

7

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A./T.A No. 71/2007
R.A/C.P No.
E.P/M.A No.

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16. Counter Reply.....

SECTION OFFICER (Judl.)

K. K. K.
25/09/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. Original Application No. 71/67
2. Miscellaneous Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(S) A.D. Pathi & Co. VS Union of India & Ors

Advocate for the Applicant(S) S.C. Boruah, B. Chandley
S. Das, D. Dutta, S. Parasham.

Advocate for the Respondent(S) Adv. EGSE Ms. M. Das

Notes of the Registry	Date	Order of the Tribunal
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20.3.07
This application is in form
is filed/C.F. for Rs. 50/-
deposited vide IPO/BD
No. 346.651.624
Dated 13.3.07

By Registrar

Pathi

16.3.07

Petition copy for
some notices are
received.

Pathi
16/3/07

20.3.07 Issue involved in this matter is that the applicants are working in the North Eastern Region under the National Sample Survey Organisation (Field Operation Division), Department of Statistics, Ministry of Planning, government of India in the different posts. The applicants have challenged the impugned office Memorandum dated 29.5.2002 and 14.12.2006 for non payment of the Special Duty Allowance which was originally paid to the applicants in view of the Office Memorandum dated 29.5.2002 which is quoted below:-

"The Government of India that Central Government Civilian Employees who have All India Transfer Liability are entitled to the grant of

contd/-

Special Duty Allowance on being posted to any station in the North Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability."

According to the applicants since identical employees in the same department have been granted the SDA, the Respondents should give the relief to the applicants. The applicants have made representations before the respondents. But the respondents have rejected the same. Being aggrieved the applicants have filed this O.A.

We have heard Mr. S.C. Biswas learned counsel for the applicants and Mr. M. D. A. S. learned Addl. C.G.S.C. for the respondents. When the matter came up for hearing the learned counsel for the respondents has submitted he would like to take instructions.


Issue notice on the respondents. Post the matter on 7.5.07. Liberty is given to the respondents to file written statement.



Member



Vice-Chairman

Received on behalf
of R-4 and R-5


Notice & order sent to lm
D/Section for issuing
to R-1, 2, 3, 6, 7, 8 and 9
Jey. regd. A/c post and
ons R-4 and 5 received
by hand.

Class 7. D/No - 396 to 402
12/4/07. DT = 18/4/07.

Notice duly served
on R-4 and 5, 9.

Notes of the Registry

07.05.07.

At the request of learned counsel for the respondents four week time is granted to file written statement. Post the matter on 30.5.07.

lm

Vice-Chairman

No W/s has been filed.

23
4.5.07.

30.5.2007

Mrs. M. Das, learned Addl. C.G.S.C. is granted, on request, three weeks' time to file reply statement.

Post on 22.06.2007.

No W/s has been filed.

23
20.5.07.

No W/s filed.

23
21.6.07.

/bb/

Vice-Chairman

22.6.2007

Mrs.M.Das, learned Addl.C sought for further time to file reply statement. Four weeks time is granted.

Post on 24.7.2007.

W/s not filed.

23
23.7.07.

/bb/

Vice-Chairman

W/s not filed.

23
25.9.07.

24.7.07.

Written statement has been filed. Matter for hearing on 16.8.07.

0.A71/07

Notes of the Registrar,

26.9.2007

Although on 24.7.2007 reply statement was stated to have been filed, it was not really filed and it is being filed today by Mrs.M.Das, learned Addl. Standing Counsel for Central Government; after serving a copy on the learned counsel for the Applicant Mr.S.C.Biswas. Mr.S.C.Biswas seeks four weeks' time to file rejoinder. Prayer is allowed.

Call this matter on 07.11.2007 for filing rejoinder.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

07.11.2007

Mr.S.C.Biswas, learned counsel for the Applicant has filed rejoinder. Copy served on Mrs.M.Das, learned Addl.C.G.S.C. who seeks four weeks time to obtain instruction on the rejoinder. Granted.

List the case on 06.12.2007.

Member (A)

/bb/

28.9.07

W/s filed by the
Respondents. page 1 to 9
not served.

2.10.07

Rejoinder submitted
by the Applicant since
kept in 'c' file.

Rejoinder

has

06.12.2007

In this case, reply, rejoinder and reply to the rejoinder have already been filed.

Subject to question of law to be examined at the time of hearing, this case is admitted and set for hearing.

Call this matter on 22.01.2008 for hearing.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

22.01.2008

On the prayer made on behalf of learned counsel for the Applicant call this matter on 07.02.2008 for hearing.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

pg

07.02.2008

On the prayer of Mr. H. Chanda, Advocate (appearing on behalf of Mr.S.C.Biswas, learned Counsel appearing for the Applicant) seeks an adjournment on the ground that Mr.S.C. Biswas, learned counsel appearing for the Applicant has not been able to reach Guwahati from Delhi to-day. Mrs. Manjula Das, learned Addl. Standing Counsel appearing for the Respondents has no objection for adjournment of this case till tomorrow.

Call this matter on 8th March, 2008.

(Khushiram)
Member (A)

(M.R.Mohanty)
Vice-Chairman

10.12.07

W/S Submitted
by the Respondents.
Copy served.

DDO

The case is ready

21.1.08

The case is ready
for hearing.

6.2.08

6

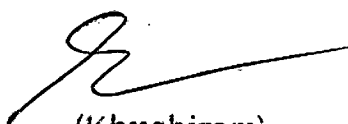
O.A. 71/07

O.A.71 of 07

08.02.2008

On the prayer of learned counsel appearing for the Applicant call this matter on 17.3.2008 for hearing.

The case is ready for hearing.



(Khushiram)
Member (A)



(M.R. Mohanty)
Vice-Chairman

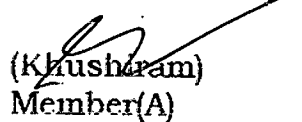
14.3.08.

lm

17.03.2008

On the request of learned counsel for both the parties, call this matter on 27.03.2008.

The case is ready for hearing.



(Khushiram)
Member(A)



(M.R. Mohanty)
Vice-Chairman

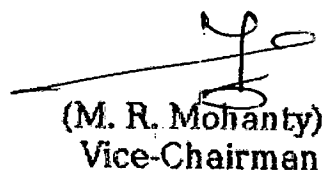
26.3.08.

lm

27.03.2008

Call this matter on 22.05.2008.

The case is ready for hearing.



(M. R. Mohanty)
Vice-Chairman

nkm

21.5.08.

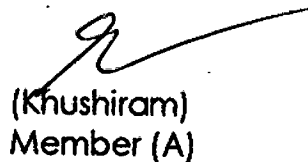
22.05.2008

Heard learned counsel appearing for the parties.

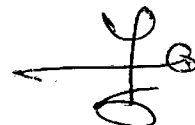
for Respondent no. 4 & 5 received one copy.

The O.A. is dismissed being withdrawn in terms of the order recorded separately. No costs.

28/05/08
Senior Superintendent
N.S.S.O (F&D) Guwahati
Regional Office.



(Khushiram)
Member (A)



(M.R. Mohanty)
Vice-Chairman

/bb/

12.6.08

Copy of the order sent to the office for record in case to the parties.

10/6/08
Addl. C.S.C.

4

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No.71 & 268 of 2007

DATE OF DECISION: 22.05.2008

Smti Anju Doly Patir & Others

.....Applicant/s

Mr.S.C.Biswas

..... Advocate for the
Applicant/s.

- Versus -

Union of India & Others

.....Respondent/s

Mr. G. Baishya, Sr. C.G.S.C. & Mrs.M.Das, Addl.C.G.S.C.

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR.KHUSHIRAM, ADMINISTRATIVE MEMBER

- | | | |
|----|---|---------------------|
| 4. | Whether reporters of local newspapers may be allowed to see the Judgment? | Yes/No ✓ |
| 5. | Whether to be referred to the Reporter or not? | Yes/No ✓ |
| 6. | Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench & other Benches ? | Yes/No ✓ |
| 7. | Whether their Lordships wish to see the fair copy of the Judgment? | Yes/No ✓ |

Vice-Chairman/Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 71 of 2007
&
Original Application No.268 of 2007

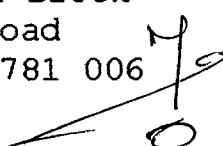
Date of Order: This, the 22nd Day of May, 2008

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

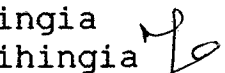
O.A. 71/2007

1. Smti. Anju Doly Patir
W/o. Late K.R.Patir
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
2. Smti Sanghamitra Maitra
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
3. Smti Arati Khastagir
W/o. Sri P.K.Khastagir
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
4. Sri Dipen Kumar Basak
S/o. Sri Anil Kumar Basak
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006



District: Kamrup, Assam.

5. Sri S.R.Gogoi
S/o Late Durgadhar Gogoi
NSSO (FOD), Malow Ali
Jorhat-785 001
District: Jorhat, Assam.
6. Sri Akon Mech
S/o Late Saizar Sing Mech
NSSO (FOD) ITI Road
Near Fire Brigade, Lalmati
Tezpur - 784 001
District: Sonitpur, Assam.
7. Sri P.C.Bezbaruah
S/o Nageswar Bezbaruah
NSSO (FOD)
C/o. Anjan Kumar Das
Saradamoni Lane
College Road
Silchar - 788 004
District: Cachar, Assam.
8. Sri Nagen Chandra Boro
S/o. Sri Dino Ram Boro
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
9. Sri P.C.Medhi
S/o. Late Golak Medhi
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
10. Sri Niranjana Das
S/o. Late Sona Ram Das
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.

11. Sri Gobinda Kalita
S/o. Late Pabin Kalita
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
12. Sri Rajib Kumar Das
S/o. Late Bongshi Dhar Das
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
13. Sri Pramod Chandra Talukdar
S/o. Sri Bhabani Chandra Talukdar
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
14. Sri Kamalenvar Sonowal
S/o. Sri Jaliram Sonowal
NSSO (FOD)
Business Centre-cum-Market
Office Complex
Dibrugarh Development Authority
East Chowkinghee, Mankata Road
Dibrugarh - 786 001
District: Dibrugarh, Assam.
15. Sri Monoranjan Biswas
S/o. Late Behari Lal Biswas
NSSO (FOD)
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
16. Sri Purnananda Dihingia
S/o. Sri Chandra Dihingia
- 

NSSO (FOD)
 Business Centre-cum-Market
 Office Complex
 Dibrugarh Development Authority
 East Chowkinghee, Mankata Road
 Dibrugarh - 786 001
 District: Dibrugarh, Assam.

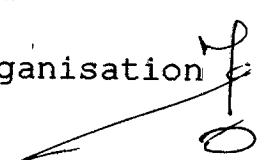
17. Sri Maheswar Das
 S/o. Late Thaneswar Das
 NSSO (FOD)
 Department of Statistics
 Housefed Complex
 3rd Floor, Central Block
 Beltola Basista Road
 Dispur, Guwahati-781 006
 District: Kamrup, Assam.

..... Applicants.

By Advocates S/Shri S.C.Biswas, S.Das, D.Dutta,
 B.Chakraborty & S.Parasar.

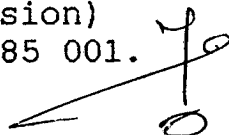
- Versus -

1. The Union of India
 through the Secretary
 Ministry of Statistics
 Programme Implementation
 Sardar Patel Bhawan
 Sansad Marg, New Delhi - 110 001.
2. The Additional Director General
 Ministry of Statistics and
 Programme Implementation
 National Sample Survey Organisation
 (Field Operations Division)
 East Block, Levels 6-7
 R.K.Puram, New Delhi - 110 066.
3. The Deputy Director General
 Ministry of Statistics and
 Programme Implementation
 National Sample Survey Organisation
 (Field Operations Division)
 East Block, Levels 6-7
 R.K.Puram, New Delhi - 110 066.
4. The Deputy Director General
 Zonal Office
 Ministry of Statistics and
 Programme Implementation
 National Sample Survey Organisation



(Field Operations Division)
3rd Floor, C-Block
Housefed Complex
Guwahati-781 006.

5. The Director
Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organisation
(Field Operations Division)
3rd Floor, Central Block
Housefed Complex
Guwahati-781 006.
6. The Assistant Director
Ministry of Statistics and
Programme Implementation
National Sample Survey Organisation
(Field Operations Division)
Business Centre-cum-Market
Office Complex
Dibrugarh Development Authority
East Chowkinghee, Mankata Road
Dibrugarh - 786 001.
7. The Senior Superintendent
Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organisation
(Field Operations Division)
ITI Road, Near Fire Brigade
Lalmati, Tezpur - 784 001
8. The Senior Superintendent
Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organization
(Field Operation Division)
C/o. Anjan Kumar Das
Saradamoni Lane, College Road
Silchar - 788 004
District: Cachar, Assam.
9. The Senior Superintendent
Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organization
(Field Operation Division)
Malow Ali, Jorhat - 785 001.

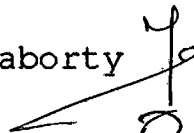


... .. Respondents

By Mrs. Manjula Das, Addl. C.G.S.C.

O.A. 268/2007

1. Mrs. Modina Kharmutee
W/o. Sri B.K. Paul
Senior Superintendent/
Investigator Grade-I
Department of Statistics
Housefed Complex
3rd Floor, Central Block
Beltola Basista Road
Dispur, Guwahati-781 006
District: Kamrup, Assam.
2. Sri Maniklal Chakraborty
S/o. Late Jaladhav Chakraborty
Superintendent/Investigator
Grade-II, Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organization
(Field Operation Division)
Malow Ali Road
Jorhat - 785 001.
3. Sri Arun Chandra Talukdar
S/o. Late Banchit Talukdar
Superintendent/Investigator
Grade-II, Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organization
(Field Operation Division)
ITI Road, Near Fire Brigade
Lalmati, Tezpur - 784 001
District: Sonitpur, Assam.
4. Sri Robin Suklabaidya
S/o. Late Rajendra Suklabaidya
Superintendent/Investigator
Grade-II, Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organization
(Field Operation Division)
C/o. Anjan Kumar Das
Saradmoni Lane, College Road
Silchar - 788 004
District: Cachar, Assam.
5. Sri Chinmoy Kanti Chakraborty



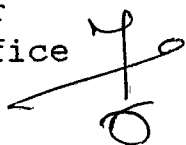
S/o. Late Charitra Mohan Chakraborty
 Superintendent/Investigator
 Grade-II, Sub-Regional Office
 Ministry of Statistics and
 Programme Implementation
 National Sample Survey Organization
 (Field Operation Division)
 C/o. Anjan Kumar Das
 Saradamoni Lane, College Road
 Silchar - 788 004
 District: Cachar, Assam.

... .. Applicants.

By Advocates S/Shri S.C.Biswas, S.Das, H.Chanda &
 B.Chakraborty.

- Versus -

1. The Union of India
 through the Secretary
 Ministry of Statistics
 Programme Implementation
 Sardar Patel Bhawan
 Sansad Marg, New Delhi - 110 001.
2. The Additional Director General
 Ministry of Statistics and
 Programme Implementation
 National Sample Survey Organisation
 (Field Operations Division)
 East Block, Levels 6-7
 R.K.Puram, New Delhi - 110 066.
3. The Deputy Director General
 Ministry of Statistics and
 Programme Implementation
 National Sample Survey Organisation
 (Field Operations Division)
 East Block, Levels 6-7
 R.K.Puram, New Delhi - 110 066.
4. The Deputy Director General
 Zonal Office
 Ministry of Statistics and
 Programme Implementation
 National Sample Survey Organisation
 (Field Operations Division)
 3rd Floor, C-Block
 Housefed Complex
 Guwahati - 781 066.
5. The Director
 Regional Office



Ministry of Statistics and
Programme Implementation
National Sample Survey Organisation
(Field Operations Division)
3rd Floor, Central Block
Housefed Complex
Guwahati-781 006.

6. The Senior Superintendent
Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organisation
(Field Operations Division)
I.T.I. Road, Near Fire Brigade
Lalmati, Tezpur - 784 001.
7. The Senior Superintendent
Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organization
(Field Operation Division)
C/o. Anjan Kumar Das
Saradmoni Lane, College Road
Silchar - 788 004
District: Cachar, Assam.
8. The Senior Superintendent
Sub-Regional Office
Ministry of Statistics and
Programme Implementation
National Sample Survey Organization
(Field Operation Division)
Malow Ali Road
Jorhat - 785 001.

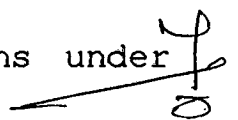
... .. Respondents

By Mr. Gautam Baishya, Sr. C.G.S.C.

O R D E R (ORAL)
22.05.2008

MANORANJAN MOHANTY (V.C.):

Applicants of both these cases are members of
the staff of National Sample Survey Organization of
Government of India. Claiming Special Duty Allowances
they have filed these two Original Applications under



Section 19 of the Administrative Tribunals Act, 1985. Both the cases are heard one after the other and are being disposed of by this common order.

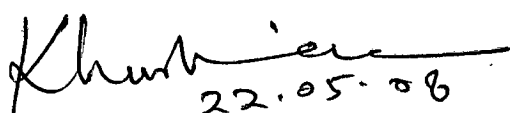
2. Mr.S.C.Biswas, learned counsel appearing for the Applicants, has raised a question of discrimination; because some of the members of the staff of the Respondent Organization (who are similarly placed as that of the Applicants) are getting Special Duty Allowances. Mr. Gautam Baishya, learned Senior Standing counsel and Mrs. Manjula Das, learned Addl. Standing counsel appearing for the Respondent Organization; in course of hearing, pointed out that the Applicants are continuing to serve in North East Region from the date of their appointment and since they are persons from North East Region, the Applicants are not entitled to get Special Duty Allowances for the reason of the rulings of the Hon'ble Supreme Court of India rendered in the case of **Union of India & Another vs. S. Vijay Kumar and Others, reported in 1994 SUPP (3) SCC 649.**

3. Before closure of the hearing, Mr.S.C.Biswas, learned counsel appearing for the Applicants submitted that 6th Pay Commission Report has given some indication that Special Duty Allowances in N.E.Region should be given to all posted in North East Region and that the condition of 'All India Transfer Liability' in the Special Duty Allowance Scheme should be scrapped. He,


however, has not placed a copy of the report of 6th Pay Commission to substantiate his submission. Mr. Biswas begs to withdraw these two Original Applications with liberty to the Applicants to represent their case before the Government of India to grant them Special Duty Allowance benefits notwithstanding the All India Transfer Liability clause.

4. In the aforesaid premises, the Applicants are permitted to withdraw these two Original Applications with liberty to the Applicants to represent their grievances to the Government of India. As a consequence, these two Original Applications are dismissed being withdrawn. There shall, however, be no order as to costs.

5. Send copies of this order to all the Applicants and all the Respondents in the addresses given in the Original Applications. Free copies of this order be also handed over to the learned counsel appearing for both the parties.


(KHUSHIRAM)
MEMBER (A)

/bb/


(MANORANJAN MOHANTY)
VICE-CHAIRMAN

16 MAR 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

DISTRICT: KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI

[An application U/s. 19 of the Central Administrative Tribunal Act, 1985]

ORIGINAL APPLICATION NO. 71 /2007

SMTI. ANJU DOLY PATIR AND OTHERS.

----- APPLICANT.

-Versus-

THE UNION OF INDIA AND OTHERS.

----- RESPONDENTS.

I N D E X

SL. NO.	PARTICULARS	PAGE NO
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ADVOCATE

Signature.

DISTRICT: KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

[An application U/s. 19 of the Central Administrative
Tribunal Act, 1985]

ORIGINAL APPLICATION NO. 71 /2007

SMTI. ANJU DOLY PATIR AND OTHERS.

----- APPLICANTS.

-Versus-

THE UNION OF INDIA AND OTHERS.

----- RESPONDENTS.

LIST OF DATES -

- 1) Some the appointment orders are identical in respect of all the applicants, only 2 (two) appointment orders are enclosed herewith.
[ANNEXURE No. 1].
- 2) The copy of All India Eligibility List of Stenographers. [ANNEXURE No. 2].
- 3) 14.12.1983 Copies of the Memorandum.
and [ANNEXURE No. 3 and 4].
1.12.1988
- 4) The copies of two such applications being O.A. No. 131(G)/89 and O.A. No. 138(G)/89. [ANNEXURE No. 5 and 6].
- 5) The copy of the Service extract of the applicants. [ANNEXURE No. 6(A)].

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Dipen Kumar Borah

- 6) 28.2.1990 The copy of the Judgment in O.A. No. 131(G)/89 and O.A. No. 138(G)/89. [ANNEXURE No. 7 and 8].
- 7) 1.1.1996 The copy of Memorandum. [ANNEXURE No. 9].
- 8) 12.1.1996 The copy of the Office Memorandum. [ANNEXURE No. 10].
- 9) 1.11.1999 The copy of the Office Memorandum.
and
5.11.1999 [ANNEXURE No. 11 and 12].
- 10) A copy of the Judgment in O.A. No. 189/96. [ANNEXURE No. 13].
- 11) The copy of the applications in O.A. No. 369/1999. [ANNEXURE No. 14].
- 12) 19.12.2000 The copy of the common Order in O.A. No. 368/1999 and O.A. No. 369/1999. [ANNEXURE No. 15].
- 13) 04/01/2006 The copy of the Judgment and Order in W.P.(C) No. 7324/2001 and batch. [ANNEXURE No. 16].
- 14) 29.5.2002 The copy of the Office Memorandum. [ANNEXURE No. 17].
- 15) Copies of the representations of the applicants. [ANNEXURE No. 18]. [in series].
- 16) 14.12.2006 The copy of the impugned Office Memorandum. [ANNEXURE No. 19].

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ADVOCATE.

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Dipen Kumar Basak

DISTRICT: KAMRUP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

[An application U/s. 19 of the Central Administrative
Tribunal Act, 1985]

ORIGINAL APPLICATION NO. 71 / 2007

IN THE MATTER OF:

- 1) SMTI. ANJU DOLY PATIR,
W/o. Late. K.R. Patir,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006.
District: Kamrup, Assam.
- 2) SMTI. SANGHAMITRA MAITRA,
W/o. Sri. R.K. Maitra,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006.
District: Kamrup, Assam.
- 3) SMTI. ARATI KHAstagir,
W/o. Sri. P.K. Khastagir,
NSSO (FOD),

Filed by
the applicants
Dipen Kumar Barik through
Advocate

Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006.
District: Kamrup, Assam.

4) SRI. DIPEN KUMAR BASAK,
S/o. Sri. Anil Kumar Basak,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

5) SRI. S.R. GOGOI,
S/o. Late. Durgadhar Gogoi,
NSSO (FOD), Malow Ali,
Jorhat - 785001,
District: Jorhat, Assam.

6) SRI. AKON MECH,
S/o. Late. Saizar Sing Mech,
NSSO (FOD) ITI Road,
Near Fire Brigade, Lalmati,
Tezpur - 784001,
District: Sonitpur, Assam.

7) SRI. P.C. BEZBARUAH,
S/o. Nageswar Bezbaruah,
NSSO (FOD),
C/o. Anjan Kumar Das,
Saradamoni Lane,
College Road,

Contd...

