinabove are true to my knowledge, belief and information and nothing is being suppressed.

I sign this verification on this 18th day of May, 2006 at

Guwahati.

Signature 

Executive Engineer (Admn.)
Assam Central Circle No.1
C.P.W.D., Guwahati-781021

MEMORANDUM OF APPEARANCE

Date : 20/9/06

To,

The Registrar

Central Administrative Tribunal
Bhangagarh, Rajgarh Road,
Guwahati.

IN THE MATTER OF :

O.A. No. 48 of 2006

Sri A. K. Datta

----- Applicant

- Vs -

Union of India & Others

----- Respondents

I, M. U. Ahmed, Addl. Central Govt. Standing Counsel, Central Administrative Tribunal, Guwahati, hereby enter appearance on behalf of the Union of India & Respondents Nos. in the above case. My name may kindly be noted as Counsel and shown as Counsel for the Respondent/s.


(Motin Ud-Din Ahmed)
Addl. C.G.S.C.