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Dipen Kumar Basak

Silchar - 788004,
District: Cachar, Assam

8) SRI. NAGEN CHANDRA BORO,
S/o. Sri. Dino Ram Boro,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

9) SRI. P.C. MEDHI,
S/o. Late. Golak Medhi,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

10) SRI. NIRANJAN DAS,
S/o. Late. Sona Ram Das,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

11) SRI. GOBINDA KALITA,
S/o. Late. Pabin Kalita,
NSSO (FOD),

Contd...

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Dipak Kumar Boruah

Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

12) SRI. RAJIB KUMAR DAS,

S/o. Late. Bongshi Dhar Das,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

13) SRI. PRAMOD CHANDRA TALUKDAR,

S/o. Sri. Bhabani Chandra
Talukdar, NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

14) SRI. KAMALENVAR SONOWAL,

S/o. Sri. Jaliram Sonowal,
NSSO (FOD), Business Centre -
cum - Market, Office Complex,
Dibrugarh Development Authority,
East Chowkidinghee,
Mankata Road, Dibrugarh - 786001,
District: Dibrugarh, Assam.

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Dipen Kumar Barak

15) SRI. MONORANJAN BISWAS,
S/o. Late. Behari Lal Biswas,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

16) SRI. PURNANANDA DIHINGIA,
S/o. Sri. Chandra Dihingia,
NSSO (FOD), Business Centre -
cum - Market, Office Complex,
Dibrugarh Development Authority,
East Chowkidinghee,
Mankata Road, Dibrugarh - 786001,
District: Dibrugarh, Assam.

17) SRI. MAHESWAR DAS,
S/o. Late. Thaneswar Das,
NSSO (FOD),
Department of Statistics,
Housefed Complex,
3rd Floor, Central Block,
Beltola Basista Road,
Dispur, Guwahati - 781006
District: Kamrup, Assam.

---- APPLICANTS.

-Versus-

1) THE UNION OF INDIA,
Through -
THE SECRETARY,
Ministry of Statistics,
Programme Implementation,
Sardar Patel Bhawan, Sansad
Marg, New Delhi - 110001.

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Dipak Kumar Barak

- 2) THE ADDITIONAL DIRECTOR
GENERAL, Ministry of
Statistics and Programme
Implementation, National
Sample Survey Organisation,
(Field Operations Division)
East Block, Levels 6-7,
R.K. Puram, New Delhi - 110066.
- 3) THE DEPUTY DIRECTOR GENERAL,
Ministry of Statistics and
Programme Implementation,
National Sample Survey
Organisation, (Field
Operations Division)
East Block, Levels 6-7,
R.K. Puram, New Delhi - 110066
- 4) THE DEPUTY DIRECTOR GENERAL,
Zonal Office,
Ministry of Statistics and
Programme Implementation,
National Sample Survey
Organisation, (Field
Operations Division)
3rd Floor, C - Block,
Housefed Complex,
Guwahati - 781006.
- 5) THE DIRECTOR,
Regional Office,
Ministry of Statistics and
Programme Implementation,
National Sample Survey
Organisation, (Field
Operations Division)

Contd...

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Dipankar Kumar Baruah

3rd Floor, C - Block,
Housefed Complex,
Guwahati - 781006.

6) THE ASSISTANT DIRECTOR,
Ministry of Statistics and
Programme Implementation,
National Sample Survey
Organisation, (Field Operations
Division), Business Centre cum
Market, Office Complex,
Dibrugarh Development Authority,
East Chowkidinghee,
Mankatta Road,
Dibrugarh - 786001.

7) THE SENIOR SUPERINTENDENT,
Sub-Regional Office,
Ministry of Statistics and
Programme Implementation,
National Sample Survey
Organisation, (Field
Operations Division)
I.T.I. Road, Near Fire Brigade,
Lalmati, Tezpur - 784001.

8) THE SENIOR SUPERINTENDENT,
Sub-Regional Office,
Ministry of Statistics and
Programme Implementation,
National Sample Survey
Organisation, (Field
Operations Division)
C/o. Anjan Kumar Das,
Saradamoni Lane, College Road,
Silchar - 788004, Assam.

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Dipankar Baruah

- 9) THE SENIOR SUPERINTENDENT,
Sub-Regional Office,
Ministry of Statistics and
Programme Implementation,
National Sample Survey
Organisation, (Field
Operations Division)
Malow Ali, Jorhat - 785001.
----- RESPONDENTS.

DETAILS OF APPLICATIONS -

- 1) PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE -

The application is directed against impugned Office Memorandum Dated: 29.5.2002 and 14.12.2006 and for a direction from this Hon'ble Tribunal to the Respondents for payment of Special Duty Allowance to the applicants. The applicants are aggrieved by non-payment of Special Duty Allowance to the applicants inspite of the fact that they are entitled to the same as per the Office Memorandum No. 20014/3/03-E.IV Dated: 14.12.1983 and also as per Office Memorandum No. 20014/16/86-E.IV/E.II(B) Dated: 1.12.1988. The applicants are highly aggrieved by the inaction on the part of the Respondents in not attending to their various representations preferred urging for payment of Special (Duty) Allowance.

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2) JURISDICTION OF THE TRIBUNAL -

The applicant declares that the subject matter of the applicant is within the jurisdiction of the Hon'ble Court.

3) LIMITATION -

The applicant declares that the application is within the period of limitation under Section - 4 of the Administrative Tribunal Act, 1981.

4) FACTS OF THE CASE -

1. The Applicants are the Citizen of India and resident of the above mentioned addresses, and as such they are entitled to all the rights and privileges as guaranteed under the Constitution of India and the laws framed there under.

1.A) That the applicants prays permission to move this application jointly in a single application under Section 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rule 1987 as the relief sought for in this application by the applicants are common, therefore, they pray for granting leave to approach the Hon'ble Tribunal by a common application.

2. That the applicants No. 1 to 3 are working as Lower Division Clerk, the applicant No. 4 as Stenographer Grade - III and the applicant No. 5 to 14 as peon, the applicant No. 15 to 16 as Daftry and the applicant No. 17 is working as a Driver in the Office of the National Sample Survey Organisation (Field Operation Division) in short NSSO (FOD), Department of Statistics, Ministry of Planning, Government of India. The applicant No. 1 to 4, 8 to 13, 15 and 17 are

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working at Regional Office, Guwahati, the applicant No. 5 at Jorhat, the applicant No. 6 at Tezpur, the applicant No. 7 at Silchar, the applicant No. 14 and 16 at Dibrugarh. Since all the applicants have the same grievances, the instant application has been filed by all the applicants jointly.

3. That the applicants carry with their services with All India Transfer Liability. In the appointment letter to all the applicants there is a distinct Clause to the effect that the appointment carries with it the liability to serve in any part of India. Further, All India Liability list is maintained for promotion etc. on all India basis. The applicants annexing herewith an extract of their service particulars.

Some the appointment orders are identical in respect of all the applicants, only 2 (two) appointment orders are enclosed herewith and as marked as ANNEXURE NO. 1 (In Series).

The copy of All India Eligibility List of Stenographers is also enclosed herewith and marked as ANNEXURE NO. 2.

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4. That not only the appointment orders of the applicants carry with it All India Transfer Liability clause, but in practice also the incumbent of the post of LDCs, UDCs and Stenographers are regularly transferred from one region to another and from one State to another leaving aside the various transfer orders within the State.

5. That the Ministry of Finance, Government of India, Department of Expenditure, New Delhi, issued an Office Memorandum No. 20014/3/83-E.IV Dated: 14.12.1983 whereby Presidential sanction towards certain allowances and facilities for Civilian employees of the Central Government serving in the States and Union Territories of N.E. Region was notified. The allowances and facilities sanctioned in various headings also involved sanction of Special (Duty) Allowances (hereinafter referred as SDA), Vide Clause - II of the Office Memorandum which are as follows -

(iii) Special (Duty) Allowances.

Central Government Civilian employees who have All India transfer liability will be granted a Special (Duty) Allowance at the rate of 25% on posting to any station in the North Eastern

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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/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such allowance will not exceed Rs. 400/- per month. Special allowance like Special Compensatory (Remote Locality) allowance, Construction Allowance, and Project Allowance will be drawn separately.

The above is a decision of the President relating to all Central Government employees who have got All India transfer liability and posted to any station in the North Eastern Region. Be it stated here that the above order was initially effective from 1.11.83 to 30.10.86 and subsequently extended from time to time. The Office Memorandum Dated: 14.12.1983 was further referred to in an Office Memorandum No. 20014/16/ 86/B.IV/B.II(B) Dated: 4.12.1988 whereby also the benefit of S(D)A was extended. In the said office memorandum, the S(D)A was sanctioned vide Clause III/which runs as follows -

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Dipak Kumar Basak

(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 12½ of basic pay subject to a ceiling of Rs. 1000/- per month on posting to any station in the North-Eastern Region. Special (Duty) Allowance will be in addition to any Special pay and/or Deputation (duty) allowance already being drawn subject to the condition that the total of such Special (Duty) allowance plus Special Pay/Deputation (Duty) Allowance will not exceed Rs. 1000/- p.m. Special allowance like Special Compensatory (Remote locality) Allowance will be drawn separately.

The Central Government Civilian employee who are members of the Scheduled Tribes and are otherwise eligible for the grant of Special (Duty) allowance under this Para and are exempted from payment of Income Tax under the Income Tax Act will also draw Special (Duty) Allowance.

Copies of the aforesaid Memorandum Dated: 14.12.1983 and 1.12.1988 are annexed herewith and marked as ANNEXURE - 3 and 4 respectively.

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Dipen Kumar Barik 34

6. That the applicants fulfil all the criteria laid down in the aforesaid 2 (two) memorandums for entitlement of S(D)A. As stated above, the applicants were appointed to the service of the National Sample Survey Organisation on acceptance of the term of "All India Transfer Liability".

7. That the applicants states that, on the basis of Memorandum No. A-19011/10/76-Estt.1 Dated: 18.9.84 a decision for recovery of the SDA amount already been paid to the categories of staff, vide Inspectors, UDCs, LDCs, Stenographers Grade - III and Group - D staff holding that they are not entitled to get SDA, challenging decision of the authorities, a series of applications were preferred before the Central Administrative Tribunal and the relief sought therein was for directing the Respondents to give effect to the Memorandum Dated: 14.12.1983 and 1.12.1988 by which benefit of 25% S.D.A. was extended to the aforesaid categories of staff if they are not eligible for SDA in terms of the aforesaid memorandum prayed for quashing the same that the same is discriminatory giving preferential treatment to one set of employees and denying the same to another set of employees

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Dicer Kumar Bork

though the terms and conditions including all India transfer liability for both set of employees are same and also both set performing exactly similar nature of works. The Respondents filed their written statement in the aforesaid cases. The Hon'ble Tribunal after perusal of records and hearing the parties at length allowed those applications and held that those applicants having All India Transfer liabilities are entitled for SDA at the rate prescribed in the Memorandum Dated: 14.12.1983 and 1.12.1988 and directed the authorities to pay them SDA w.e.f. 1.11.1983 or from the date of joining of the employees whichever is earlier.

The copies of two such applications being O.A. No. 131(G)/89 and O.A. No. 138(G)/89 are annexed here with and marked as ANNEXURE No. 5 and 6 respectively.

8. That the applicants state that the Learned Tribunal arrived at the aforesaid decision relying on the decision Dated: 12.4.1989 passed in O.A. No. 16/1988, O.A. No. 17/1988, and O.A. 18/1988 of the Full Bench of C.A.T., Calcutta Bench on the same subject, wherein it was opined that when the condition of service

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Dipen Kumar Barik

imposed All India Transfer Liability, continues to exist and has not been revoked by an order of the competent authority, it was not open to the Government to deny the benefit of the SDA to any employee on the ground of All India Transfer Liability has not been infact enforced. As none of the aforesaid decision was challenged in any higher forum since 1989, such a proposition attempt finality and then binding to all.

9. That the applicants state that, after pronouncement of the aforesaid verdict of the Hon'ble Tribunal, no appeal was preferred before the Hon'ble Apex Court, the Government complied with the decision rendered by the Hon'ble Tribunal.

10. That the applicants state that, all of them who have joined their post prior to the year 1999 got SDA w.e.f. 1.11.1983 or from respective date of joining whichever is later, but subsequently, without any Notice/Office Memorandum, the payment of SDA to the applicants and other similarly situated were stopped w.e.f. 1.9.1999.

The copy of the Service extract of the applicants is annexed here with and marked as ANNEXURE No. 6 (A).

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Dipen Kumar Barik
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11. That the applicants state that the aforesaid Judgment and Order Dated: 28.2.1990 passed in O.A. No. 138(G)/89 filed by the colleagues of the applicants of the same Department was accepted and implemented by the Respondent following the decisions of the Director N.S.S.O., New Delhi, which was communicated telegraphically on 20.6.1990.

It is categorically stated that the present Respondent did not prefer any appeal against the aforesaid Judgment and accepted the same and had paid arrear as well as the current S.D.A. to those applicants including the present applicants.

However, surprisingly, the Respondents without any notice, Memorandum stopped payment of S.D.A. to the applicants from 1.9.1999 for the reason best known to them. In this connection, the Joint Director, New Delhi vide his Memorandum bearing No. A.46011/3/94-0 and M (Vol. II) Dated: 1.1.1996 instructed the original Assistant Director, Kohima that in view of the aforesaid Judgment that there is no need to re-open the case and also directed to continue the present position i.e. to continue

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Dipen Kumar Barak 38

to pay S.D.A. to the members of the Investigators Association. But inspite of such instruction, the payment of S.D.A. is withheld.

The copy of the Judgment Dated: 28.2.1990 in O.A. No. 131(G)/89 and O.A. No. 138(G)/89 are annexed herewith and marked as ANNEXURE No. 7 and 8 respectively.

The copy of Memorandum Dated: 1.1.1996 is annexed herewith and marked as ANNEXURE No. 9.

12. That the Applicants beg to state that, the Deputy Director (Administration) New Delhi vide Memorandum issued under letter No. A.46011/3/94-OM (Vol. III) Dated: 1.11.1999 informed the local Head Office NSSO (FOD) Guwahati while disposing the representation of staff of NSSO(FOD) Shillong on stoppage and recovery of SDA stated that in view of the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 3251 of 1993 and also in view of the Office Memorandum No. 11(3)/95-E.II(B) Dated: 12.1.1996 in easy instalment and rejected all the representations in view of the Supreme Court Judgment and O.M. Dated: 12.1.1996 and also directed to take necessary action accordingly to all Head Office, Guwahati.

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Dipak Kumar Barak 39

In this connection, it is stated that the O.M. Dated: 12.1.1996 was issued by the Ministry of Finance, Department of Expenditures in view of the Hon'ble Supreme Court Judgment and Order passed in the Civil Appeal No. 3251/1993 but the Respondents failed to appreciate the fact that the members of the Applicant's association have been drawing the SDA in terms of the Judgment and Order Dated: 28.2.1990 passed in O.A. No. 131(G)/89 and O.A. NO. 138(G)/89, whereby the Hon'ble Tribunal declared their entitlement of drawal of SDA. Therefore the Office Memorandum Dated: 12.1.1996 has no application in the instant case of the applicants for the purpose of drawal of SDA as because the Judgment and Order Dated: 28.2.1990 is still in force and the executive Order Dated: 12.1.1996 cannot curtail the right of entitlement of grant of SDA when the same was passed by the Hon'ble Tribunal, as such, the applicants are entitled to drawal of SDA so long the Judgment and Order Dated: 28.2.1990 is in force.

The copy of the O.M. Dated: 12.1.1996 is annexed herewith and marked as ANNEXURE No. 10.

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Dipen Kumar Basu 50

13. Most surprisingly, the Deputy Director (Administration), New Delhi vide Impugned O.M. issued under letter No. I.46011/3/94-OM (Vol. III) Dated: 1.11.1999 informed the local Head Office of NSSO (FOD), Guwahati while disposing the representation of the staff of NSSO (FOD), Shillong on stoppage and recovery of SDA stated that in view of the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 3251/1993 and also in view of the O.M. No. 11(3)/95-E.II(B) Dated: 12.1.1996 requested to recover the amount of SDA already paid after 20.9.1994 in easy instalment and rejected all the representations in view of the Supreme Court Judgment and O.M. Dated: 12.1.1996 and also directed to take necessary action accordingly to all Head of offices at Guwahati.

In pursuance of O.M. Dated: 1.11.1999, the Deputy Director NSSO (FOD) Guwahati vide his O.M. issue under letter No. 1(76)Acctts/ASM /99 Dated: 5.11.1999 whereby it is directed to recover the SDA amount paid to in eligible Officers on instalments not exceeding Rs. 520/- in any month, therefore, the decision of stoppage as well as recovery of SDA which was communicated through O.M. Dated: 1.11.1999,

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Dipen Kumar Borah
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sought to be implemented vide O.M. Dated: 5.11.1999 are contrary to the direction passed by the Hon'ble Tribunal. As such, the O.M. Dated: 1.11.1999 and 5.11.1999 are liable to be set aside and quashed.

Copy of the O.M. Dated: 1.11.1999 and 5.11.1999 are annexed here with and marked as ANNEXURE No. 11 and 12 respectively.

14. That your applicants beg to state that, this Hon'ble Tribunal decided the similar issues involved in O.A. No. 189/1996 and in O.A. No. 107/1999. The copy of the Judgment and Order of the aforesaid O.A. No. 189/1999 is enclosed herewith for kind perusal of the Hon'ble Tribunal.

A copy of the Judgment in O.A. No. 189/96 is annexed herewith and marked as ANNEXURE No. 13.

15. That the applicants state that, thereafter several applicants were preferred by the aggrieved person including by some of the colleagues of the applicants of the some dependents. The present applicants did not preferred any application since some of the colleagues of the some

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Dipen Kumar Barak 52

departments who are exactly similarly situated persons and were having similar grievances and therefore under bonafide impression whatever may be the verdict in those cases it will also cover their cases. Two such cases are O.A. No. 368/1999 filed by investigators and O.A. No. 369/1999 filed by the Ministerial staff of NSSO (FOD). Both the aforesaid cases were allowed by this Hon'ble Tribunal by common order Dated: 19.12.2000 whereby this Hon'ble Tribunal held since the orders Dated: 28.2.1990 passed in O.A. NO. 138(G)/89 and O.A. No. 131(G)/89 holding those applicants entitled to S.D.A. remained unchallenged therefore the same attains finality and accordingly set aside the illegal Memorandum regarding recovery and stoppage of S.D.A. and directed the Respondents to comply with the Judgment and Order dated: 28/02/1990.

The copy of the applications in O.A. No. 369/1999 is annexed here with and marked as ANNEXURE No. 14.

The copy of the common Order Dated: 19.12.2000 in O.A. No. 368/1999 and O.A. No. 369/1999 is annexed here with and marked as ANNEXURE No. 15.

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Dipen Kumar Barik 53

16. That the applicants state that, the Government of India preferred Writ Petition before the Hon'ble High Court challenging the verdict of the Hon'ble Tribunal. The Departmental authority preferred W.P.(C) No. 7324/2001 against the order Dated: 19.12.2000 passed in O.A. No. 368/1999 and O.A. No. 369/1999. All the aforesaid cases were clustered and heard together and disposed of vide Judgment and Order Dated: 04/01/2006. The Hon'ble High Court after perusal of records and after hearing arguments of the parties held that the right of the employees/officers accrued under the Order Dated: 20.02.1990 passed by this Tribunal which attained finality cannot be taken away because of the subsequent decision of the Apex Court in Sri. S. Vijay Kumar case (1994 Suppl (ii) SCC 649). The Respondent authority also could not place any direction of the Apex Court that the said decision shall effect all the Judgment already rendered by any competent Court/Tribunal and accordingly directed the Respondent authority to scrutinise each of the claim of the employees for S.D.A. and passed necessary order in that regard. However, the authority cannot re-open and stop payment of S.D.A. or recover such allowances from such officers/employees, whose

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Dipen Kumar Bose

cases have already been decided by the Learned Tribunal, prior to S. Vijay Kumar's case, declaring that they are entitled to such allowances, if the said decisions have not been assailed and set aside by the Higher Court.

The copy of the Judgment and Order Dated: 04/01/2006 in W.P.(C) No. 7324/2001 and batch is annexed herewith and marked as ANNEXURE No. 16.

17. That the applicants state that, during the pendency of the Writ petition, Government of India, Ministry of Finance, Department of Expenditure, vide O.M. Dated: 29.5.2002 passed on the basis of the S. Vijay Kumar Judgment that SDA shall be eligible to the Central Government Employees having All India Transfer Liability and only posting to the N.E. Region from the N.E. Region.

A copy of the O.M. Dated: 29.5.2002 is annexed herewith and marked as ANNEXURE No. 17.

18. That the applicants states that, the applicants of the O.A. No. 368/1999 and O.A. No. 369/1999 i.e. the Investigators and Ministerial staff

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Dipen Kumar Bera

of NSSO (FOD) have got arrear of the S.D.A. w.e.f. September' 1999 onwards and the current S.D.A. regularly by the Respondent authorities. But have not paid the same to the present applicants who are similarly situated persons of some cadre and of the same department although the applicants were paid S.D.A. along with them by virtue of the earlier Judgment Dated: 28.2.1999 of this Hon'ble tribunal and whose S.D.A. was stopped along with those applicants by the same Memorandum. All the applicants filed their representations thereto which were rejected vide O.M. Dated: 14.12.2006. Hence this application before this Hon'ble Tribunal praying inter alia for similar relief.

Copies of the representations are annexed herewith and marked as ANNEXURE No. 18 [in series].

19. That the applicants states that, vide Impugned Office Memorandum Dated: 14.12.2006, the Director (R), N.S.S.O. (F.O.D) informed the applicants that this representations have been considered and upon consideration informed that since they do not fulfil the condition laid

Contd...

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Dipen Kumar Baral

down in the O.M. Dated: 29.5.2002, and they are not entitled for S.D.A.

The copy of the impugned O.M. Dated: 14.12.2006 is annexed here with and marked as ANNEXURE No. 19.

5) GROUND FOR RELIEF WITH LEGAL PROVISIONS -

5.1 For that entitlement of S.D.A. in respect of the applicant has already been declared and caused by the Hon'ble Tribunal in its Judgment and Order Dated: 28.2.1990 passed in O.A. No. 131(G)/1989 and O.A. No. 138(G)/1989 which is still in force inasmuch as since the applicants were paid S.D.A. along with the applicants of the aforesaid applications, who are the Ministerial staff and Investigators of the same departments of similar cadre and being similarly appointed with the same terms and conditions including All India Transfer Liability.

5.2 For that the Respondents i.e. Union of India and Others have accepted and implemented the said Judgment and Order Dated: 28.02.1990 and by virtue of which the applicants were drawing S.D.A. up to August, 1999 along with those applicants and whose S.D.A was stopped

Contd...

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Dipen Kumar Basak

along with the applicants by this same Memorandum. Since all the applicants of the aforesaid two applications belonging to the same cadre have been paid arrear S.D.A. and current S.D.A. by the authority after the verdict of the Hon'ble High Court, the present applications being exactly similarly situated person of the same department whose cases were covered by the Judgment Dated: 28.02.1990 are also entitled to get arrear as well as current S.D.A. which was illegally stopped by the Respondent in view of the decision of this Hon'ble Tribunal and High Court.

5.3 For that, non payment of S.D.A. is amount to wilful non compliance of the Judgment and Order referred above which is still in force. Therefore, the payment of SDA cannot be denied to the applicants on the plea of executive order issued by the Government of India, Ministry of Finance which has no bearing with the entitlement of SDA to the present applicants.

5.4 For that, the Respondents have no jurisdiction to stop the payment of SDA to the present applicants in view of the Judgment and Order passed by the Hon'ble Tribunal referred above.

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Dipen Kumar Basak

5.5 For that, the illegal action of stoppage of payment of SDA w.e.f. 1.9.1999 to the applicants without affording any opportunity to the applicants is gross violation of principles of Natural justice, equity, good conscience and administrative fairness.

5.6 For that, the impugned O.M. Dated: 29.05.2002 and 14.12.2006 rejecting the benefit of S.D.A. to the applicants on the ground of that they being not the applicants O.A. No. 131(G)/89 and O.A. No. 138/89 is not maintainable in law in view of the facts that the applicants were earlier paid S.D.A. by virtue of the Judgment and Order Dated: 28.2.1990 passed in O.A. No. 131(G)/89 and O.A. No. 138(G)/89 as similarly situated persons of the same cadre of the same departments like the applicants of the aforesaid applications and as the payment of S.D.A. to the present applicants were stopped along with the applicants of those application by the same Memorandum. As such, the impugned O.M. Dated: 29.5.2002 and 14.12.2006 are liable to be set aside and quashed.

5.7 For that, as the Respondents have paid S.D.A. to the present applicants up to August 1999 as was given to the applicants of the

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Dipen Kumar Barick 99

aforesaid application and not stopped earlier as denied earlier. The act of the Respondents in rejecting /non-extending the benefits of S.D.A. to the present applicants as the plea of that they being not the applicants of the aforesaid application is absolutely illegal, arbitrary, and discriminatory and unequal treatment in the eye of law, which is in gross violation of Article 14 of the Constitution of India.

5.8 For that, the applicants being similarly situated person like the aforesaid two application belonging to the same cadre and same department are very much caused by the Judgment and Order Dated: 28.2.1990 of this Hon'ble Tribunal under the aforesaid facts and circumstances of the case and since the aforesaid Judgment attained its finality, it cannot be re-opened and the benefit occurred therein cannot be taken away from the applicants by the authority by issuing any Order or Office Memorandum since the same is barred by the doctrine of finality of Judgment/the principle of res-judicata as has been held both by this Hon'ble Tribunal as well as the Hon'ble High Court, as such, the impugned Office Memorandum Dated: 29.5.2002 and 14.12.2006 are liable to be set aside and quashed.

Contd...

Dipen Kumar Barik 15/8

Dipen Kumar Basak

6) DETAILS OF REMEDY EXHAUSTED -

The applicants submitted representation before the Respondent authorities for payment of S.D.A. which has been stopped without affording any opportunity of hearing the applicants but the same were rejected by the impugned O.M. Dated: 14.12.2006. In this view of the matter, the applicants have no other alternative and efficacious remedy in the relief sought for herein would be just, adequate and proper if so granted.

7) MATTERS NOT PREVIOUSLY FILE OR PENDING BEFORE ANY OTHER COURT/TRIBUNAL -

That the applicants further declares that they have not previously filed any application, Writ petition, or suit regarding the matter in respect of which this application has been made before any Court of law or any other authority or any Bench of the Tribunal and/or any such application, Writ petition, or pending before any of them.

8) RELIEF SOUGHT FOR -

Under the facts and circumstances of the case, the applicants pray that Your Lordships would be pleased to issue notice to the

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Respondents to show cause as to why the relief sought for by the applicants shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties, Your Lordships may be pleased to grant the following relief -

8.1 That the Hon'ble Tribunal be pleased to set aside and quash the Office Memorandum Dated: 29.5.2002 (Annexure No. 17), so far it relates to the present applicants.

8.2 That the Hon'ble Tribunal be pleased to set aside and quash the impugned O.M. Dated: 14.12.2006 (Annexure No. 19).

8.3 That the Hon'ble Tribunal be pleased to direct/command the Respondents to pay the arrear of S.D.A. w.e.f. 1.9.1999 till date and current S.D.A. regularly as has been given to the applicants of O.A. No. 131 (G)/1989 and O.A. No. 138(G)/89 holding that the applicants cases is caused by the Judgment and Order Dated: 28.2.1990 passed in O.A. No. 131(G)/89 and O.A. No. 138(G)/89.

8.4 Cost of the application.

8.5 Any other relief or reliefs to which the applicants are entitled to under the facts and

Contd...

Dipen Kumar Barik ^{sr}

circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

9) INTERIM RELIEF PRAYED FOR -

During the pendency of this application, the applicants pray for the following relief -

- 9.1 That the Hon'ble Tribunal be pleased to stay the operation of impugned O.M. Dated: 1.11.1999 and 5.11.1999 (Annexures - 11 and 12) till disposal of this application.

The above relief is prayed on the grounds mentioned in the Paragraph 5 of this application.

10) -----

This application has been filed through advocate.

11) PARTICULARS OF I.P.O.

I.P.O. No. : 346. 651624
Date of Issue : 13/3/07
Issued from : G.P.O., Guwahati
Payable at : Guwahati

12) LIST OF ENCLOSURES -

As stated in the INDEX.

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Dipen Kumar Barik

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

I, SRI. DIPEN KUMAR BASAK, S/o. Sri. Anil Kumar Basak, aged about 37 years, Resident of: NSSO (FOD), Department of Statistics, Housefed Complex, 3rd Floor, Central Block, Beltola Basistha Road, Dispur, Guwahati - 781006, in the District of - Kamrup, Assam, one of the applicant in this O.A. do hereby verify that the statements made in paragraphs 4, 2, 3, 4(1), 4(2), 4(4), 4(6) of the accompanying application are true to my knowledge, and belief and those made in Paragraphs 4(1-A), 4(3, 5, 7, 10 & 12) are the matter of records, and that I have not suppressed any material facts. I have been duly authorised to sign this verification on behalf of the other applicants.

And, I set my hand on this verification today the 13th day of ^{March} ~~February~~ 2007 at Guwahati.

Dipen Kumar Basak
Signature of the Applicant

Contd...

Dipen Kumar Basak
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REGD. LETTER

No. 3(2)/Estt.II/ASM/95/5140-44
 Government of India
 Ministry of Planning
 Department of Statistics
 National Sample Survey Organisation
 (Field Operations Division)

Office of the Regional Asstt.
 Director,
 Dr. B. K. KAKATI ROAD, ULUBARI,

GUWAHATI-781 007

MEMORANDUM Dated 13TH NOVEMBER, 1995

On the recommendations of the Staff Selection Commission, Shri
 DIPEN KR. BASAK is offered a temporary post of
 STENOGRAPHER GR. II in the office of the Field Operations Division, National
 Sample Survey Organisation on a pay of Rs. 1200 - 2040/-
 in the Scale of Rs. 1200-30-1560-EB-40-2040/-. The appointee
 will also be entitled to draw dearness and other allowances at the rates
 admissible under and subject to conditions laid down in rules and
 orders, governing the grant of such allowance in force from time to time.

2. The terms of appointment are as follows:-

- (i) The post is temporary but is likely to continue.
 His/hers appointment will be made on a temporary basis.
- (ii) The appointment may be terminated at any time by month's
 notice given by either side viz. the appointee or the
 appointing authority, without assigning any reason in
 accordance with the provisions of Central Civil Services
 (Temporary Service) Rules, 1965 as amended from time to time.
 The appointing authority, however reserves the right to
 terminate the services of the appointee forth-with or
 before the expiry of the stipulated period of notice by
 making payment to him/her, of sum equivalent to the pay
 and allowance for the period of notice or the unexpired
 portion thereof.
- (iii) He/she will be on probation for a period of two years.
 The appointee can be discharged from service for failure
 to complete the period of probation including the extended
 period, if any, satisfactorily or for any other reasons,
 during the probation period, the appointment.....
2/-

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may be terminated at any time by a day's notice given by either side viz. the appointee or the appointing authority without assigning any reason.

- (iv) The place of duty will be at GUWAHATI but the appointment carries with it the liability to serve in any part of India.
- (v) Other conditions of service will be governed by the relevant rules and orders, in force from time to time.

3. The appointment will be further subject to:-

- (i) His/Her being declared fit by the competent Medical Authority, Production of a Certificate of fitness from/viz Civil Surgeon, District Medical Officer or a Medical Officer of equivalent Status.
- (ii) Submission of a marital declaration in the form enclosed (Annexure-I) and in the event of a candidate having more than one wife living or being married to a person having more than one wife living the appointment will be subject to his being exempted from the enforcement of the requirement in this behalf.
- (iii) Taking of an oath of allegiance/faithfulness to the constitution of India (or making a solemn affirmation to the effect) in the prescribed form Annexure-II)
- (iv) Production of the following original certificates:-
 - (a) Degree/Diploma/Certificate of educational and other technical qualification.
 - (b) Certificate of age.
 - (c) Character certificate in the prescribed form (Annexure-III) from the head of the educational Institution last attended by him/her and a similar certificate from his/her employer, if any and at least one of them duly attested by a stipendary first class Executive Magistrate (Including a District Magistrate or Sub-Divisional Magistrate).
 - (d) Community Certificate in the prescribed form in support of candidates claim to he/she belong to a scheduled caste or tribe community/ABC from the prescribed authority.

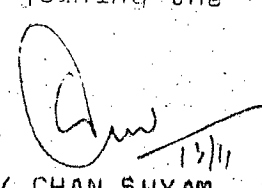
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-3-

(e) Discharge certificates, in the prescribed form of previous employment, if any.

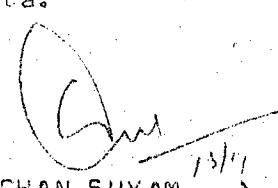
4. It may be stated whether the candidate is ~~is~~ serving or is under obligation to serve another Central Govt. Deptt. or a State Govt. or a public authority.
5. If any declaration given or information furnished by the candidate proves to be false or if the candidate is found to have wilfully suppressed any material information, he/she will be liable to removal from service and such other actions as Govt. deem necessary.
6. The candidate will undergo in the first instance a training at any place decided by the authority and then posted outside for regular work for which only ordinary T.A. will be paid.
7. If Shri Dipen Kr. Basak accepts the offer on the above terms and conditions he/she should report for duty to the office of the Regional Assistant Director GUWAHATI on or before 4th December, 95. If he fails to report for duty on the prescribed date the offer will be treated as cancelled.
8. No travelling allowance will be allowed for joining the appointment or on termination thereof.

✓ Shri Dipen Kr. Basak
Rly. Qtr. No. 2/B, Central Gt Nagar,
Malgasen, Guwahati-781011


(GHAN SHYAM)
Regional Asstt. Director

Copy forwarded for information to:-

1. The Director, Field Operations Division, NSSO, New Delhi.
2. Controller of Examination, Staff Selection Commission Guwahati with reference to his letter SSCG-A.11011/36/94-95/Nom/3479 dated 01/11/95.
3. Personal file of Shri Dipen Kr. Basak.
4. Superintendent N.S.S.O. (F.O.D.)
5. Joint Director, NSSO (FOD) Eastern Zone, Calcutta.
6. The Estt. I section, Guwahati.


(GHAN SHYAM)
Regional Asstt. Director

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No. 3(3)/ASM/Est.H.II/95/488-92
Government of India
Ministry of Planning
Department of Statistics
National Sample Survey Organisation
(Field Operations Division)

Office of the Regional Asstt.
Director,

Dr. B.K. KAKATI ROAD, ULUBARI

GUNAHATI-781007

MEMORANDUM

Dated 31-01-1996

On the recommendations of the Staff Selection Commission, Smt. Mrs. Sanghamitra Choudhury is offered a temporary post of L D C in the office of the Field Operations Division, National Sample Survey Organisation on a pay of Rs. 950/- to 1500/- in the Scale of 950/- 20-1150-EB-25-1500/- PM. The appointee will also be entitled to draw dearness and other allowances at the rates admissible under and subject to conditions laid down in rules and orders governing the grant of such allowance in force from time to time.

2. The terms of appointment are as follows:-

- (i) The post is temporary but is likely to continue.
His/her appointment will be made on a temporary basis.
- (ii) The appointment may be terminated at any time by month's notice given by either side viz. the appointee or the appointing authority, without assigning any reason in accordance with the provisions of Central Civil Services (Temporary Service) Rules, 1965 as amended from time to time. The appointing authority, however reserves the right to terminate the services of the appointee forth-with or before the expiry of the stipulated period of notice by making payment to him/her, of sum equivalent to the pay and allowance for the period of notice or the unexpired portion thereof.
- (iii) He/She will be on probation for a period of two years. The appointee can be discharged from service for failure to complete the period of probation including the extended period, if any, satisfactorily or for any other reasons, during the probation period, the appointment.....

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may be terminated at any time by a day's notice given by either side viz. the appointee or the appointing authority without assigning any reason.

- (iv) The place of duty will be at GUWAHATI but the appointment carries with it the liability to serve in any part of India.
- (v) Other conditions of service will be governed by the relevant rules and orders, in force from time to time.

3. The appointment will be further subject to:-

- (i) ~~His~~/Her being declared fit by the competent Medical Authority, Production of a Certificate of fitness from/viz Civil Surgeon, District Medical Officer or a Medical Officer of equivalent Status.
- (ii) Submission of a marital declaration in the form enclosed (Annexure-I) and in the event of a candidate having more than one wife living or being married to a person having more than one wife living the appointment will be subject to his being exempted from the enforcement of the requirement in this behalf.
- (iii) Taking of an oath of allegiance/faithfulness to the constitution of India (or making a solemn affirmation to the effect) in the prescribed form Annexure-II)
- (iv) Production of the following original certificates:-
 - (a) Degree/Diploma/Certificate of educational and other technical qualification.
 - (b) Certificate of age.
 - (c) Character certificate in the prescribed form (Annexure -III) from the head of the educational Institution last attended by him/her and a similar certificate from his/her employer, if any and at least one of them duly attested by a stipendiary first class Executive Magistrate (Including a District Magistrate or Sub-Divisional Magistrate).
 - (d) Community Certificate in the prescribed form in support of candidates claim to he/she belong to a scheduled caste or tribe community/OBC from the prescribed authority.

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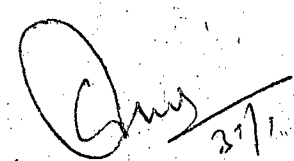
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(e) Discharge certificates, in the prescribed form of previous employment, if any.

4. It may be stated whether the candidate is serving or is under obligation to serve another Central Govt. Deptt. or a State Govt. or a public authority.
5. If any declaration given or information furnished by the candidate proves to be false or if the candidate is found to have wilfully suppressed any material information, he/she will be liable to removal from service and such other actions as Govt. deem necessary.
6. The candidate will undergo in the first instance a training at any place decided by the authority and then posted outside for regular work for which only ordinary T.A. will be paid.
7. If Shri Miss Sanghamitra Choudhury accepts the offer on the above terms and conditions he/she should report for duty to the office of the Regional Assistant Director GUWAHATI on or before 22-02-96. If he fails to report for duty on the prescribed date the offer will be treated as cancelled.
8. No travelling allowance will be allowed for joining the appointment or on termination thereof.

✓ Shri Miss Sanghamitra Choudhury
Co. Sri Pradip Chakrabarti
Shyamanand Daloy "Nakaglaho Road
Silpukhuri, Guwahati - 781003
 Copy forwarded for information to:-


 (GHAN SHYAM)
 Regional Asstt. Director

1. The Director, Field Operations Division, NSSO, New Delhi.
2. Controller of Examination, Staff Selection Commission Guwahati with reference to his letter SSC-A-11011/16/192-93/Num/126 dated 19-01-96.
3. Personal file of Shri Sanghamitra Choudhury.
4. Superintendent N.S.S.O. (F.O.D.).
5. Joint Director, NSSO (FOD) Eastern Zone, Calcutta.
6. The Estt. I section, Guwahati.


 (GHAN SHYAM)
 Regional Asstt. Director

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No.A-23021/3/2006-Estt.III

Government of India
Ministry of Statistics and Programme Implementation
National Sample Survey Organisation
(Field Operations Division)

East Block No.6, Level 4-7
R.K.Puram, New Delhi-66
Dated : 13.04.2006

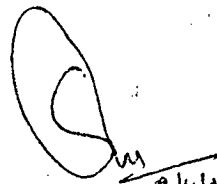
OFFICE MEMORANDUM

Subject:- Provisional All India Seniority-cum-Eligibility List of Stenographers Grade.III in the pay scale of Rs.4000-100-6000/- working in NSSO(FOD) on regular basis as on 31.12.2005 for the purpose of promotion to the post of Stenographer Grade.II

An upto date All India Seniority-cum-Eligibility List (Provisional) as on 31.12.2005 of Stenographers Grade.III appointed on regular basis in this Division has been prepared and a copy of the same is enclosed herewith for circulation amongst the Officials concerned. All concerned officials are requested to check their position and particulars in the All India Seniority-cum-Eligibility list and bring discrepancies, mistakes/omissions, if any, to the notice of this Division, through proper channel latest by 28.04.2006 positively. The Seniority-cum-Eligibility list may also be checked by all concerned Heads of Offices with reference to the Service Books of the Officials concerned and discrepancies, if any, pointed out to this Division latest by 28.04.2006.

The representations, if any, received from the Officials concerned, may please be forwarded to Hqrs. along with a certificate that the particulars etc. indicated in the representation submitted by the applicant have been verified from the Service Records of the Official and found correct/incorrect, if any, latest by 28.04.2006. If no comments/representation is received by 28.04.2006, the All India Seniority-cum-Eligibility list will be treated as final and no further correspondence/objection will be entertained in this regard in future.

Encl: Provisional All India Seniority-cum-Eligibility List


(GHAN SHYAM)
JOINT DIRECTOR(ADMN.)

To

All concerned Heads of Offices,
NSSO(FOD) (Including New Delhi/ Faridabad)

**PROVISIONAL ALL INDIA SENIORITY-CUM-ELIGIBILITY LIST OF STENOGRAPHERS GRADE.III WORKING ON
REGULAR BASIS AS ON 31.12.2005 IN NSSO(FOD)**

Sl. No.	Name	Date of birth	Educational Qualification	Date of Entry into Govt. service	Date of appointment in the present grade	Whether Temp./Pmt.	Place of posting	Remarks
1.	Shri Indranil Banerjee	23.02.69	B.Com.	15.07.1994	15.07.1994	Pmt.	Burdwan	West Bengal
2.	Shri Dipen Kumar Basak	01.03.69	B.Sc.	20.11.1995	20.11.1995	-do-	Guwahati	Assam
3.	Sh.P. Bhattacharjee	13.09.70	B.Sc.	25.06.1996	25.06.1996	-do-	Kolkata	West Bengal
4.	Shri Kewal Singh (OBC)	21.10.73	Inter	11.12.1996	11.12.1996	-do-	Agra	Uttar Pradesh
5.	Shri Sanjeev Kumar (OBC)	05.04.74	B.A.	17.01.1997	17.01.1997	-do-	Muzaffarpur	Biher
6.	Shri P. Saha(OBC)	04.08.74	B.Com.	09.06.1997	09.06.1997	-do-	Malda	West Bengal
7.	Shri Om Prakash Singh	01.03.76	B.Sc.	16.04.1998	16.04.1998	-do-	Ranchi	Jharkhand
8.	Mrs. Sebha Arora	01.12.71	B.A.	05.05.1998	05.05.1998	-do-	Lucknow	Uttar Pradesh
9.	Shri Sanjeev Kumar (SC)	24.07.78	B.Com.	27.05.1998	27.05.1998	-do-	Hqrs. New Delhi	Promoted as Steno.Gr. II on adhoc basis w.e.f. 21.12.2005 (Hqrs.)
10.	Mrs. Victoria Mary	20.05.74	12 th Pass	19.06.1998	19.06.1998	-do-	Port Blair	Andaman and Nicobar
11.	Shri Abhishek Chaturvedi	24.11.76	Al.Sc.	18.08.1998	18.08.1998	-do-	Bhopal	Madhya Pradesh
12.	Shri Manish Yadav (OBC)	11.01.75	Sr. Secondary	(AN) 31.08.1998	(AN) 31.08.1998	-do-	Jaipur	Rajasthan

Sl. No.	Name	Date of birth	Educational Qualification	Date of Entry into service	Date of appointment in the present grade	Whether Temp./	Place of posting	Remarks
13.	Mrs. Raj Lakshmi Menon	02.06.59	SSLC	26.06.1982	16.12.1999	Pmt.	Kozhikode	Joined in Ministry of Home Affairs and posted at DOS. Transferred to FOD (Kerala)
14.	Ms. Thara Kumari T.R.	11.02.72	Pre-University	26.06.1996	03.02.2000	-do-	Bangalore	Karnataka
15.	Shri Vishwas L. Daisal	19.05.81	B.Com. (Pass)	19.03.2004	19.03.2004	Temp.	Hqrs. New Delhi	Hqrs.
16.	Mrs. Supriya De	07.09.76	B.A.	27.05.2004	27.05.2004	-do-	Shimla	Since resigned w.e.f. 25.01.2006 (H.P.)

(GHAN SHYAM)
JOINT DIRECTOR (ADMIN.)

ANNEXURE NO. 3.

Extract only.

Extract copy of the Ministry of Finance (Department of Expenditure)'s O.M. No. 20014/2/03-E.IV Dated: 14.12.1983.

Subject: Allowance and facilities for civilian employee of the Central Government serving in the States and Union Territories of North Eastern Region, immovable thereof.

The need for attracting and retaining the service of competent officers for service in the North Eastern Region comprising the State of Assam, Meghalaya, Manipur, Nagaland, Tripura, and Union territories of Arunachal Pradesh and Mizoram has been engaging the attention of the Government for some time. The Government has appointed a Committee under the Chairmanship of Secretary, Department of Personal and 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 improvement. The recommendation of the Committee have been carefully considered by the Government and the President is now pleased to decide as follows -

- (i) Tenure of posting/deputation.
- (ii) Weightage of Central deputation/training, ABROAD & SPECIAL MENTION in the confidential records.

Contd...

(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% on posting 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/or Deputation (Duty) Allowance already being drawn subject to the condition that the total of such allowance will not exceed Rs. 400/- per month. Special allowance like Special Compensatory (Remote Locality) allowance, Construction Allowance, and Project Allowance will be drawn separately.

(iv) Special Compensatory Allowance.

(v) -----

(vi) -----

(vii) -----

Contd...

only.

20014/16/86/E.IV/E.II(D)
Government of India
Ministry of Finance,
Deptt. of Expenditure.

New Delhi, the 1st Dec, 1983.

OFFICE MEMORANDUM.

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

The undersigned is directed to refer to this Ministry's
OM NO. 20014/3/83-E.IV dtd. 14th December, 1983 and 30th
March 1984 on the subject mentioned above and to say that the
question of making suitable improvements in the allowances and
facilities to Central Govt. employees posted in North Eastern
Region comprising the States of Assam, Meghalaya, Manipur,
Nagaland, Tripura, Arunachal Pradesh and Mizoram has been
engaging the attention of the Govt. Accordingly the President
is now pleased to decide as follows:-

- (1) Tenure of posting/deputation.
.....
- (ii) Weightage for central deputation and training abroad;
Special mention in Confidential records.
.....
- (iii) Special (Duty) Allowance.
Central Govt. Civilian employees who have all India
Transfer liability will be granted Special (Duty) Allowance
at the rate of 12% of basic pay subject to a ceiling of
Rs. 1,000/- per month on posting to any station in the
North Eastern Region. Special (Duty) Allowance will be
in addition to any special pay and/or deputation (duty)
allowance already being drawn subject to the condition
that the total of such Special (Duty) Allowance plus
Special Pay/Deputation (Duty) Allowance will not exceed
Rs. 1,000/- pm. Special allowances like special compensatory
(Remote Locality) Allowance, construction allowance and
Project allowance will be drawn separately.

The Central Govt. Civilian employees who are
members of Scheduled Tribes and are otherwise eligible
for the grant of Special (Duty) Allowance under this para
and are exempted from payment of Income Tax under the
Income Tax Act will also Special (Duty) Allowance.

- (iv) Special Compensatory Allowance.
.....
- (v)
- (vi)
- (vii)
- (viii)
- (ix)
- (x)
- (xi)
- (xii)

Sd/- (A. Jayaraman)
Jt. Secretary to the Govt. of India.

C. B. B. B.

ANNEXURE - D4

45-

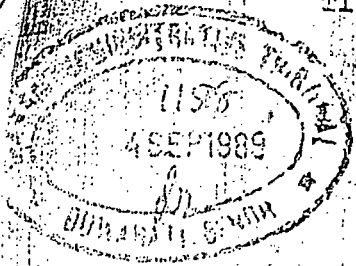
ANNEXURE - 5

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-18-

Application fee of Rs. 50/-
Paid vide Bank Draft.....
Postal Order No. 22/6/89 7552
Dated.....4/9/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.
(Application under Section 19 of the A.T. Act 1985)
Title of the Case : O.A. 131 (G) of 1989.



BETWEEN

All India Association of Investigators,
National Sample Survey Organisation
(Field Operation Division)
Department of Statistics,
Ministry of Planning, Govt. of India
Assam Region, Ulubari, Guwahati-7
And another.

.... Applicants.

AND

Union of India & Others.

.... Respondents.

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For use in Tribunal's Office.

certified to be
true copy
C. B. Baizy
ASD

Date of filing : 4-9-89
Registration No. O.A. 131 (G) / 89
Signature 5.9.89
Registrar.

received copy
G. S. S. S.
1201 C. G. SC
5.9.89

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Filed by -
B.K. Sharma
Advocate
4.9.89
for the applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

BETWEEN

- i. All India Association of Investigators,
National Sample Survey Organisation,
(Field Operation Division),
Deptt. of Statistics, Ministry of Planning,
Govt. of India, Assam Region,
Ulubari, Guwahati-7.
 - ii. Shri Agni Prasad Sarma, Unit Secretary,
All India Association of Investigators,
National Sample Survey Organisation,
(Field Operation Division),
Deptt. of Statistics, Ministry of Planning,
Govt. of India, Assam Region,
Ulubari, Guwahati-7.
- Applicants.

AND

- I. Union of India represented by ^(a) the Secretary,
Ministry of Planning, Deptt. of Statistics,
Govt. of India, West Block No. 8, Wing No. 6
R.K. Puram, New Delhi-110066. ^(b) *the Secy Ministry of
Finance, New Delhi.*
 - ii. The Director, National Sample Survey Organisation
(Field Operation Division), Deptt. of Statistics,
Ministry of Planning, Govt. of India,
West Block No. 8, Wing No. 6, RK Puram, New Delhi-110066.
 - iii. The Regional Asstt. Director, National Sample Survey Orgn.
(Field Operation Divn.), Deptt. of Statistics,
Ministry of Planning, Govt. of India, Ulubari,
Dr. B.K. Kakati Road, Gauhati-7.
- Respondents.

1. Particulars of the order against which the application is made.

The application is not directed against any order but for a direction from this Hon'ble Tribunal to the respondents for payment of Special (Duty) Allowance to the members of the applicant No. 1. The applicants are aggrieved by non-payment of Special (Duty) Allowance in spite of the fact that they are entitled to the same as per the Office Memorandum No. 20014/3/83-E.IV dtd. 14.12.83 and also as per Office Memorandum No. 20014/16/86-E.IV/E.II(B) dtd. 1.12.88. The applicants are highly

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aggrieved by the inaction on the part of the respondents in not attending to their various representations preferred urging for payment of Special (Duty) Allowance.

2. Jurisdiction of the Tribunal.

The applicants declared that the subject matter of the order against which they want redressal is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation.

The applicants further declare that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case.

1. That the applicant no. 1 is the representative registered Union of Investigators numbering 45 of the National Sample Survey Organisation (Field Operation Divn.), Deptt. of Statistics, Ministry of Planning, Govt. of India, Ulubari, Gauhati-7. Apart from the Central Unit of the aforesaid Association, there are other units all over the states. The applicant no. 1 is the Assam Unit of the aforesaid Association. The said Association is recognised by the respondents. The applicant Association represents the interest of the Investigators who are Group 'C' employees of the aforesaid department. The applicant no. 1 is represented by its Unit Secretary who is also in the Service of the aforesaid department as Investigator and he is duly authorised to file this application on behalf of the Association. The applicant no. 2 is also vitally interested in the matter.

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ii. That since the applicant no. 1 represents the interest of the members of the aforesaid Association, i.e. the Investigators of the aforesaid deptt. and since the members of the said Association have got same grievances relating to this application, the instant application has been filed by the applicant no. 1 through the applicant no. 2 representing the interesting of the said Association (Assam Region).

iii. That the members of the applicant no. 1 carry with them all India Transfer liability. In the appointment letters of all the members of the said Association, there is a distinct Clause to the effect that the appointment carries with the liability to serve in any part of India. Further, all India seniority list is maintained for the Investigators and promotion etc. on all India basis. Be it stated here that the members of the Association entered into their services as Investigators after being selected through the Staff Selection Commission on the basis of an All India advertisement, wherein also under the column 'details of the post', it was mentioned that the post carries with it all India service liability. In the requisits placed before the Staff Selection Commission for advertisement for the post of Investigators, the deptt. always mentioned that the post carries with it all India service liability.

Since all the appointment letters in respect of the appointment of Investigators are similar, only one copy of such an appointment is annexed herewith and marked as Annexure '1'.

A copy of the memorandum dtd. 9.12.88 forwarding/ circulating all India Eligibility seniority list of Investigators appointed upto 31.12.82 together with an extract of the said list is annexed as Annexure '2'.

A copy of the letter (extract) dtd. 2.12.87 from the deptt. to the Staff Selection Commission placing its requirement of Investigators is annexed herewith and marked as Annexure '3'.

iv. That not only the appointment orders of the members of the applicant no. 1 carry with it all India transfer liability clause, but in fact, the members of the applicant no. 1 are regularly transferred from one region to another and from one state to another leaving aside the various transfer orders within the State.

v. That the Ministry of Finance, Govt. of India, Deptt. of Expenditure, New Delhi, issued an Office Memorandum No. 20014/3/83-E.IV dtd. 14.12.83 whereby Presidential sanction towards certain allowances and facilities for Civilian employees of the Central Govt. serving in the States and Union Territories of N.E. Region was notified. The allowances and facilities sanctioned on various headings also included sanction of Special (Duty) Allowance (hereinafter referred to as S(D)A, vide Clause II of the Office Memorandum which runs as follows :-

(iii) Special (Duty) Allowance.

Central Govt. civilian employees who have all India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 per cent 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 allowance will not exceed Rs.400/- pm. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

The above is a decision of the President relating to all Central Govt. employees who have got all India transfer liability and posted to any station in the North-Eastern Region. Be it stated here that the above order was initially effective from 1.11.83 to 30.10.86 and subsequently extended from time to time. The office memorandum dtd. 14.12.83 was further referred to in an office memorandum No. 20014/16/86/E.IV./B.II(B) dtd. 1.12.88 whereby also the benefit of S(D)A was extended. In the said office memorandum, the S(D)A was sanctioned vide Clause III which runs as follows :

(iii) Special (Duty) Allowance :

Central Govt. Civilian employees who have all India Transfer liability will be granted special (Duty) Allowance at the rate of 12½% of basic pay subject to a ceiling of Rs.1,000/- per month on posting to any station in the North-Eastern Region. Special (Duty) Allowance will be in addition to any Special pay and/or deputation (duty) allowance already being drawn subject to the condition that the total of such Special (Duty) allowance plus Special Pay/Deputation (Duty) Allowance will not exceed Rs.1,000/- pm. Special allowance like Special Compensatory (Remote locality) Allowance, will be drawn ~~pm~~ separately.

The Central Govt. Civilian employees who are members of the Scheduled Tribes and are otherwise eligible for the grant of Special (Duty)

Allowance under this para and are exempted from payment of Income-Tax under the Income Tax Act will also draw Special (Duty) Allowance.

Copies of the aforesaid memorandums dtd. 14.12.83 and 1.12.88 are annexed herewith and marked as Annexures 4 & 5 respectively.

vi. That the members of the applicant no. 1 fulfil all the criterias laid down in the aforesaid 2 memorandums for entitlement of Special Duty Allowance. As stated above, the members of the applicant no. 1 were appointed to the services of the National Sample Survey Organisation on acceptance of the term of all India transfer liability.

vii. That as the members of the applicant no. 1 fulfill all the conditions laid down in the aforesaid 2 memorandums for entitlement of the Special Duty Allowance, they were initially granted the said Special Duty Allowance for 9 months. However, subsequently the amounts drawn as Special Duty Allowance were deducted from the members of the applicant no. 1 on 15 instalments on the ground that the said allowance was paid to them erroneously and they were not entitled to the said S(D)A. Such a decision was taken for recovery of the amount already paid as S(D)A on the basis of a memorandum No.A-19011/10/76-Estt.1 dtd. 18.9.84 wherein it was laid down that the allowance in question is not admissible to the categories of staff, vice Investigators, U.D.Cs, L.D.Cs, Steno (Gr.III) and Group 'D' staff.

A copy of the said memorandum dtd. 18.9.84 is annexed herewith and marked as Annexure '5'.

viii. That the applicants state that the decision conveyed in the aforesaid memorandum is prima-facie not

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sustainable inas-much-as the differential treatment metted out by the aforesaid memorandum is violative of Article 14 of the Constitution of India. However, the members of the applicant no. 4 being a disciplines officials allowed the deptt. to deduct the S(D)As from their salaries in 15 instalments. However, they continued their dialogue with the respondents in this respect and kept on urging for payment of the S(D)A in deference to the aforesaid memorandums on S(D)A. The respondent no. 3 made many correspondances in this regard with the respondent no. 2, but till date the applicants have not been favoured with a decision for payment of S(D)A to the members of the applicant no. 1. The applicants pray that this Hon'ble Tribunal may be pleased to call for those correspondences made by respondent no. 3 with the respondent no. 2.

ix. That the applicants even after a lapse of several years and failing in all respects to convince the respondents that they are entitled to the S(D)A as granted by the aforesaid 2 memorandums, finally they submitted a representation to the respondent no. 1 on 9.9.88 when he visited the Gauhati Office but till date, the applicants have not been replied.

A copy of the said representation dtd. 9.9.88 is annexed herewith and marked as Annexure '7'.

x. That the applicants state that under the facts and circumstances stated above, there can not be any justification for depriving them for such a long time from their legitimate due by the respondents simply sitting

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over the matter. The members of the applicant no. 1 having fulfilled all the criterias laid down in the aforesaid memorandums for entitlements of the S(D)A, the respondents are duty bound to pay the same to the members of the applicant no. 1 and they cannot be deprived of the same.

xi. That the applicants state that if the presidential memorandum dtd. 14.12.83 and 1.12.88 are to treat the applicants differently with that of the other employees under the same footing and under the same service conditions, then the same Presidential memorandums are discriminatory and liable to be set aside.

xii. That the applicants state that the members of the applicant no. 1 are in practice transferred from one stations to another but still they are deprived of the benefit of S(D)A.

xiii. That the applicants state that no clarification can over-ride the presidential memorandums granting S(D)A to the Central Govt. Civilian employees posted in the M.E. Region.

xiv. That the applicants state that there cannot be differential treatment among similarly situated employees who are getting the benefit of S(D)A. The applicants should be extended with the same benefit. In this connection, it will be pertinent to mention here that the S(D)A is being paid to the similarly situated employees in other deptt. such as Directorate, Central Ground Water Board, Ministry of Irrigation, Gauhati; Office of the Survey of India, Gauhati; Office of the Dy. Director for S.W. & S.T.,

Gauhati; Office of the Superintending Engineer, C.P.W.D.,
Gauhati; Meteorological Deptt., Gauhati and many others.

5. Grounds for relief with legal provision:

i. For that the members of the applicant no. 1 are having all India transfer liability is apparent on the face of it ~~as~~ in-as-much-as the offer of appointment stipulated the same and the employees are transferred from one State to another.

ii. For that the applicants have fulfilled the basic criteria of 'all India transfer liability' which is the condition precedent for grant of S(L)A as per aforesaid office memorandum, they are very much entitled to receive the said allowance.

iii. For that any Central Govt. employee is eligible to get the aforesaid allowance in-as-much-as when a non-gazetted staff working in the N.E. Region is transferred from one State to another then the region when he is posted in the region, he experiences the same difficulties by an official coming to this region from other parts of the Country. The hardship faced by the employees (Group 'C' & 'D') are similar in nature, if not more than that faced by the other officials posted in the N.E. Region who are getting the said benefit.

iv. For that the decision to grant S(D)A for the Central Govt. employees working in the NE Region has been influenced by the fact that the cost of living in this region is comparatively higher than other part of India and considering the relevant factors such as backwardness of the area and lack of proper communication facilities, S(D)A must necessarily be paid to all the employees who

are posted in the NE Region. Any attempt to exclude the applicants from such a benefit will be highly discriminatory and violative of Art. 14, 16 and 21 of the Constitution of India.

v. For that many of the Central Govt. Deptts. have granted the SDA to all its employees including Group 'C' & 'D' employees. The name of some of them are Regional Office for Heal and Family Welfare, Shillong; Odio-Visual Publicity, Payadhara, Song & Drama Division, Kendriya Vidyalaya Sangathan; Central Ground Water Board, National Savings Organisation, C.P.W.D., Weaver Services & Rubber India, Deptt. of Explosives, Office of the Dy. Director of SC & ST, Survey of India, Botanical Survey of India, North-Eastern Hill University, Dy. Controller of Defence Accounts, National Malaria Eradication Programme, Military Engg. Service, Central Bureau of Investigation etc. and other under different Ministries. The applicants are similarly situated with the employees of these deptt. and as such the denial of SDA to them is highly discriminatory.

vi. For that the action/inactions of the respondents in the instant case is most arbitrary, unfair, unreasonable and discriminatory and thereby violates the rights guaranteed to the applicants under Article 14 of the Constitution of India.

vii. For that the office memorandums dtd. 14.12.83 and 1.12.88 having laid down in clear terms that all the Central Govt. Civilian employees posted in the NE Region and having all India transfer liability are entitled to the SDA, the respondents cannot deny the same to the members of the applicant no. 1 and they are required to be suitably

directed for payment of the same to the members of the applicant no. 1.

viii. For that there cannot be any reasonable basis for any differential treatment to the members of the applicant no. 1 depriving them from the SDA.

ix. For that the members of the applicant no. 1 admittedly having all India transfer liability both in words and in spirit and their seniority and promotions being maintained on all India basis, there cannot be any justified grounds to deny them the SDA on some extraneous grounds consideration.

x. For that in any view of the matter, the instant application deserves to be fully allowed with suitable direction to the respondents for payment of SDA to the members of the applicant no. 1 w.e.f. 1.11.83 as laid down in the O.M. dtd. 14.12.83.

6. Details of remedies exhausted.

The applicants declare that they have ~~exhausted~~ taken of all the remedies available to them under the relevant service rules and they have not been granted any relief whatsoever by the respondents. In spite of submission of numerous representations, the applicants have not been favoured with any reply till date.

7. Matters not previously filed or pending with any other court.

The applicants further declare that they had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other

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authority or any other Bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought.

On the facts and circumstances, the applicants pray for the following reliefs :-

- i. To direct the respondents to give effect to the office memorandum nos. 20014/2/83-E.IV- dt. 14.12.83 and 20014/16/86/E.IV/E.II(B) dtd. 1.12.88 extending the benefit of 25% SDA to all the members of the applicant no. 1.
- ii. To quash the said OMs dtd. 14.12.83 and 1.12.88 if it is held that the applicants are not eligible for grant of 25% SDA in terms of the said O.Ms, on the ground that the same is discriminatory giving preferential treatment to one set of employees to that the applicants through they are similarly circumstances and also for being violative of the provision of the Constitution.
- iii. Cost of this application, and
- iv. Any other relief or reliefs to which the applicants are entitled to and which may be deemed fit and proper by the Hon'ble Tribunal under the facts and circumstances of the case.

9. Interim order prayed for.

Under the facts and circumstances of the instant case, the applicants do not pray for any interim relief. However, they pray that the instant application may be disposed of at an early date.

10.

11. Particulars of the Bank Draft/Postal Order filed in respect of the application fee.

i. I.P.O. No. DD657552

ii. Date 21.9.89

iii. Payable at : Guwahati. H.P.O.

12. List of Enclosures : As stated in the index.

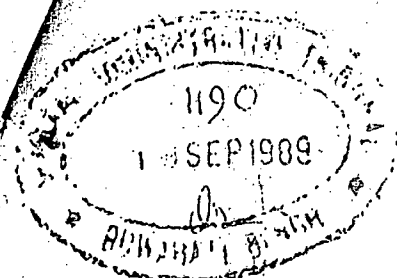
VERIFICATION.

I, Shri Agni Prasad Sharma, son of Shri Hari Prasad Sharma, aged about 37 years, Unit Secretary, All India Association of Investigators, National Sample Survey Organisation (Field Operation Division) Deptt. of Statistics, Ministry of Planning, Govt. of India, Assam Region, Ulubari, Gauhati-7 and working as Investigators in the said Office, do hereby verify that the contents from paragraphs 1 to 12 are true to my knowledge and believe and I have not suppressed any material fact.

I sign this verification on this the ____ th day of _____, 1989.

Agni Prasad Sharma

(SIGNATURE OF THE APPLICANT)



Application fee of Rs. 50/-

Paid vide Bank Draft.....

Postal Order No. 22/3. 65. 14. 20

Dated..... 18/9/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI Bench.

(Application under Section 19 the A.T. Act, 1985)

Title of the case : O.A. No. 138 (G) of 1989.

BETWEEN

Sri Sailendra Kr. Sarma & Ors. Applicants.

AND

Union of India & Others Respondents.

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For use in Tribunal's Office.

Civil Benches

Date of filing : 18/9/89

Registration No.: O.A. 138(G)/89

Signature
Registrar.

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Sailendra Kr. Sarma 2005
Applicants
18/9/80

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUANATHI BENCH.

BETWEEN

1. Sri Sailendra Kr. Sarma.
2. Chitta Ranjan Mamasudra.
3. Smt. Manjusha Kaha.
4. Smt. Aya Chakraborty.
5. Shri Dilip Debnath.
6. Smt. Rekha Das.
7. Shri Gaurab Dev.
8. Smt. Geeta Purkayastha.
9. Shri Kripal Kr. Sarkar.
10. Shri Nagen Daimary.
11. Shri Samir Mukherjee.

Applicant nos. 1 to 4 are Upper Division Clerks, applicant nos. 5 to 10 are Lower Division Clerks and applicant nos. 11 is Stenographer in the Office of the National Sample Survey Organisation (Field Operation Division), Deptt. of Statistics, Ministry of Planning, Govt. of India, Ulubari, Gauhati-7.

.... Applicants.

AND

- i. Union of India represented by (a) The Secretary Ministry of Planning, Deptt. of Statistics, Govt. of India, West Block No. 8, Wing No. 6, R.K. Puram, New Delhi-110066; (b) The Secretary, Govt. of India, Ministry of Finance, New Delhi.
- ii. The Director, National Sample Survey Organisation, (Field Operation Division), Deptt. of Statistics, Ministry of Planning, Govt. of India, West Block No. 8, Wing No. 6, R.K. Puram, New Delhi-110066.
- iii. The Regional Asstt. Director, National Sample Survey Orgn. (Field Operation Divn.), Deptt. of Statistics, Ministry of Planning, Govt. of India, Ulubari, Dr. D.N. Kakati Road, Gauhati-7.

.... Respondents.

1. Particulars of the order against which the application is made.

The application is not directed against any order but for a direction from this Hon'ble Tribunal to the respondents for payment of Special (Duty) Allowance to the applicants. The applicants are aggrieved by non-payment of Special (Duty) Allowance in spite of the fact

....contd.

that they are entitled to the same as per the office memorandum No. 20014/3/83-E.IV dtd. 14.12.83 and also as per office memorandum no. 20014/16/86-E.IV/E.II(B) dtd. 1.12.88. The applicants are highly aggrieved by the inaction on the part of the respondents is not attending to their various representations preferred urging for payment of Special (Duty) Allowance.

2. Jurisdiction of the Tribunal.

The applicants declared that the subject matter of the order against which they want redressal is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation.

The applicants further declare that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case.

1. That the applicants are citizens of India and as such, are entitled to the rights and protections guaranteed by the Constitution of India.

That as stated above, the applicant nos. 1 to 4 are Upper Division Clerks, applicant nos. 5 to 10 are Lower Division Clerks and applicant no. 11 is stenographer in the Office of the National Sample Survey Organisation (Field Operation Division), Deptt. of Statistics, Ministry of Planning, Govt. of India, Ulubari, Gauhati-7. Since all the applicants have got the same grievances relating to this application, the instant application has been filed by all the applicants jointly.

....contd.

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ii. That the applicants carry with their services all India transfer liability. In the appointment letters to all the applicants there is a distinct Clause to the effect that the appointment carries with it the liability to serve in any part of India. Further, all India Eligibility list is maintained for promotion etc. on all India basis. *The applicants are annexing herewith the extract showing their post, place of posting, date of joining, etc.*

Since the appointment orders are identical in respect of all the applicants, only 2 appointment orders are enclosed as Annexures 'A' & 'B'. Further, 2 copies of all India Eligibility List of UDCs and Stenographers are also enclosed and marked as Annexures 'C' & 'D'. *The copy of the extract of the service particulars of the applicants is annexed herewith as Annexure No. E.*

iii. That not only the appointment orders of the applicants carry with it all India transfer liability Clause but in practice also the incumbent of the post of LDCs, UDCs and Stenographers ^{etc} are regularly transferred from one region to another and from one State to another leaving aside the various transfer orders within the State.

iv. That the Ministry of Finance, Govt. of India, Deptt. of Expenditure, New Delhi, issued an office memorandum No. 20014/3/83-E.IV dtd. 14.12.83 whereby Presidential sanction towards certain allowances and facilities for Civilian employees of the Central Govt. serving in the States and Union Territories of N.E. Region was notified. The allowances and facilities sanctioned on various headings also included sanction of Special (Duty) Allowance (hereinafter referred to as S(D)A), vide Clause II of the office memorandum which runs as follows :-

.....contd

(iii) Special (Duty) Allowance.

Central Govt. Civilian employees who have all India transfer liability will be granted a Special (Duty) Allowance at the rate of 25 per cent 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 allowance will not exceed Rs.400/- per month. Special Allowance like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

The above is a decision of the President relating to all Central Govt. employees who have got all India transfer liability and posted to any station in the North Eastern region. As it stated here that the above order was initially effective from 1.11.63 to 30.10.66 and subsequently extended from time to time. The office memorandum dtd. 14.12.63 was further referred to in an office memorandum no. 20014/16/86/E.IV/B.II(B) dated 4.12.68 whereby also the benefit of S(D)A was extended. In the said office memorandum, the S(D)A was sanctioned vide Clause III/ which runs as follows :-

(iii) Special (Duty) Allowance.

Central Govt. Civilian employees who have all India transfer liability will be granted special (Duty) Allowance at the rate of 12% of basic pay subject to a ceiling of Rs.1,000/- per month on posting to any station in the North-Eastern region. Special (Duty) Allowance will be in addition to any special pay and/or deputation (duty) allowance

.....contd

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. 1,000/- p.m. Special allowance like special Compensatory (Remote locality) Allowance, will be drawn separately.

The Central Government Civilian employees who are members of the Scheduled Tribes and are otherwise eligible for the grant of special (Duty) allowance under this para and are exempted from payment of Income Tax under the Income Tax Act will also draw Special (Duty) Allowance.

Copies of the aforesaid memorandums dtd. 14.12.83 and 1.12.86 are annexed herewith and marked as Annexures 'E' & 'F' respectively.

v. That the applicants fulfill all the criterias laid down in the aforesaid 2 memorandums for entitlement of S(D)A. As stated above, the applicants were appointed to the services of the National Sample Survey Organisation on acceptance of the term of 'all India transfer liability'.

vi. That as the applicants fulfill all the condition laid down in the aforesaid 2 memorandums for entitlement of S(D)A, They were initially granted the said allowance for 9 months. However, subsequently the amount drawn as S(D)A were deducted from the applicants on 15 instalments on the ground that the said allowance was paid to them erroneously and that they were not entitled to the said S(D)A. Such a decision for recovery of the amount already paid was taken on the basis of a memorandum no. A-19011/10/75-Extt.1 dtd. 18.9.84, wherein it was laid down that the allowance in question was not admissible to the categories of staff vice

...contd.

Inspectors, UDCs, IDCs, stenographer (Gr.III) and Group
'D' staff.

A copy of the said memorandum dtd. 13.9.84 is
annexed herewith and marked as Annexure 'G'.

vii. That the applicants state that the decision
conveyed in the aforesaid memorandum is prima-facie not
sustainable in-as-much-as the differential treatment
metted out by the aforesaid memorandum is violative of
Article 14 of the Constitution of India. However, the
~~xxxxxx~~ applicants being
disciplined officials allowed the doptt. to deduct the
S(D)As from their salaries in 15 instalments. However, they
continued their dialogue with the respondents in this
respect and kept on urging for payment of the S(D)A in
deference to the aforesaid memorandums on S(D)A. The
respondent no. 3 made many correspondences in this regard
with the respondent no. 2, but till date the applicants have
not been favoured with a decision for payment of S(D)A to
the applicants. The applicants pray that this Hon'ble
Tribunal may be pleased to call for those correspondences
made by respondent no. 3 ~~xxx~~ with the respondent no. 2. The
All Indian Association of Ministerial Staff (non-Gazetted)
~~xxxx~~
Unit also espouse the cause of the applicants by filing
representation, but to no avail.

~~xxxx~~ One such representation dtd. 5.12.84 is
annexed herewith and marked as Annexure 'H'.

viii. That the applicants after elapse of several
years failed in all respects to convince the respondents
that they are also entitled to the S(D)A as granted by the
aforesaid 2 memorandums. It will be pertinent to mention

....Contd.

here that the post of Investigators in the Office of the respondents is also a Group 'C' post. The Investigators, in the Office have got an Association in the name and style 'All Indian Association of Investigators, Assam Region'. The applicants are similarly situated with the Investigators. The said Association also espouse its cause ~~for~~ for S(D)A, but till date have failed in all respects. Finally the said Association submitted a representation to the respondent no. 1 on 9.9.88 when he visited the Gauhati Office but till date neither the said Association nor the applicants have been favoured with any reply.

A copy of the said representation dtd. 9.9.88 is annexed herewith and marked as Annexure 'I'.

ix. It will further be pertinent to mention here that the said Association has already preferred an application before this Hon'ble Tribunal for a direction to the respondents for payment of S(D)A and the said application has been registered and numbered as O.A. 131(G) of 1989. The said application has been admitted on 6.9.89. The applicants pray that this application may also be taken up along with the said case in-as-much as the facts involve in both the cases are similar and both the matters can be disposed of by a single order.

ix. That the applicants state that under the facts and circumstances stated above, there cannot be any justification for depriving them for such a long time for their legitimate due by the respondents simply sitting over the matter. The applicants having fulfilled all the criterias laid down in the aforesaid memorandum

....contd.

for entitlements of the S(D)A, the respondents are duty bound to pay the same to the applicants and they cannot be deprived of the same.

x. That the applicants state that if the Presidential memorandum dtd. 14.12.85 and 1.12.88 are to treat the applicants differently with that of the other employees under the same footing and under the same service conditions, then the same Presidential memorandums are discriminatory and liable to be set aside.

xi. That the applicants state that they are in practice transferred from one stations to another but still they are deprived of the benefit of S(D)A.

xii. That the applicants state that no clarification can over-ride the Presidential memorandum granting S(D)A to the Central Govt. Civilian employees posted in the N.E. Region.

xiii. That the applicants state that there cannot be differential treatment among similarly situated employees who are getting the benefit of S(D)A. The applicants should be extended with the same benefit. In this connection, it will be pertinent to mention here that the S(D)A is being paid to the similarly situated employees in other deptt. such as Directorate, Central Ground Water Board, Ministry of Irrigation, Gauhati; Office of the Survey of India, Gauhati; Office of the Dy. Director for SC & ST, Gauhati; Office of the Superintending Engineer, Central Public Works Deptt., Gauhati; Meteorological Deptt., Gauhati and many others.

....contd.

5. Grounds for relief with legal provision.

- i. For that the applicants are having all India transfer liability is apparent on the face of it in-as-much-as the offer of appointment stipulated the same and the employees are transferred from one state to another.
- ii. For that the applicants have fulfilled the basic criteria of 'all India transfer liability' which is the condition precedent for grant of S(D)A as per aforesaid office memorandums, they are very much entitled to receive the said allowance.
- iii. For that the Central Govt. employees is eligible to get the aforesaid allowance in-as-much-as when a non-gazetted staff working in the N.E. Region is transferred from one State to another, then the region when he posted, he experiences the same difficulties by an official coming to this region from other parts of the country. The hardship faced by the employees (Group 'C' & 'D') are similar in nature, if not more than that faced by the other officials posted in the N.E. Region who are getting the said benefit.
- iv. For that the decision to grant S(D)A for the Central Govt. employees working in the N.E. region has been influenced by the fact that the cost of living in this region is comparatively higher than other parts of the country and considering the relevant factors such as backwardness of the area and lack of proper communication facilities, S(D)A must necessarily be paid to all the employees who are posted in the NE Region. Any attempt to exclude the the applicants from such a benefit will be highly discriminatory and violative of Art. 14, 16 and 21 of the Constitution of India.

....contd.

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v. For that many of the Central Govt. Deptts. have granted the S(D)A to all its employees including Group 'C' & 'D' employees. The name of some of them are Regional Office for Health and Family Welfare, Shillong; Odio-Visual Publicity, Payadhara, Song & Drama Division, Kendriya Vidyalaya Sangathan, Central Ground Water Board, National Savings Organisation, S.P.M.D., Weaver Services & Rubber India, Deptt. of Explosives, Office of the Dy. Director of SC & ST, Survey of India, Botanical Survey of India, North Eastern Hill University, Dy. Controller of Defence Accounts, National Malaria Eradication Programme, Military Engg. Service, Central Bureau of Investigation etc. and other under different Ministries. The applicants are similarly situated with the employees of those deptt. and as such, the denial of S(D)A to them is highly discriminatory.

vi. For that the action/inaction of the respondents in the instant case is most arbitrary, unfair, unreasonable and discriminatory and thereby violates the rights guaranteed to the applicants under Article 14 of the Constitution of India.

vii. For that the office memorandums dtd. 14.12.87 and 1.12.88 having laid down in clear terms that all the Central Govt. Civilian employees posted in the NE Region and having all India transfer liability are entitled to the S(D)A, the respondents cannot deny the same to the applicants and they are ~~expressly~~ required to be suitably directed for payment of the same to the applicants.

viii. For that there cannot be any reasonable basis for any differential treatment to the applicants depriving them from the S(A)A.

....Contd.

ix. For that the applicants admittedly having all India transfer liability both in words and in spirit and their seniority and promotions being maintained on all India basis, there cannot be any justified grounds to deny them the S(D)A on some extraneous considerations.

x. For that in any view of the matter, the instant application deserved to be fully allowed with suitable direction to the respondents for payment of SDA to the applicants w.e.f. 1.11.83 as laid down in the office memorandum dtd. 1.12.83.

6. Details of remedies exhausted.

The applicants declare that they have taken of all the remedies available to them under the relevant service rules and they have not been granted any relief whatsoever by the respondents. In spite of submission of numerous representations, the applicants have not been favoured with any reply till date.

7. Matters not previously filed or pending with any other court.

The applicants further declare that they had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any Court or any other authority or any other Bench of the Tribunal, nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought.

On the facts and circumstances, the applicants pray for the following reliefs :-

1. To direct the respondents to give effect to the office memorandum nos. 20014/2/83-E.IV dated 14.12.83 and

.... Contd.

20014//16/86/E.IV/MI(E) dtd. 1.12.83, extending the benefit of 25% S(D)A to all the ~~manhxxxxxx~~ applicants.

- ii. To quash the said O.Ms dtd. 14.12.83 and 1.12.83, if it is held that the applicants are not eligible for grant of 25% S(D)A in terms of the said O.Ms, on the ground that the same is discriminatory giving preferential treatment to one set of employees to that the applicants though they are similarly circumstanced and also for being violative of the provision of the Constitution.
- iii. Cost of this application, and
- iv. Any other relief or reliefs to which the applicants are entitled to and which may be deemed fit and proper by the Honble Tribunal under the facts and circumstances of the case.

9. Interim order prayed for.

Under the facts and circumstances of the instant case, the applicants do not pray for any interim relief. However, they pray that the instant application may be disposed of at an early date.

10.

11. Particulars of the Bank Draft/Postal Order filed in respect of the application fee.

(i) I.P.O. No. DD 657690

(ii) Date 13.9.89

(iii) Payable at : Guwahati. /A.P.

12. List of Enclosures :

As stated in the Index.

....contd.

VERIFICATION.

I, Shri Sailendra Kumar Sarma, son of Sri
Ranak Ch. Sarma, aged about 37 years, working as
Upper Division Clerk in the Office of the respondent
No. iii, do hereby solemnly affirm and verify that the
contents from paragraph 1 to 12 are true to my
knowledge and believe and I have not suppressed any
material fact. I am also authorised to sign this
Verification on behalf of all the applicants.

I sign this verification on this the 18th
day of September, 1989.

Dated, Guwahati,
the ___ Sept 1989.

✓ *Sailendra Kumar Sarma*

(SIGNATURE OF THE APPLICANT)

ANEXURE No. 6-A

Sl. No.	Name and Designation	Date of joining	Place of posting	Father's/Husband's name	Address	SDA received up to
1	2	3	4	5	6	7
1	Smtl. A.D. Patir, LDC	30.06.1999	Guwahati R.O.	Late. K.R. Patir,	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
2	Smtl. S. Maltra, LDC	09.02.1996	Guwahati R.O.	Sri. R.K. Maltra	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
3	Sri. D.K. Basak, Steno, Grade III	20.11.1995	Guwahati R.O.	Sri. Anil Kumar Basak	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
4	Smtl. Arati Khastagir, LDC	14.11.1990	Guwahati R.O.	Sri. P.K. Khastagir	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
5	Sri. S.R. Gogoi, Peon	08.01.1983	Jorhat SRO	Late. Durgadhar Gogoi	NSSO (FOD) Malow Ali, Jorhat, PIN - 785001, Assam.	30.8.1999
6	Sri. P.S. Bezbaruah, Peon	10.01.1993	Silchar SRO	Sri. Nageswar Bezbaruah	NSSO (FOD), C/o. Anjan Kumar Das, Saradmoni Lane, College Road, Silchar - 788004, Cachar.	30.8.1999
7	Sri. Akon Mech, Peon	08.04.1983	Tezpur SRO	Late. Salzar Sing Mech	NSSO (FOD) I.T.I. Road, Near Fire Brigade, Lalmati, Tezpur - 784001 Assam	30.8.1999
8	Sri. N.C. Boro, Peon,	20.04.1989	Guwahati R.O.	Late. Dino Ram Boro	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
9	Sri. M.R. Biswas, Daftry	30.06.1972	Guwahati R.O.	Late. Behari Lal Biswas	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
10	Sri. P.C. Medhi, Peon	04.01.1985 17.01.1994 [From Surplus cell]	Guwahati R.O.	Late. Golok Medhi	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
11	Sri. Niranjan Das,	21.11.1989	Guwahati R.O.	Late. Sona Ram Das	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista	30.8.1999

	Peon,				Road, Dispur, Guwahati - 781006.	
12	Sri. Gobinda Kalita, Peon.	19.04.1983	Guwahati R.O.	Late. Pabin Kalita	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
13	Sri. Rajib Kumar Das, Peon,	04.03.2000	Guwahati R.O.	Late. Bongshi Dhar Das	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
14	Sri. P.C. Talukdar, Peon	04.01.1991	Guwahati R.O.	Sri. Bhabani Chandra Talukdar	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
15	Sri. Maheswar Das, Driver		Guwahati R.O.	Late. Thaneswar Das	NSSO (FOD) Housefed Complex, 3 rd Floor, Central Block, Beltola Basista Road, Dispur, Guwahati - 781006.	30.8.1999
16	Sri. K. Sonowal, Peon,	17.06.1986	Dibrugarh R.O.	Sri. Allram Snowal	NSSO (FOD) Business Centre cum Market, Office Complex, Dibrugarh Development Authority, East Chowkidinglee, Mankatta Road, Dibrugarh - 786001, Assam	30.8.1999
17	Sri. P. Dihingla, Daftary		Dibrugarh R.O.	Sri. Chandra Dihingla	NSSO (FOD) Business Centre cum Market, Office Complex, Dibrugarh Development Authority, East Chowkidinglee, Mankatta Road, Dibrugarh - 786001, Assam	30.8.1999

75-79-1
THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

AX No-7

60

97

O.A.No.131(G) of 1989

Date of decision: The 20th day of February, 1990.

1. All India Association of Investigators, National Sample Survey Organisation, (Field Operation Division), Deptt. of Statistics, Ministry of Planning, Ulubari, Guwahati-781006
2. Shri Agni Prasad Sarma, Unit Secretary, All India Association of Investigators, National Sample Survey Organisation, (Field Operation Division), Deptt. of Statistics, Ministry of Planning, Ulubari, Guwahati-781006

... Petitioners

-Versus-

1. Union of India represented by (a) The Secretary, Ministry of Planning, Deptt. of Statistics, Govt. of India, West Block No.8, Wing No.6, R.K. Puram, New Delhi, (b) The Secretary, Ministry of Finance, New Delhi
2. The Director, National Sample Survey Organisation (Field Operation Division), Deptt. of Statistics, Ministry of Planning, Govt. of India, West Block No.8, Wing No.8, R.K. Puram, New Delhi
3. The Regional Asstt. Director, National Sample Survey Organisation (Field Operation Division), Deptt. of Statistics, Ministry of Planning, Govt. of India, Ulubari, Dr. B.K. Rokali Road, Guwahati-7

.... Respondents

For the applicants: Mr. U.K. Sharma and
Mr. D.M. Duzarbaruah, Advocates

For the respondents: Mr. G. Sarma, Addl. C.G.S.C.

C O R A M:

THE HON'BLE SHRI K.P. ACHARYA, VICE-CHAIRMAN
AND
THE HON'BLE SHRI J.C. ROY, ADMINISTRATIVE MEMBER.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? No
3. Whether Their Lordships wish to see the fair copy of the judgment?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

C. B. Sarma

~~80~~ - ~~22~~ - 76 - 75 - 61 - 98

JUDGMENT

MARYA.J.

In this application under Section 19 of the Administrative Tribunal Act, 1905, the petitioners pray to direct the opposite parties to give effect to the office memorandum No.20014/2/83-E-IV dated 14.12.1983 and office memorandum No.20014/16/86/E.IV/E.11(E) dated 1.12.1988 and further direct the opposite parties to make payment of Special (Duty) Allowance, which the members of the Association are entitled to.

2. Petitioner No.1 is the All India Association of Investigators, National Sample Survey Organisation (Field Operation Division), Department of Statistics, Ministry of Planning, Government of India, Assam Region and petitioner No.2 is the Unit Secretary of the said Association.

3. Shortly stated, the case of the petitioners is that by virtue of the above mentioned office memorandum the Government of India, Ministry of Finance, granted some improvement of facilities to the Civilian Employees of the Central Government serving in the North Eastern Region relating to their conditions of service. The Ministry had allowed Special (Duty) Allowance to the Central Government Civilian Employees who have All India Transfer liability and according to the petitioner they are entitled to such Special (Duty) Allowance at the rate of 25% of their basic pay subject to a maximum of Rs.400/- per month. Office memorandum of 1.12.1988 brought about some amendments especially regarding the amount payable to such civilian employees and it was prescribed therein that such employees will be entitled to 12 1/2% of their basic.....

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the pay subject to a maximum of Rs.1000/- . Furthermore, as found in the said office memorandum that such amount will be payable to those civilian employees who have All India Transfer liability. Hence this application has been filed with the aforesaid prayer.

4. The crux of the counter filed on behalf of the opposite parties goes to show that the investigators do not have an All India Transfer liability and they are only transferred to any part of India when a request is made by a particular employee and such request is accepted on compassionate ground for the convenience of the particular employee. Hence, going to the opposite parties, the members of the investigators, namely, the members of the Association are not entitled to Special (Duty) Allowance.

5. We have heard Mr. O.K. Sharma, the learned counsel for the petitioners, leading Mr. H.M. Duxterbaruah, and Mr. G. Sarma, the learned Addl. C.G.S.C., at some length. The admitted position is that by virtue of the above mentioned office memorandum the Ministry of Finance by order of the Hon'ble President of India granted a Special (Duty) Allowance at the rate of 25% of the basic pay subject to a ceiling of Rs.400/- per month on posting to any station in the North Eastern Region and to those who have an All India Transfer liability. Further admitted position is that by virtue of the memorandum dated 1.12.1900, the allowance has been raised to 12½% of the basic pay subject to a maximum of Rs.1000/- per month. The only disputed question is that the members of the Association are not entitled to any Special (Duty) Allowance because they are actually never transferred outside the State and.....

If any such transfer is made it is at the request of particular employee.

6. Before we express our opinion regarding the entitlement of the investigators to a Special (Duty) Allowance and whether they have an All India Transfer liability it is worthwhile to mention that at a particular time, several cases of this nature came up before the Guwahati Bench and the Guwahati Bench accepted the position that though by virtue of those memorandums the employees having All India Transfer liability are entitled to Special (Duty) Allowance, yet such allowance could be paid to those persons who have been actually transferred. Cases of similar nature came up before the Calcutta Bench and while disposing of those cases the Calcutta Bench held that once there is a transfer liability on All India basis, cases of Central Government employees covered under the above mentioned memorandums on one of the conditions of service such employees were entitled to Special (Duty) Allowance irrespective of the fact as to whether the employee has been transferred or not. Because of the conflicting views expressed by the two different Benches, Hon'ble Chairman of the Principal Bench constituted a Full Bench to resolve the controversy and accordingly a full Bench heard O.A.No.16/88, O.A.No.17/88 and O.A.No.18/88. They were disposed of on 12.4.1989. After considering the views of the Calcutta Bench and that of the Guwahati Bench, the Full Bench held as follows:

"We are of the opinion that when the conditions of service impose an All India service liability and so long as that liability continues to exist and has not been revoked by an order of the competent authority, it is not open to the Government to deny the benefit of the Special (Duty) Allowance to any employee on the ground that the All India Transfer liability has not been in fact enforced."

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7. The Full Bench approved the view taken by the Calcutta Bench and thus the law laid down by the Guwahati Bench was overruled. After pronouncement of the judgment of the Full Bench, this Bench has disposed of several cases of the present nature following the view of the Full Bench holding that those employees of different departments posted in the North Eastern Region having All India Transfer liability are entitled to Special (Duty) Allowance. Applying the principles laid down by the Full Bench and the precedents covering the cases of the present nature the only question now remaining to be determined is to whether the Investigators, who are members of the Association are entitled to Special (Duty) Allowance. The petitioners maintained that the Investigators, who are being represented by the petitioners are liable to be transferred to any part of India. This fact has been admitted by the opposite parties in their counter. In paragraph 2 of the counter it is stated as follows:

"The Investigators of National Sample Survey Organisation (Field Operations Divisions) working in North Eastern Region have all India Transfer liability."

In another branch it is stated as follows:

"They have been recruited on State basis and are liable to be transferred within the state only. As they do not have an All India Transfer liability they are not entitled to the payment of Special (Duty) Allowance in terms of instructions contained in the O.M. dated 14.12.1903 and 1.12.1908 of the Ministry of Finance."

8. On a perusal of Annexure '1', which is a letter of appointment issued in favour of one Investigator, Shri Bondukar Marjary, it is found in serial (iv) as follows:

"The appointment carries with it the liability to serve in any part of India."

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Thus the oral statement of the petitioners and the first statement quoted above from the counter are unimpeachably gaining corroboration from the documentary evidence. The stand taken by the opposite parties that transfer on All India basis is effected only on requests received from the employees does not at all weight with us in view of the dictum laid down by the Full Bench, namely, once there is a condition imposed that a particular employee has an All India Transfer liability then he is automatically entitled to Special (Duty) Allowance if such employee is a civilian employee posted in North Eastern Region. Therefore, we find no merit in the contention advanced by Mr. G. Sermo, the learned Addl. C.G.S.C., trying to repudiate the contention of Mr. U.K. Sharma, the learned counsel for the petitioner.

9. In such circumstances, we are of the view that the Investigators, who are represented by petitioner No.1, are entitled to Special (Duty) Allowance at the rate mentioned in the office memorandums dated 14.12.1983 and 1.12.1988. We, therefore, direct the amount to which the Investigators are entitled according to the norms laid down by the Ministry of Finance be calculated with effect from 1.11.1983 or from the date on which a particular employee joined his post (whichever is later) and such amount be paid to the Investigators within three months from the date of receipt of a copy of this judgment.

10. Thus the application stands allowed leaving the parties to bear their own costs.

TRUE COPY

20/12/89

(J.C.ROU)
26-2-99
MEMBER

sd/-

(K.P.ACHARYA)
24-2-90

VICE-CHIEFMAN

O.A.No.138(G) of 1989

Date of decision : The 20th Day of February, 1990.

Shri. Sailendra Kr. Sarma, son of
Shri. Kanak Ch. Sarma, aged about 37 years
working as Upper Division Clerk in the
Office of the National Sample Survey
Organisation (Field Operation Division),
Deptt. of Statistics, Ministry of Planning,
Ulubari, Guwahati-7.

2. Shri Chitta Ranjan Namasudra
3. Smt Manjusha Raha
4. Smt Ava Chakraborty
5. Shri Dilip Debnath
6. Smt Rekha Das
7. Shri Gaurab Dev
8. Smt Geeta Purkayastha
9. Shri Pradip Kr. Sarkar
10. Shri Nagen Dalmay
11. Shri Samir Mukherjee

..... Petitioners

-Versus-

1. Union of India represented by
(a) The Secretary, Ministry of
Planning, Deptt. of Statistics,
Government of India, West Block No.8,
Wing No.6, R.K. Puram, New Delhi
(b) The Secretary, Government of India
Ministry of Finance, New Delhi
2. The Director, National Sample Survey
Organisation, (Field Operation Division)
Deptt. of Statistics, Ministry of Plann-
ing, Govt of India, West Block No.8,
Wing No.6, R.K. Puram, New Delhi
3. The Regional Asstt. Director, National
Sample Survey Organisation, (Field Op-
eration Division), Deptt. of Statistics,
Ministry of Planning, Govt of India,
Ulubari, Dr. B.K. Kakoti Road, Guwahati-7

..... Respondents

For the applicants - Mr. B.K. Sharma,
Mr. B.M. Buzarbaruah and
Smt Archana Sharma, Advocates

For the respondents - Mr. G. Sarma, Addl. C.G.S.C.

C O R A M:

THE HON'BLE SHRI K.P. ACHARYA, VICE-CHAIRMAN
AND
THE HON'BLE SHRI J.C. ROY, ADMINISTRATIVE MEMBER.

1. Whether reporters of local papers may be allowed to
see the judgment?
2. To be referred to the Reporters or not? / / /
3. Whether Their Lordships wish to see the fair copy of
the judgment?

Chaitanya

ACHARYA, J.

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In this application under Section 19 of the Administrative Tribunal Act, 1985, the petitioners pray to issue appropriate directions to the Opposite parties to give effect to office memorandum bearing No. 20014/2/83-E/IV dated 14.12.1983 and the office memorandum No. 20014/16/86/E.IV/E.II(B) dated 1.12.1988 and further prayer is for consequential reliefs.

2. Shortly stated, the case of the petitioners (11 in number) is that the petitioners 1 to 4 are Upper Division Clerks, petitioners 5 to 10 are Lower Division Clerks and petitioner 11 is a Stenographer attached to the office of the National Sample Survey Organisation, (Field Operation Division), Department of Statistics, Ministry of Planning, Government of India, stationed at Guwahati. Further case of the petitioners is that each of them have been saddled with All India Transfer liability and so they are entitled to the financial benefits conferred in the above mentioned office memorandum and such financial benefits having been denied to the petitioners appropriate directions as prayed for be allowed in their favour.

3. Despite the fact that several adjournments were given to the opposite parties to file counter no counter having been filed we had no option, but to proceed with the hearing of the case on merits without any further waiting for filing of counter.

In the present case we heard Mr. B.K. Sharma, the learned counsel for the petitioners and Mr. G. Sarma, the learned Addl. C.G.S.C., appearing on behalf of the opposite parties at some length. Before we arrive at our findings it is worthwhile to narrate briefly, the history of different cases of similar nature, which were dealt with by the Central Administrative Tribunal of Guwahati Bench and that of the Calcutta Bench.

5. At one point of time the Guwahati Bench was of the view that unless the All India Transfer liability imposed on a particular civilian employee of the Central Government posted in any station of the North Eastern Region has not been given effect to, the particular employee is not entitled to Special (Duty) Allowance as envisaged under the above mentioned office memorandum. Contrary view was expressed by the Calcutta Bench in cases of similar nature and the Calcutta Bench was of the view that once All India Transfer liability has been imposed over a particular employee, he or she is entitled to Special (Duty) Allowance. In order to resolve this controversy the Hon'ble Chairman constituted a Full Bench, which heard O.A.No.16/88, O.A.No.17/88 and O.A.No.18/88 and which were disposed of on 12.4.1989. All the above mentioned cases were disposed by a common judgment after considering the views of the Calcutta Bench and that of the Guwahati Bench. Ultimately, the Full Bench held as follows:

" We are of the opinion that when the conditions of service impose an All India transfer liability and so long as that liability continues to exist and has not been revoked by an order of the competent authority, it is not open to the Government to deny the benefit of the Special (Duty)

Allowance.....

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Allowance to any employee on the ground that the All India Transfer liability has not been in fact enforced."

We are bound by the view expressed by the Full Bench and, therefore, in many cases of similar nature this Bench held that the civilian employees posted in the North Eastern Region are entitled to the financial benefits conferred under the said office memorandum and till now, neither the view of the Full Bench nor that of the Guwahati Bench expressed in several cases disposed of after the pronouncement of the judgment of the Full Bench has been set aside by the highest court of the land. Therefore, we are of the view that irrespective of the fact as to whether the All India Transfer liability has been given effect to or not by mere imposition of All India Transfer liability in the case of any employee, he/she is bound to derive the financial benefits conferred under the above mentioned office memorandum.

7. Now coming to the questions of fact as to whether the petitioners have been saddled with All India Transfer liability, at the outset, it may be mentioned that the averments made by the petitioners that in their respective letters of appointments, All India Transfer liability has been imposed on them as one of the conditions of service has not been denied by the opposite parties. One would find from Annexure 'A' (letter of appointment issued in favour of petitioner No.11, Shri Samir Mukherjee) that the place of duty will be in Guwahati, but the appointment carries with it the liability to serve in any part of India. Annexure 'B' pertains to the letter of appointment issued in favour of petitioner No.5, Shri Dilip Dobnath. The very same condition...

on has been imposed in his letter of appointment. There has been any letter of appointment issued in favour of any of the petitioners not imposing All India Transfer liability, the opposite parties would have certainly filed such letter of appointment to counter the assertion of the petitioners. Therefore, we have no hesitation in our mind to hold that the case put forward by the petitioners that they have an All India Transfer liability is nothing but true. Therefore, we hold that the petitioners are entitled to Special (Duty) Allowance at the rate prescribed in the memorandum dated 14.12.1983 and memorandum dated 1.12.1988 and it is further directed that the amount to which the petitioners are entitled as per the said office memorandum dated 14.12.1983 and memorandum dated 1.12.1988, each of them be paid with effect from 1.11.1983 or from the date on which a particular employee joined his post (whichever is later) within four months from the date of receipt of a copy of this judgment.

Thus the application stands allowed leaving the parties to bear their own costs.

sd/-

(J.C.ROY)
28-2-90
MEMBER

sd/-

(K.P.ACHARYA)
28-2-90
VICE-CHAIRMAN

TRUE COPY

Deputy R.

30.7.70

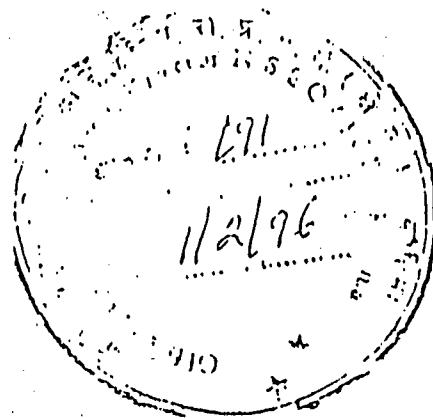
भारत सरकार
योजना मंत्रालय
सांख्यिकी विभाग

राष्ट्रीय प्रतिवर्ष सर्वेक्षण संगठन

(क्षेत्र संकाय प्रभाग)

'सी' खण्ड, तृतीय तल,
पुष्पा भवन, मदनमोरी रोड,
नई दिल्ली-110062

सं.
No. A-46011/3/94-O&M (Vol. II)



Annexin - 9
Telegram :- STATSURVEY
GOVERNMENT OF INDIA
Ministry of Planning
Department of Statistics
NATIONAL SAMPLE SURVEY
ORGANISATION
(Field Operations Division)
"C" Block, 3rd Floor,
Pushpa Bhavan, Madangir Road,
New Delhi-110062
दिनांक.....
Dated the 1 JAN 1996

MEMORANDUM

Subject:- Special Duty Allowance- All India Transfer Liability.

Regional Asstt. Director Kohima may please refer to his letter No.B-11011/2/95-KMA/1885, dated 19.9.95 on the above cited subject.

After going through the old records available in the Section it is seen that some of the staff members i.e. Investigator Steno. Gr.III, Hindi Translator, L.D.C.s & Group 'D' have filed a petition in the C.A.T., Gauhati Bench at Gauhati for the payment of Special Duty Allowance and the same has been decided by the C.A.T. Gauhati Bench, Guwahati with the direction that the petitioners be paid spacial duty allowance w.e.f. 1.11.83 or from the date on which the petitioners joined their respective posts in the N.E. Region (whichever is later). Accordingly this Division issued instructions to Regional Asstt. Director's of N.E. Regions for payment of Special Duty Allowance to all catagories of staff. (copy enclosed)

In view of the facts stated above, there is no need to reopen the case and present position may continue.

Encl:- As above.

(N.M. SHARMA)
JOINT DIRECTOR
Tel.No. 6985284

To

✓ Regional Asstt. Director
NSSO (FOD),
Kohima.

DDO

Reference Paper
General Lib.

to us necessary action - PL
No. 11(31/95-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

87-
Ax No 10 1A

New Delhi, the 12th Jan. 1996

OFFICE MEMORANDUM

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

The undersigned is directed to refer to this Department's OM No. 2001/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 2001/16/86-E.IV/E.II(B) dt. 1.12.88 on the subject mentioned above.

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

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

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

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

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

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

i) the amount already paid on account of SDA to the ineligible persons on or before 20.9.94 will be waived.

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

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

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

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

(C. Balachandran).

Under Secy to the Govt. of India.

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

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

89-34

Annexure - 11

সংসদীয় প্রশাসন
সংসদীয় প্রশাসন
সংসদীয় প্রশাসন
সংসদীয় প্রশাসন
(সংসদীয় প্রশাসন)
"সি" ব্লক, পি.এ.এ.
পূর্ব পূর্ব, মন্ত্রণালয়, সি.
নং ফাইল-110002



EX-100-100
TELEGRAMS - STATIS REPT
GOVERNMENT OF INDIA
Ministry of Planning
Department of Statistics
NATIONAL SAMPLE SURVEY
ORGANISATION
Field Operations Division
"C" wing, 3rd Floor,
Pashpa Bhawan, Madanji Road,
New Delhi-110062

Attention of
Mr. K. V. B. K. Murthy
Gen. Secretary

No. A-46011/3/94-O.M.(Vol.III)

DATE
Dated 1st November '99.

OFFICE MEMORANDUM

Subject: Representations of staff of NSSO(FOD), Shillong on stoppage and recovery of Special Duty Allowance.

Superintendent & Head of Office, NSSO(FOD), Shillong may please refer to his letter No.128/Mogh./99/1495, dated 5.10.99 forwarding therewith 13 representations of staff on the subject cited above. In this connection the position is explained as under:-

The Hon'ble Supreme Court in their judgement delivered on 20.9.94 (in Civil Appeal No.3251 of 1993) upheld the submissions of the Govt. of India that Central Govt. 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 SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The Apex Court further added that the grant of this allowance only to the officers transferred from outside the region to this Region would not be violative of the provision contained in Article 14 of the Constitution as well as the equal pay doctrine. The Hon'ble Court also directed that whatever amount has already been paid to the respondents or for that matter to other similarly situated employees would not be recovered from them in so far as this allowance is concerned.

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

- 1) 'the amount already paid on account of SDA to the ineligible persons on or before 20.9.1994 will be waived; and

Contd..p.2/-

7983326

संदेश

भारत सरकार

योगना, मिनालय

संविधान विभाग

राष्ट्रीय प्रतिवर्ष सर्वेक्षण संगठन

(क्षेत्र संकाय प्रभाग)

"सी" ब्लॉक, तृतीय तल,

पुष्पबाग, मदनगिर रोड,

नई दिल्ली-110062



7983326

Telegram :--57473/SECURITY

GOVERNMENT OF INDIA

Ministry of Planning

Department of Statistics

NATIONAL SAMPLE SURVEY ORGANISATION

(Field Operations Division)

"C" wing, 3rd Floor,

Pashpa Bhavan, Madangir Road,

New Delhi-110062

- 2 -

दिनांक

Dated

- 1 NOV 1999

0001-ADM-1-

(11) the amount paid on account of SDA to ineligible persons after 20.9.1994 (which also includes those cases in respect of which the allowance was pertaining to the period prior to 20.9.1994) will be recovered.

Attention of the Head of Office is also invited to Govt. of India, Ministry of Finance O.M.No.11(3)/95-E.II(B), dated 12.1.1996. He is requested to recover the amount already paid in easy instalments may be 12 or so, so that staff are not put to inconvenience. All representations are considered and rejected on the above decision.

All concerned may please be informed accordingly.

To
The Head of Office,
NSSO(FOD), Shillong.

N.O.O.:

(SARITA PURI)
DEPUTY DIRECTOR(ADMN.)

Copy for information and necessary action to:-

- i) The Head of Offices, NSSO(FOD), Gauhati/Port Blair/Kohima.
- ii) Shri K.V.K. Murthy, General Secretary, All India Association of Asstt. Superintendents, NSSO(FOD).

(SARITA PURI)
DEPUTY DIRECTOR(ADMN.)

- 36 - 915 Annexure - 20 12 113
Annexure to

NO. 1(76)ACCTIS/ASM/99/
GOVT. OF INDIA
MINISTRY OF PLANNING
DEPARTMENT OF STATISTICS
NATIONAL SAMPLE SURVEY ORGANISATION
(FIELD OPERATIONS DIVISION)
HOUSEFED COMPLEX
BELTOLA, GUWAHATI-781 006

DATE : 05.11.99

OFFICE MEMORANDUM

Sub Representations of Staff of NSSO(FOD), Shillong on stoppage and recovery of Special Duty Allowance.

As per the O.M.No. A-46011/3/94-OM(Vol.III) dated 01.11.99, it has been decided to recover the S.D.A. amount already paid to ineligible officers/officials in the following manner.

SL. NO.	RANGE OF AMT. TO BE RECOVERED	NO. OF INSTALMENT	REMARKS
1.	UPTO 3000/-	12	IF ANY ONE WANTS TO COMPLETE HIS RECOVERIES IN LESS THAN PROPOSED INSTALMENTS ONE CAN INFORM THE DDO IN WRITING.
2.	3001 - 9000/-	24	-DO-
3.	9001-15000/-	36	-DO-
4.	15001 AND ABOVE	42	-DO-

It is clear from the table and the list of recoverable amount that highest amount to be recovered from a person in a month does not exceed Rs.520/-. Thus, it is expected none of the officers/officials has to face financial inconvenience due to recovery.

Recovery will be effected from November'99.

To

All concerned.

(H. BORAH)

DEPUTY DIRECTOR

- Copy to : 1. Pay bill Dealing Assistant for necessary action.
2. Ms. Sarita Puri, Deputy Director(A), New Delhi.
3. Joint Director(NEZ), Guwahati for information please

(H. BORAH)
DEPUTY DIRECTOR

21-92
Annexure - 13
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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.189 of 1996.

Date of Order: This the 27th Day of October 1998.

HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN

HON'BLE MR.G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Shri K.C.Sharma & Others.

(All the applicants are working under the Deputy Assistant Director General(MS), Govt. Medical Store Depot, P.O. Gopinath Nagar, Guwahati-16, in different capacities as Group B, C & D categories). ... Applicant.

By Advocate Mr.J.L.Sarkar, Mr.M.Chanda

-Vs-

1. Union of India ,
(Through Secretary to the Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110011.
2. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.
3. The Deputy Assistant Director General(MS)
Govt. Medical Store Depot, A.K.Azad Road,
P.O.Gopinath Nagar,
Guwahati-781016. ... Respondents.

By Advocate Mr.S.Ali, Sr.C.G.S.C.

O R D E R

BARUAH, J. (VC):

In this application the applicants have challenged the impugned Annexure-5 letter dated 27-8-96, issued by the Deputy Assistant Director General, Ministry of Health & Family Welfare stopping the Special Duty Allowance on the basis of Annexure-3, office Memorandum dated.12-1-1996 issued by the Under Secretary, Government of India, Ministry of Finance, Department of Expenditure. They also seek certain directions. Facts are :-

The applicants are Group 'C' and 'D' employees of the Government Medical Store Depot at Guwahati in various capacities. The applicants used to receive Special Duty Allowance(SDA) pursuant to the judgment dated 8-2-91 passed by this Tribunal in O.A.No.208 of 1991. The respondents

contd/-

in the said O.A. being aggrieved by and dissatisfied with the order of this Tribunal, approached the Supreme Court by filing SLP No.9381/92(Annexure 2 to the application. When the SLP was moved similar matters regarding SDA were pending before the Supreme Court. The Supreme Court after noticing the Special Leave Petition and passed the following order :-

"There is a delay of 347 days in filing this SLP for which there is no cogent explanation.

Learned counsel for the petitioners submitted that the point involved for decision on merits in this S.L.P is important and is also involved in some other pending SLPs, one of which is SLP(C)No.13710/87. In our opinion this cannot be a ground for condonation of the inordinate delay for which no cogent explanation has been offered by the petitioners.

I.A.No.1 for condonation of delay is rejected. Consequent the SLP is dismissed as time barred."



The aforesaid order dated 23-7-92 of the Supreme Court was passed after this Tribunal's order dated 8-2-91 in O.A.No.208/91. The applicants have been getting SDA on the basis of the order of this Tribunal. Meanwhile, the Supreme Court in its judgment delivered on 20-9-94 (in Civil Appeal No.3251 of 1993) held that the Central Government Civilian Employees who have all India transfer liability are entitled to receive of SDA, on being posted in any station in the N.E. Region from outside the Region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability. The Apex Court further held that benefit of this allowance is available only to the officers transferred from outside the NE Region to this Region. This would not be violative of the provisions contained in the Article 14 of the constitution as well as the equal pay doctrine.

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contd/-

After the disposal of the aforesaid application by the Supreme Court, Annexure 3 order was issued by the Under Secretary, Government of India, Ministry of Finance, directing the department concerned to stop payment of SDA on the ground that the local employees were not entitled to get SDA. Pursuant to the said Annexure 3 O.M. dated. 12-1-1996, Annexure 5 order was issued, Hence the present application. In due course the respondent have entered appearance and have filed written statement. This Tribunal issued notice to the respondents to show cause as to why the present application should not be admitted. After the reply was filed, the application had been admitted. The respondents urged that the reply to the show cause might be treated as written statement. In the said reply the respondents have refuted the claim of the applicants. The respondents have submitted that in view of the order passed by the Supreme Court the applicants cannot claim any SDA.

We heard learned counsel for both sides. Mr.J.L. Sarkar learned counsel for the applicants submitted before us that in so far as the present case was concerned after dismissal of the SLP by Supreme Court as barred by limitation, the Tribunal's order dated 8-2-91 passed in O.A. No.208/91 became final. Mr.J.L.Sarkar further submitted that the Supreme Court has not passed any order nullifying the order passed by this Tribunal till now. This Tribunal had no authority to alter the same. Mr.Sarkar further submitted that the Supreme Court passed the order dated 23-7-92 in other cases stating that local candidates would

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would not be entitled to get the SDA. But that would not affect the present case which reached its finality.

On the rival contention of the parties it is now to be seen whether the applicants are entitled to get the SDA. This Tribunal cannot pass any order reviewing order passed earlier by this Tribunal as the Supreme Court had dismissed the SLP against the said order of the Tribunal. Therefore, we agree with the submissions of Mr. Sarkar that the applicants are entitled to get the SDA on the basis of the judgment passed by this Tribunal in O.A. 208/91. In view of the above circumstances the Annexure 3 O.M. dated 12-1-96 shall not have any effect so far the present applicants are concerned, unless the Supreme Court reviews the order dated 8-2-91 passed by this Tribunal in O.A. No. 208/91. Therefore, we set aside the Annexure 5 order. The applicants shall continue to get the SDA.

Application is accordingly disposed of. No order as to costs.

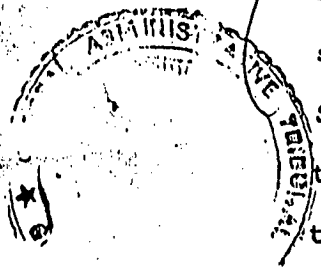
Sd/- VICE CHAIRMAN
Sd/- MEMBER (ADMN)

Certified to be true Copy
प्रमाणित प्रतिलिपि

(Signature)
Section Officer (A)
Central Administrative Tribunal
Government of India
New Delhi

21/1/99

operative part



560463
Mr. Nav
F20377

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Ax No 14 118

In the Central Administrative Tribunal

Cumshati Bench : : Cumshati.

Title of the Suit : O.A. No. 369 /99
All India Association of Investigators
S. K. Sharma & Ors.
~~All India Association of Investigators~~
~~Association~~
Association and others Applicants.

- Versus -

Union of India and others Respondents.

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2.	-	Verification	14
3.	1, 2 & 3	An extract of O.M. dated 14.12.83 and C.F. dt. 1.12.85 and 22.7.98	
4.	4	A copy of judgment and order of O.A. No. 131/89 dt. 20.2.90	
5.	5, 6, & 7	Copy of telegram dt. 25.6.96 and memorandum dt. 1.1.96 and representation dt. 28.11.98	
6.	8 & 9	Copy of the O.M. dt. 12.1.96	
7.	10 & 11	Copy of the O.M. dt. 1.11.99 and 5.11.99	
8.	12 & 13	Copy of the judgment O.A. No. 189/96 and O.A. No. 101/97 order dt. 31.3.99, 102 OA No. 107/99	

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In the Central Administrative Tribunal

Guwahati Bench : : Guwahati.

(An application under Section 19 of the Central Administrative Tribunal Act, 1985)

G.A. NO. _____/99

Between

1. All India Association of Investigators,
National Sample Survey Organisation,
(Field Operation Division),
Deptt. of Statistics, Ministry of
Planning and Programme Implementation,
Central Block, House Fed Complex,
Basistha Road, Dispur,
Guwahati.
2. Shri Gushobhan Talukdar
Son of Shri Nandeswar Talukdar,
Unit Secretary,
All India Association of Investigators,
National Sample Survey Organisation,
(Field Division), Deptt. of Statistics,
Ministry of Planning Programme -
Implementation, Central Block,
House Fed Complex, Basistha Road,
Dispur, Guwahati.

3. Shri Bheer Bardoloi
Son of Shri A.K. Bardoloi
Investigator, NSSO, (FOD),
Central Block, House Fed Complex,
Basistha Road, Dispur,
Guwahati-6.

4. Shri Siddharta Bhattacharjee
Son of Late S.C. Bhattacharjee,
Investigator, NSSO(FOD),
Silchar Sub Regional Office,
Showic Building, Dapur,
Sx Silchar-3.

..... Applicants.

-Versus-

1. Union of India,
Represented by the Secretary,
Ministry of Planning and Programme,
Implementation, Sardar Patel Bhawan,
Parliament Street, New Delhi.

2. Deputy Director General,
Field Operation Division,
NSSO Pashpa Bhawan,
Maden Sir Road,
New Delhi -62.

3. Deputy Director,
N.S.S.O. (FOD),
Central Block, House Fed Complex,
Basistha Road, Dispur, Guwahati-6

4. Deputy Director (Administrative)
H.S.S.O.(FOD),
Pachpa Bhawan , Madan Gori Road,
New Delhi -62.

..... Respondents.

DETAILS OF APPLICATION.

1. Particulars for orders against which this application is made.

This application is made against the impugned order of recovery as well as stoppage of payment of Special Duty Allowance (SDA) vide office memorandum issued under letter No. A-46911/3/94-OM(Vol.III) dated 1.11.99 and a letter bearing No. I(76) D.A.S.M./Accts/98-99/4070-77 dated 22.9.99 in pursuance of the Office Memorandum issued by the Ministry of Finance, Govt. of India, letter No. II(3)/95-E.II(B) dated 12.1.96 whereby it is directed to make recovery of the Special Duty Allowance paid ^{to} of the (members of) the Applicants (Association) after 20.9.94 and also for stoppage of payment of Special Duty Allowance in view of the decision taken by the Govt. of India, Ministry of Finance and also praying for a directed upon the respondents for continuation of the payment of SDA to all the (members of the) applicants (Association) and also for setting aside impugned orders of recovery of SDA issued under O.M. dated 12.1.96, 1.11.99 and also under Letter No. 22.9.99 and also against under dated 5.11.99.

2. Limitation.

The applicants declare that this application is filed within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

3. Jurisdiction of the Tribunal.

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

4. Facts of the case.

4.1. That all the applicants are the citizens of India as such, ^{they} as are entitled to all the rights, privileges, and protections as guaranteed under the provision of the Constitution of India.

The applicant No.1 is a recognised association of Investigators of National Sample Survey Organization (Field Operation) ^{Division}, Assam Unit, Department of Statistics and Programme Implementation under the Ministry of Planning and Programme Implementation, Govt. of India, New Delhi. The members of the association are serving as Investigators in the cadre of Group 'C'. The applicant No.2 is the Unit Secretary of the said association serving in the cadre of Investigator and the applicant No. 3 and 4 are the affected members of the association.

✓ 4.2. That your applicants pray for permission to move this application jointly under the provision laid down in section 4, 5(a) and (b) of the Administrative Tribunal's Procedure Rules 1987 as the grievances and the relief are common in this application. All the members of the.

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2 applicant's association belong to Group B and C Category.)

4.3. That the Govt. 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.E.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 basic pay subject to ceiling of Rs. 400/- per month on posting to any station in the North Eastern Region. The relevant portion of the O.M. 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/- per month on posting to any station in the North East Region. Such of these employees who are exempt 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/- per month. Special Allowance like Special Compensatory (Remote) Locality Allowance, Construction allowance and project allowance will be drawn separately".

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An extract of Office Memorandum dated 14.12.1983 and C.R. dated 1.12.1988 and 22.7.98 are annexed hereto and the same are marked as Annexure- 1, 2 and 3 respectively.

4.4. That your applicants being highly aggrieved due to non payment of Special Duty Allowance approached this Hon'ble Tribunal through O.A. No. ~~131(6)/89~~ ^{131/89}. The said application was duly contested by the present Respondents and the O.A. No. (131/1989)^{131/1989} was decided on 20.2.1990 wherein the Hon'ble Tribunal Guwahati Bench found that the members of the applicants association are entitled to get the SDA and accordingly it was directed in para 9 of the said Judgement as follows :

131/89
if non owing ~~"In such circumstances, we are of the view that"~~

"In such circumstances, we are of the view that the Investigators, who are represented by petitioner No.1, are entitled to Special (Duty) Allowance at the rate mentioned in the office memorandum dated 14.12.1983 and 1.12.1988. We, therefore, direct the amount to which the Investigators are entitled according to the norms laid down by the Ministry of Finance be calculated with effect from 1.11.1983 or from the date on which a particular employee joined his post (whichever is later) and such amount be paid to the Investigator within three months from the date of receipt of a copy of this judgment.

Thus the application stands allowed leaving the parties to bear their own costs."

~~From the above application stands allowed~~

From above it is quite clear that the Hon'ble Tribunal declared their entitlement of grant of SDA to the ^{applicants.} (members of the association.)

A copy of judgement and order of O.A. No. 138(6)/89 ^{131/89} dated 26.2.90 is annexed as Annexure-3.

4.5 That your applicants beg to state that the said judgment and order dated 26.2.90 was accepted and implemented by the respondents following the decision of the Director & H.B.S.O. New Delhi which was communicated telegraphically on 25.6.1990.

It is categorically stated that the present respondents did not prefer any appeal against the judgment and order dated 26.2.1990 passed in O.A. No. ^{138(6)/89} (131/89) in respect of the applicants (association) ^{after} ^{131/88} latter accepted the said order of the judgment and paid arrears as well as the current SDA to the ~~(members of the)~~ applicants' (association).

However, Surprisingly the respondents without any notice stopped payment of SDA from the month of February, 1997 to January, 1998 for the reasons best known by them. In this connection it is relevant to mention here that the joint Director, New Delhi vide his memorandum bearing No. A-46011/3/94-O & M (Vol.II) dated 1.1.1996 instructed the Regional Asstt. Director, Kohima that in view of the judgment by the Hon'ble Tribunal declaring entitlement of grant of SDA in respect of Investigator there is no need to reopen the case and also directed to continue present position i.e. to continue to pay SDA to the members of the Investigators' association.

NO
SLP
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Stopped
Feb/97

But inspite of such instructions the payment of SDA was withheld for the period from ^{October 1998} February '97 to ^{to till date} January '98. However the applicants' (association submitted their representation) demanding payment of SDA following the resolution taken by the association in the meeting held on 14/15/11-98. It is relevant to mention here that the payment of SDA again restored in respect of investigators from the month of February, 1998.) X

A copy of the telegram dated 25.6.98 and memorandum dated 1.1.96 (and representation dated 23.11.98) are enclosed as Annexures- 4, 5 (and 6) X respectively.

✓ 4.6. That your applicants beg to state that the Deputy Director (Administration) New Delhi vide his impugned memorandum issued under letter No. A.46011/3/94-OM (Vol.III) dated 1.11.99 informed the local head office NSSO (ICD) Guwahati while disposing the representation of staff of NSSO (ICD) Shillong on stoppage and recovery of SDA stated that in view of the judgement of the Hon'ble Supreme Court in Civil Appeal No. 3251 of 1993 and also in view of the office memorandum No. 11(3)/95-E.II(B) dated 12.1.96 in easy instalment and rejected all the representation in view of the Supreme Court Judgment and O.M. dated 12.1.96 and also directed to take necessary action accordingly to all Head Offices, Guwahati.

In this connection it is stated that the O.M. dated 12.1.96 was issued by the Ministry of Finance, Deptt. of Expenditure in view of the Hon'ble Supreme Court Judgment and order passed in the Civil Appeal No. 3251/1993, but the respondents failed to appreciate the fact that the members of the applicants association have been drawing the SDA in terms of the judgment and order dated 28.2.1990 passed in C.A. no. ^{138 Co 2/79} ~~131/64/1989~~ whereby the Hon'ble Tribunal declared their entitlement of drawal of SDA. Therefore the office memorandum dated 12.1.96 has no application in the instant case of the applicants for the purpose of drawal of SDA as because the judgment and order dated 28.2.90 is still in force and the executive order dated 12.1.96 cannot curtail the right of entitlement of grant of SDA when the same was passed by the Hon'ble Tribunal as such the applicants are entitled to drawal of SDA so long the judgment and order dated 28.2.90 is in force.

Judgment is still in force

A copy of the C.M. dated 12.1.96 is enclosed as annexe ^{to} 8.

4.7. Most surprisingly the Deputy Director (Administration), New Delhi vide impugned O.M. issued under letter I.46011/3/94-CN (Vol.III) dated 1.11.99 informed the local Head offices of WSSO (IOD), Guwahati while disposing the representation of the staff of WSSO (IOD), Shillong on stoppage and recovery of SDA stated that in view of the judgement of the Hon'ble Supreme ^{court} in civil Appeal No. 3251/1993 and also in view of the O.M. No. 11(3)/95-E.II(D) dated 12.1.96 requested to recover the amount of SDA already paid after 20.9.94 in easy instalment and rejected.

representations in view of the Supreme Court Judgment and O.M. dated 12.1.96 and also directed to take necessary action accordingly to all head offices at Guwahati.

In pursuance of O.M. dated 1.11.99 the Deputy Director ESSO (FOD) Guwahati vide his O.M. issued under letter No. 1(76)Accts/AM/99 dated 5.11.99 whereby it is directed to recover the SDA amount thereby paid to in eligible officers on instalments not exceeding Rs. 520/- in any month, therefore, the decision of stoppage as well as recovery of SDA which was communicated through O.M. dated 1.11.99, sought to be implemented vide O.M. dated 5.11.99 are contrary to the direction passed by the Hon'ble Tribunal. As such the O.M. dated 1.11.99 and 5.11.99 are liable to be set aside and quashed.

Copy of the O.M. dated 1.11.99 and 5.11.99 are annexed as Annexures- 7 & 8 respectively.

4.8. That your applicants beg to state that this Hon'ble Tribunal decided the similar issues involved in O.A. No. 189/96 and also in O.A. No. 107/99 ^{is Pending}. The copy of the judgment and order affix of the aforesaid O.A. No. 107/99 are enclosed herewith for kind perusal of the Hon'ble Tribunal.

Copy of the judgment O.A. No. 189/96 and O.A. No. 107/99 are enclosed as Annexures- 9 to 11. 5.12

4.9. That it is stated that the recovery of SDA with effect from 20.9.94 is going to be started from the pay bill of November 1999 and non payment of SDA has already been effected ~~(from the month of September, 1999.)~~ Therefore the Hon'ble Tribunal be pleased to stay the operation O.M. dated

1.11.99 and 5.11.99 and further be pleased to direct the respondents to continue to pay the SDA till disposal of this application.

4.10. This application is made bonafide and for the ends of justice.

5. Grounds for relief with legal provisions.

5.1. For that entitlement of SDA in respect of the members of the applicants of its association has been declared by the Hon'ble Tribunal in its Judgment and order dated 28.2.1990 passed in O.A. No. ~~131/1989~~ ^{128/1989} which is still in force.

5.2. For that the respondents i.e. the Union of India and others have accepted and implemented the judgment and order dated 28.2.1990 and therefore the members of the applicant's association were drawing SDA.

5.3. For that non payment of SDA is amount to wilful non compliance of the judgment and order referred above which is still in force. Therefore, the payment of SDA cannot be denied to the applicants on the plea of executive order issued by the Govt. of India, Ministry of Finance which has no bearing with the entitlement of SDA to the present applicants.

5.4. For that the respondents have no jurisdiction to stop the payment of SDA to the present applicants in view of the judgment and order order passed by the Hon'ble Tribunal ^{referred above} referred above.

5.5. For that the impugned order of stoppage of payment of SDA and recovery has been issued without affording any opportunity to the applicants. Therefore the impugned orders dated 1.11.99 and 5.11.99 are liable to be set aside and quashed.

6. Details of remedies exhausted.

The applicants had no scope to submit any representation as the payment of SDA has been stopped without affording any opportunity to the applicants. In this view of the matter, the applicants have no other alternative and efficacious remedy and the reliefs sought for herein above if granted will be just and proper.

7. Matters not previously filed or pending before any other Court/Tribunal.

That the applicants further declare that they have not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court or law or any other authority or any Bench of the Tribunal and/or any such application, writ petition or suit is pending before any of them.

8. Relief sought for.

Under the facts and circumstances of the case the applicants pray that Your Lordships would be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicants shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause that may be shown, be pleased to grant the following relief

8.1. That the Hon'ble Tribunal be pleased to direct the respondents to continue the payment of SDA to the members of the applicants' association in the light of the judgment and order dated 28.2.90 passed in ^{138(6)/1990} O.A. No. 131(6)/1999 by this Hon'ble Tribunal.

8.2. That the Hon'ble Tribunal be pleased to set aside and quashed the impugned order dated 1.11.99 and 5.11.99 (Annexure 9610).

8.3. Cost of the application.

8.4. Any other relief or reliefs to which the applicants are entitle to under the facts and in circumstances of the case and as may be deemed fit and proper by the Hon'ble Tribunal.

9. Interim relief prayed for .

During the pendency of this application the applicants pray for the following reliefs :

9.1. That the Hon'ble Tribunal be pleased to stay the operation of impugned O.A. dated 1.11.99 and 5.11.99 (annexures 9610) till disposal of this application.

The above relief is prayed on the grounds mentioned in the paragraph 5 of this application.

10.

This application has been filed through advocate.

11. Particulars of I.P.O.

I.P.O. No. :

Date of Issue :

Issued from :

Payable at :

12. List of enclosures : As stated in the Index.

VERIFICATION

I, Shri. Bishobhan Talukdar son of Shri Handeswar-
Talukdar aged about years unit Secretary Assam All India
Association of Investigators, N.S.S.O. (IOD), Department of
Statistics and Programme implementation presently resident
of Dibrugarh, Assam, ^{one} are of the applicant in this O.A. do
hereby verify the statements made in paragraph 1 to 4 and
6 to 12 are true to my knowledge and those made in paragraph
-5 are true to my legal advice. I have been duly authorised
to sign this verification on behalf of the & other applicants
and I have not suppressed any material facts.

And I sign this verification on this 15th day of
November, 1999 .

Signature.

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Ax No 15

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 360 of 1999
with

Original Application No. 369 of 1999.

Date of decision : This the 19th December, 2000.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Hon'ble Mr. M.P.Singh, Member (A).

O.A. No. 368 of 1999.

Shri Sailendra Kr. Sharma,
Upper Division Clerk,
Office of the Deputy Director,
N.S.S.O. (FOD),
Central Block, 3rd Floor,
House Fed Complex, Basistha Road,
Dispur, Guwahati-6 & 10 Ors.

....Applicants

By Advocate Mr. J.L.Sarkar and Mr. M. Chanda.

-versus-

Union of India & Ors.

...Respondents

By Advocate Mr. B.S. Basumatary, Addl. C.G.S.C.

O.A. No. 369 of 1999.

All India Association of Investigators,
National Sample Survey Organisation,
(Field Operation Division),
Deptt. of Statistics, Ministry
of Planning and Programme Implementation,
Central Block, House Fed Complex,
Basistha Road, Dispur,
Guwahati & 3 Ors.

Applicants

By Advocate Mr. J.L.Sarkar and Mr. M. Chanda.

-versus-

Union of India & Ors.

...Respondents

By Advocate Mr. B.S. Basumatary, Addl. C.G.S.C.

.....

O R D E R. (ORAL)

CHOWDHURY J.(V.C.).

Similar question arise for consideration in these
two applications hence these are disposed of by a common
order.

Contd..

2. Apparently the matter raised in these applications were already adjudicated upon between the parties. The Tribunal rendered its judgements on, 28.2.1990 in O.A. No. 138 (G) of 1989 and O.A. No. 131(G) of 1989 holding that the applicants were entitled to Special (Duty) Allowance. The orders of the Tribunal remained unchallenged therefore attained its finality. The respondents instead of complying with the Tribunal's order time to time issued orders contrary to the judgement rendered by this Tribunal. Needless to say if a wrong judgement is rendered between the parties not set aside by a higher court the order cannot be disregarded to. The respondents are accordingly directed to give effect to the orders of the Tribunal passed in O. No. 138(G) of 1989 and 131 (G) of 1989. The impugned O. No. A-16011/3/94-O.M. (Vol. III) dated 1.11.1989 and O. No. 1(76)Accts/ASM/99 dated 5.11.99 (Annexures 8 and 9 to the O.A. No. 368/99 and Annexures 9 & 10 to the O.A. No. 369/99) are set aside. We now direct the respondents to comply with the aforesaid judgements and orders of the Tribunal within two months from today and thereafter submit its compliance report.

3. The application is accordingly allowed. There shall, however, be no order as to costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)

trd

Certified to be true COPY

ਸਹਿਮਤ ਕੀਤਾ ਜਾਂਦਾ ਹੈ

22/12/2000

Deputy Officer (Jr.)

ਸਹਿਮਤ ਕੀਤਾ ਜਾਂਦਾ ਹੈ
Control Adm. Officer (Jr.)

Deputy Officer (Jr.)

Gurukul, Gurukul, Gurukul

ਸਹਿਮਤ ਕੀਤਾ ਜਾਂਦਾ ਹੈ

Application for copy.	समया सूचित करने की तिथि Date fixed for notifying the requisite number of stamps and folios.	देने की तारीख Date of delivery of the requisite stamps and folios.	प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	1/3 तारीख Date of making over the copy to the applicant.
31/1/08	31/1/08	31/1/08	31/1/08	31/1/08

Ax No. 16

**IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM NAGALAND MEGHALAYA
MANIPUR TRIPURA MIZORAM AND ARUNACHAL PRADESH.**

**PRESENT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE B.P.KATAKEY**

W.P.(C) No. 5087/1999

1 The Regional Director
Employees State Insurance Corporation
N.E. Region
Bamunimaidan
Guwahati 781 021 and others

Petitioners

VERSUS

1 The Secretary
Employees State Insurance Corporation
Employees Union, N.E. Region
Bamunimaidan, Guwahati 781021 and others
Respondents.

Proforma

For the Petitioner

Mr. B.R. Dey,
Mr K.K.Nandi
Mr H. Talukdar
Mr A.K. Choudhury
Advocates.

For the Respondents

Mr. D.S. Bhattacharyya
Mr. K.K. Goswami,
Advocates.

W.P.(C) No. 3009/2001

The Union of India and others

Petitioners

Versus

Shri Aravand Pall and others.

Respondents

For the Petitioner :

Mr. K.K.Mahanta
Advocate

For the Respondents

Mr. A.K Joseph

Mr A. Ahmed, Adv.

W.P.(C) No. 7057/2001

Union of India and others

Petitioners

Versus

Shri Apurba Kumar Ghosh and others

Respondents

For the petitioner

Mr. G.P.Bhowmick
Advocate.

For the Respondent

Mr M. Chanda
Mr S. Ghosh
Mr S. Dutta
Advocates.

✓ W.P.(C) No. 7324/2001

The Union of India and others

Petitioners

VERSUS

Sri Sailendra Kr Sarma

Respondents

For the Petitioner

Mr. S. Kalita
Mr D. Saikia
Mr C. Baishya
Advocates.

For the Respondents

Mr B.K.Sarma
Mr U.K.Nair
Mr R.K. Vothra
Advocates

W.P.(C) No. 3000/2001

The Union of India and others

Petitioners

VERSUS ,

Sri Chandra Kanta Sinha
Deputy Commissioner of
Income Tax, Jorhat Circle
Jorhat.

Respondent

For the Petitioner

Mr. G.P. Bhowmick

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Advocate.

For the Respondents Mr. J.L.Sarkar
 Mr N. Choudhury
 Ms S. Deka
 Mr A. Choudhury
 Advocates.

W.P.(C) No. 3280/2001

The Union of India and others

Petitioners

VERSUS

Income tax Gazetted Service Federation
North Eastern Region Unit
Aayakar Bhawan, Uzanbazar Guwahati
Through the President of the Service
Federation and others

Respondents.

For the Petitioner Mr. G.P.Bhowmick
 Advocate

For the Respondents Mr. J.L.Sarkar.
 Advocate.

W.P.(C) No. 2771/2004.

Union of India
Through the Director General of
Posts, Department of Posts
Represented by the Chief Postmaster
General of Posts, Assam Circle
Meghdoot Bhawan, Guwahati

Petitioner

VERSUS

Shri Bangshidhar Boro
Circle Secretary, National
Federation of Postal Employees
Assam Circle, Guwahati and others.

Respondents.

For the Petitioner : Mr. Bipul Sarma
 Advocate

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For the Respondents : None appears.

Date of Hearing : 19.12.05

Date of Judgment : 04.01.06

JUDGMENT AND ORDER

(Katakey,J)

By this batch of Writ Petitions, the petitioners have challenged the judgments and orders passed by the learned Administrative Tribunal, Guwahati Bench regarding the grant of Special Duty Allowance(for short "SDA") to the employees under them.

2 In WP(C) No.5087/99 the petitioners, Regional Director, E.S.I. Corporation and another have challenged the order dated 17.2.99 passed by the learned Tribunal setting aside the order dated 12.6.96 issued by the petitioner No.1 and directing that the employees of the Corporation will continue to receive the SDA in terms of the order dated 28.2.90 passed in O.A.No. 130(G)89. An application being O.A.No.103/96 was filed by the Respondent Nos 1 and 2 herein challenging the order issued by the Regional Director, ESI Corporation dated 12.6.96, whereby the SDA directed to be paid by the learned Tribunal vide order dated 28.2.90 in O.A. No. 130(G)/89 was sought to be recovered with effect from 20.9.94 and also deciding not to pay the said allowances to the members of the Respondent No.1 Association, though the learned Tribunal by the aforesaid order dated 28.2.90 has held that the Members of the petitioners' association are entitled to such SDA.

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3 WP(C) No. 3009/2001 is filed by the Union of India challenging the order dated 20.12.2000 passed by the learned Tribunal in O.A. No.306/99 filed by the applicants therein, who are the respondents before this court, to pay the SDA in terms of the officer memorandums dated 14.12.83 and 1.12.88 for the period of their posting in North Eastern Region. The said Original Application was filed by the respondents herein claiming the said allowances in terms of the judgment passed by the Apex court in Union of India and others Vs B.Prasad B.S.D. and others, reported in (1997) 4 SCC 189 and also in terms of the office memorandums dated 14.12.83 and 1.12.88 claiming that they have fulfilled all the conditions for grant of such SDA.

4 Writ Petition (C) No. 7057/2001 is directed against the order dated 5.3.2001 passed by the learned Tribunal holding that the applicants (respondent herein) are entitled to SDA and directing the writ petitioners to pay the said allowances from the date of their subsequent posting in N.E Region. The Original Application was filed by the respondents herein claiming that though they were initially recruited in the North Eastern Region they were transferred to places out side the said Region and re-transferred to the North Eastern Region and as such they are entitled to the SDA.

5 The Union of India and others, in Writ Petition (C) No. 7324/2001 have challenged the order dated 19.12.2000 passed by the learned Tribunal directing the petitioners to give effect to the earlier order dated 28.2.90

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passed by the learned Tribunal in O.A. No.130(G)/89 and 130/96.

6 Writ Petition(C) No. 3000/2001 and 3280 of 2001 have been filed by the Union of India and others challenging the common order dated 19.12.2000 passed by the learned Tribunal in O.A. No. 268/ 2000 and O.A.No. 293/1999 filed by the present respondents, setting aside the order dated 12.7.2000, 14.7.2000 and 25.8.2000 , whereby the writ petitioners have decided to discontinue the payment of SDA and to recover the amount already paid and directing the writ petitioners to comply with the judgment and order passed on 31.8.90 in O.A. No.80/99, wherein the learned Tribunal declared that the respondents are entitled to SDA under the various office memorandums issued by the Government of India in that regard.

7 In Writ Petition(C) No. 2771/04 the Union of India has challenged the common order dated 12.3.03 passed by the learned Tribunal in O.A. No.249/2002 and other Original Applications, directing the petitioners not to make any further recovery of the SDA already paid to the respondents herein, while rejecting the claim of the respondents herein for grant of SDA. The said Original Application was filed before the Tribunal assailing the action of the respondents as regards the recovery of the SDA so far paid to the applicants - respondents herein.

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8 We have heard Mr. Dey, learned Senior counsel and Mr H. Rahman, learned Assistant Solicitor General for the writ petitioners in the aforesaid writ petitions and Mr. J.L. Sarkar and Mr M. Chanda learned counsel for the respondents.

9 The Government of India, Ministry of Finance, upon consideration of the recommendation of the Committee appointed by it to review the existing allowances and facilities admissible to the various categories of Civilian Central Government employees serving in the North Eastern Region, comprising the State of Assam, Meghalaya, Manipur, Nagaland, Tripura and erstwhile Union Territories of Arunachal Pradesh and Mizoram and to suggest suitable improvement, has decided to grant the Special Duty Allowances to the Central Government Civilian employees, who have All India transfer liability, on their posting from any region in to the North Eastern Region. It is evident from the said office memorandum that the intention of the Government and the spirit behind issuance of such office memorandum is to provide incentive and attraction to the officers belonging to the region other than the North Eastern Region to come and serve in the said region.

10 The learned counsel for the petitioners have submitted that the issue relating to the entitlement of SDA by the employees/officers of the Central Government has already been decided by the Apex Court in S. Vijaykumar's case. Therefore, according to the learned counsel, the employees/officers, who are not entitled to such allowance, in view of the said decision of the Apex court, cannot be paid

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such allowance, even if the cases filed by them were heard and disposed of in their favour before the said decision of the Apex court, by the learned Tribunal or by the High Court in a petition challenging such decision of the learned Tribunal.

11 The learned counsel for the respondents, agreeing with the submissions of the learned counsel for the petitioners relating to the decision of the Apex court regarding the entitlement of SDA, in S. Vijaykumar's case, have however submitted that the said decision of the Apex court will not effect the decisions of the learned Tribunal, rendered prior to the said judgment of the Apex court, which have attained finality, either because of not challenging the same before the Higher Court or if challenged, were rejected.

12 In Union of India and others Vs S. Vijayakumar and others, reported in 1994 Supp (3) SCC 649, the Apex court by taking into account the purpose for which the office memorandums dated 14.12.83, 29.10.86 and 20.4.87 were issued, has held that such allowances was meant to attract persons out side the North Eastern Region to work in that Region because of inaccessibility and difficult terrain and with a view to attract and retain the services of the competent officers for service in North Eastern Region. It has further been held that the Central Government Civilian employees who have All India Transfer Liability would be granted the allowances on posting to any Station in the North Eastern Region and such employees would not become entitle to such allowances merely because of the Clause in the appointment order relating to All India Transfer Liability. However, the Apex court, on the basis

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of the concession given by the learned Additional Solicitor General, has directed that the amount already drawn by the ineligible employees/officers, towards SDA shall not be recovered from them. The Apex court in Chief General Management (Telecom), N.E. Telecom Circle and another Vs Rajendra Ch. Bhattacharjee and others, reported in AIR 1995 SC 813 has also reiterated the said position.

13 . The Apex court in Union of India and others Vs Executive Officers Association Group C , reported in 1995 Supp.(1) SCC 757; upon consideration of the object behind issuance of the various office memorandums issued by the Government of India regarding entitlement of Special Duty Allowance, has held that as the North Eastern Region was considered to be 'hard zone' for various reasons, the Government has issued the said office memorandums providing certain extra allowances , benefits and other facilities to attract competent officers in the North Eastern Region at least for 2 to 3 years of tenure posting. Referring to Rajendra Ch. Bhattacharjee case, the Apex Court has further held that such benefits shall not be available to the persons belonging to the N.E. Region, where they were appointed and posted. The decision of the Apex court in Union of India & Ors etc Vs B. Prasad, B.S.D. & Ors, etc(supra) being related to the entitlement of SDA as well as Field area Special compensatory(Remote Locality) Allowance, of the defence civilian personnel, is not applicable in the present writ petitions as the said issue has not arisen in this batch of writ petitions.

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14 From the aforesaid decisions of the Apex court, it is, therefore, evident that the SDA is payable to the civilian employees of the Government of India who were initially appointed and posted outside the North Eastern Region but subsequently posted in the North Eastern Region. The benefit of such allowance is also not available to the employees/officers belonging to North Eastern Region and to such officers/ persons who were appointed and posted in the said region .

15 The Government of India, Ministry of Finance(Department of Expenditure) thereafter issued an office memorandum dated 13.6.2001 regarding admissibility of SDA of postal employees in their posting in N.E Region. In the said office memorandum it has been clarified that there is no bar in eligibility of SDA for the officers belonging to North Eastern Region, if they satisfy the criteria that their appointment in service/post is made on All India basis and the promotion is also done on the basis of All India common seniority. However, it has been made clear that they will be entitled to the same , if they are posted in N.E. Region from out side the region.

16 The learned Assistant Solicitor General, during the course of argument, has placed on record another office memorandum dated 29.5.2002 issued by the Government of India, Ministry of Finance(Department of Expenditure) wherein it is stipulated that the SDA shall be admissible to the Central Government employees having All India Transfer Liability on their posting to the North Eastern Region, including Sikkim, from outside the region. Referring to the

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decision of the Apex court dated 5.10.2001 in Civil Appeal No. 7000/2001, the Ministry in the said office memorandum has also decided that the amount already paid on account of SDA to the ineligible persons not qualified to such allowances on or before 5.10.2001 will be waived. However, the recoveries, if any, already made, need not be refunded and the amount paid on account of such allowances after 5.10.2001 will be recovered.

17 It appears from the said office memorandum dated 29.5.2002 that the admissibility of SDA of the postal employees belonging to the North Eastern Region upon posting in the said region on the basis of the promotion pursuant to the All India common seniority and on their posting to N.E. region from outside the region, has not been dealt with.

18 Let us now consider the submission of the learned counsel for the parties on the point whether the aforesaid decision of the Apex court will in any way effect the rights of the employees/officers already accrued to them, prior to the said decisions of the Apex court, by virtue of the decisions given by the learned Tribunal in the applications where they were parties.

19 Doctrine of finality of judgment or the principles of res judicata are founded on the basic principle that when a court of competent jurisdiction renders any judgment, the same ought not to be allowed to be agitated again and again. The judgment which attained finality cannot be re-opened and the benefit occurred therein cannot be taken away by the

-124-

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authority by issuing any order or office memorandum⁹ which is contrary to such decision, on the ground that the position of law has been changed because of the subsequent decision of the Apex court,, unless of course the Apex Court directs otherwise or such decisions of the competent court/tribunal is challenged and set aside. Such decision would operate as res judicata between the parties to such decision. Therefore, the rights of the employees/officers accrued under the order of the learned Tribunal, which attained finality, cannot be taken away because of the subsequent decision of the Apex court in S. Vijayakumar case. The learned counsel for the petitioners also could not place any direction of the Apex court that the said decision shall effect all the judgments already rendered by any competent court/tribunal.

20 In view of the law laid down by the Apex Court, as discussed above and also in view of the discussion relating to the finality of judgment, we hold that the officers and employees, who belongs to the region other than the N.E.Region, will be entitled to SDA. The persons belonging to the other parts of the country other than the N.E.Region, if initially appointed and posted in N.E. Region shall not be entitled to such allowance. The Postal employees belonging to N.E. Region but posted in the said Region from out side the region on their promotion on the basis of the All India Common Seniority List shall also be entitled to SDA from the date of such posting. The employees and officers, other than, the employees and officers mentioned above, shall not be entitled to SDA and the authorities shall be entitled to recover SDA already paid to them after 5.10.2001 in terms of the office memorandum dated 29.5.2002 and the amount already

d/c

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[Signature]

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paid upto 5.10.2001 towards SDA shall not be recovered. However, the recoveries, if any already been made, need not be refunded. This is also subject to the inter party judgment and order that have been passed by any competent Court or Tribunal, which have attained its finality.

21 The writ petitioners in view of our aforesaid decision, are directed to scrutinize each of the claim of the officers/employees for SDA and pass necessary orders in that regard. However, the authority cannot re-open and stop payment of SDA or recover such allowances from such officers/employees, whose cases have already been decided by the learned Tribunal, prior to S. Vijayakumar's case, declaring that they are entitled to such allowances, if the said decisions have not been assailed and set aside by the Higher court.

22 The judgments and orders passed by the learned Tribunal are accordingly modified to the extent indicated above. The writ petitions are accordingly disposed of. No order as to cost.

Sd. B. P. Katakay
Judge

Sd. B. S. Reddy
Chief Justice

CERTIFIED TO BE TRUE COPY
Atk on Barpatra Usham
Date 3.11.06
Super (Collection)
High Court
Authorized U/S 76 Act 1 1872

22/11/06

PA 47356
31/1/06

New Delhi, dated the 29th May, 2002

OFFICE MEMORANDUM

Subject: Special Duty Allowance for civilian employees of the Central Government Serving in the State and Union Territories of North Eastern Region including Sikkim

The undersigned is directed to refer to this Department's OM No 20014/3/83-E.IV dated 14.12.83 and 20.4.1987 read with OM No.20014/16/86-E.IV/E.II.(B) dated 1.12.88, and OM No.11(3)/95-E.II.(B) dt. 12.1.1996 on the subject mentioned above.

2. Certain incentives were granted to Central Government employees posted in NE region vide OM dt. 14.12.83. Special Duty Allowance (SDA) is one of the incentives granted to the Central Government employees having 'All India Transfer Liability'. The necessary clarification for determining the All India Transfer Liability was issued vide OM dt.20.4.87, laying down that the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of posts has to be determined by applying the tests of recruitment zone, promotion zone etc., i.e., whether recruitment to service/cadre/post has been made on All India basis and whether promotion is also done on the basis of an all India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, did not make him eligible for the grant of Special Duty Allowance.

3. Some employees working in NE region who were not eligible for grant of Special Duty Allowance in accordance with the orders issued from time to time agitated the issue of payment of Special Duty Allowance to them before CAT, Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by Supreme Court of India in favour of UOI. The Hon'ble Supreme Court in judgement delivered on 20.9.94 (in Civil Appeal No. 3251 of 1993 in the case of UOI and Ors V/s Sh. S. Vijaya Kumar and Ors) have upheld the submissions of the Government of India that C.G. civilian Employees who have All India Transfer Liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North Eastern Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability.

4. In a recent appeal filed by Telecom Department (Civil Appeal No 7000 of 2001 - arising out of SLP No.5455 of 1999), Supreme Court of India has ordered on 5.10.2001 that this appeal is covered by the judgement of this Court in the case of UOI & Ors. vs S. Vijayakumar & Ors. reported as 1994 (Supp.3) SCC, 649 and followed in the case of UOI & Ors vs. Executive Officers' Association 'Group C' 1995

TH IIC
NEW DELHI

10/5/02

127 (16)
(Supp 1) SCC, 757 Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further orders that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed. 149

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

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

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

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

(i) The amount already paid on account of Special Duty Allowance to the ineligible persons not qualifying the criteria mentioned in 5 above on or before 5.10.2001, which is the date of judgement of the Supreme Court, will be waived. However, recoveries, if any, already made need not be refunded.

(ii) The amount paid on account of Special Duty Allowance to ineligible persons after 5.10.2001 will be recovered.

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

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


(N.P. Singh)
Under Secretary to the Government of India

All Ministries/Departments of the Government of India, etc.
Copy (with spare copies) to C&AG, UPSC etc. as per standard endorsement list.

Date : 11-12-2006

To
The Director, DDO&HO
N.S.S.O.(FOD)
Guwahati, R.O.

Subject : **Payment of Special Duty Allowances (S.D.A.)**

Sir,

With reference to the above subject, I have the honour to state the following few lines for your kind consideration and necessary action.

- i) That Sir, I have serving in this Department/Organisation since 20-11-1995 as Stenographer Gr. III
- ii) That Sir, Special Duty Allowances admissible for the employees serving in the N.E. Region is not paid to me since 1999.
- iii) That Sir, as per the verdict of Central Administrative Tribunal (C.A.T.) Guwahati Bench vide Case No.138(G) of 1989, between Sailendra Kr. Sarma & Others Vs. Union of India & Others, some employees are getting S.D.A. since 1999 where as I have been deprived of the same.
- iv) That Sir, in a recent judgement of the Guwahati High Court, WP(C) NO.7324/2001; the Hon'ble Judge have upheld the verdict of the C.A.T. where some 12(twelve) employees belonging to various cadre viz. Accountant, UDC, LDC & Stenographer Gr.III are getting the S.D.A.
- v) That Sir, though I belong to the Stenographer Gr.III category which also falls on the same category as mentioned in Para-iv, is being deprived of the S.D.A.
- vi) That Sir, I would request you to pay the S.D.A. as admissible in the monthly salary from December,2006 onwards alongwith arrear w.e.f. 1999.

In view of the above facts, I would request your good honour to look in to the matter and do the needful at your earliest & obliged.

Yours faithfully

Dipen Kumar Basak
(DIPEN KR. BASAK)
Steno-III.

Date : 11-12-2006

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To
The Director, DDO&HO
N.S.S.O.(FOD)
Guwahati, R.O.

Subject : **Payment of Special Duty Allowances (S.D.A.)**

Sir,

With reference to the above subject, I have the honour to state the following few lines for your kind consideration and necessary action.

- vii) That Sir, I have serving in this Department/Organisation since 19-04-83 as Peon
- viii) That Sir, Special Duty Allowances admissible for the employees serving in the N.E. Region is not paid to me since 1999.
- ix) That Sir, as per the verdict of Central Administrative Tribunal (C.A.T.) Guwahati Bench vide Case No.82/90 Guwahati Bench, between S.K. Deb, UDC Shillong R.O. & Others Vs. Union of India & Others, some employees are getting S.D.A. since 1999 where as I have been deprived of the same.
- x) That Sir, in a recent judgement of the Guwahati High Court, WP(C) NO.7323/2001; the Hon'ble Judge have upheld the verdict of the C.A.T. where some 23(twenty three) employees belonging to various cadre viz. Accountant, UDC, LDC, Peon & Stenographer Gr.III are getting the S.D.A.
- xi) That Sir, though I belong to the Peon category which also falls on the same category as mentioned in Para-iv, is being deprived of the S.D.A.
- xii) That Sir, I would request you to pay the S.D.A. as admissible in the monthly salary from December,2006 onwards alongwith arrear w.e.f. 1999.

In view of the above facts, I would request your good honour to look in to the matter and do the needful at your earliest & obliged.

Yours faithfully

G. Kalita
11-12-06
(GROBINDA KALITA)
Peon

Ax No. 19

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7530-46

No. DIR/ASM/ WP(c)/7324-01/06/

GOVERNMENT OF INDIA

MINISTRY OF STATISTICS & P.I

NATIONAL SAMPLE SURVEY ORGANISATION

(FIELD OPERATIONS DIVISION)

'C' BLOCK, 3RD FLOOR
HOUSEFED COMPLEX, GUWAHATI-6
DATED 14.12.2006

OFFICE MEMORANDUM

Sub: Payment of Special Duty Allowance (SDA)-regarding.

The following officials are hereby informed that their representations on the above subject have been considered in the light of general instructions issued by Division vide letter No. C-18013/32/99-CC dated 14.07.2006 and in the light of Department of expenditure's O.M. No. 11 (5)/97 Estt.II(B) dated 29.05.2006 and found that they are not entitled for SDA.

2. As per general instructions given in Division's letter No. C-18013/32/99-CC dated 14.07.2006 payment of SDA is to be continued only to the petitioners who were paid SDA in pursuance of order dated 28.02.90 in OA No. 138(G)/89 and 131(G)/89. None of them were petitioners in any of these two OAs. Thus benefit of SDA cannot be extended to them.

3. As per para 5 of Department of Expenditure's OM No. 11(5)/97 Esstt.II(B) dated 29.05.2002 "SDA shall be admissible to central government employees having All India Transfer Liability on posting to North Eastern Region (including Sikkim) from outside the region." All of them were initially appointed and posted in North Eastern Region and have been serving in the North Eastern Region since their joining service. Thus, they do not fulfill the condition laid down in the said OM and not entitled for SDA.

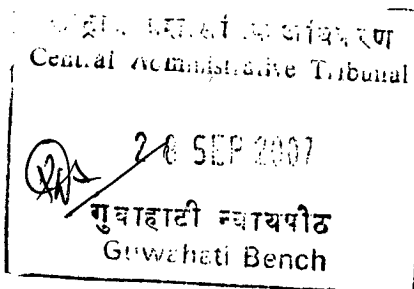
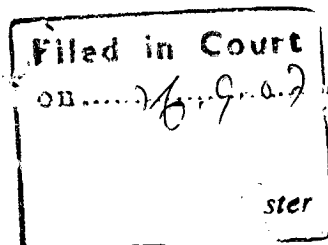
Name & designation of the officials place of posting

- | | |
|-----------------------------|--------------|
| 1. Smt A.D.Patir, LDC, | Guwahati RO |
| 2. Smt. S.Maitra, LDC | Guwahati RO |
| 3. Shri D.Bosak, Steno-III | Guwahati RO |
| 4. Smt Arati Khastagir, LDC | Guwahati RO |
| 5. Shri S.R.Gogoi, Peon | Jorhat SRO |
| 6. " P.C.Bezbaruah, Peon | Jorhat SRO |
| 7. " Akon Mech, Peon | Tezpur SRO |
| 8. " N.C.Boro, Peon | Guwahati RO |
| 9. " M.R.Biswas, Daftry | Guwahati RO |
| 10. " P.C.Medhi, Peon | Guwahati RO |
| 11. " Niranjan Das, Peon | Guwahati RO |
| 12. " Gobinda Kalita, Peon | Guwahati RO |
| 13. " Rajib Kr. Das, Peon | Guwahati RO |
| 14. " P.C.Talukdar, Peon | Guwahati RO |
| 15. " Maheswar Das, Driver | Guwahati RO |
| 16. " K.Sonowal, Peon | Dibrugarh RO |
| 17. " P. Dihingia, Peon | Dibrugarh RO |

Copy to: All officials concerned.

Yours faithfully

S. Maitra
(S.MAITRA) 15/12/2006
Director (R)



Filed by: - ①
The Respondents
Through -
Manjinder Das
Addl. C.S.C.
CAT
-53 3/9/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

In the matter of:

O.A. no.71/07

Smt. Anju Doly Patir and ors

...Applicant

-Vs-

Union of India and ors

...Respondents

-AND-

In the matter of:

Written statement on behalf of
all the respondents.

Amritan
3/9/2007

(WRITTEN STATEMENT ON BEHALF OF ALL THE RESPONDENTS)

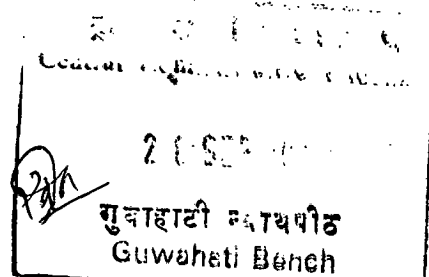
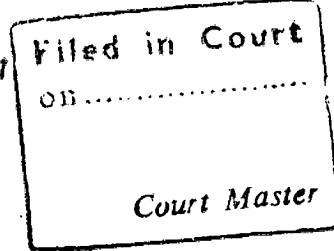
I, Sri S. MAITRA..... son of A. S. K. MAITRA presently
working as Director, National Sample Survey Organisation, (Field
Operations Division), Housefed Complex, Guwahati-6 do hereby solemnly
affirm and state as follows :-

1. That I am the Director, National Sample Survey Organisation, (Field
Operation Division), Housefed Complex, Guwahati-6. The copies of the
aforesaid application have been served upon the respondents including me
where I have been impleaded as party respondent no.4. I have gone through
the same and have understood the contents thereof. I have been authorized to
file this written statement on behalf of all the respondents.

2. That I do not admit any of the averments except which are specifically
admitted hereinafter and the same are deemed as denied.

3. That before the answering respondents reply to the averments made in
OA, submits the brief facts of the case, which may please be read as part of
the reply to the OA.

4. Certain incentives were granted to the Central Government employees
posted in NE Region vide OM dated 14.12.1983. Special Duty Allowance



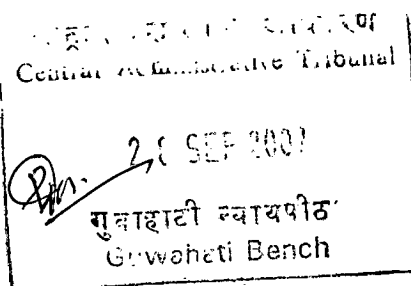
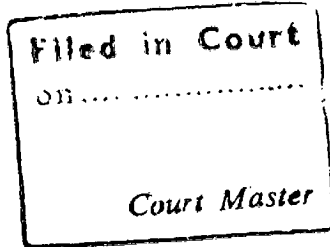
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(SDA) is one of the incentives granted to the Central Government employees having 'All India Transfer Liability'. Clarification for determining the All India Transfer Liability was issued vide OM dated 20.04.1987, laying down that the All India Transfer Liability of the members of any service/cadre or incumbents of any post/group of post has to be determined by applying the tests of recruitment zone, promotion zone etc, i.e. whether promotion is also done on this basis of an All India common seniority list for the service/cadre/post as a whole. A mere clause in the appointment letter to the effect that the person concerned is liable to be transferred anywhere in India, do not make him eligible for the grant of Special Duty Allowance.

S. Mani
3/9/2004

5. Some employees working in NE region in one of the respondent's office who were not eligible for the grant of SDA in accordance with the orders issued from time to time agitated the issue of payment of SDA to them before CAT Guwahati Bench and in certain cases CAT upheld the prayer of employees. The Central Government filed appeals against CAT orders which have been decided by the Supreme Court of India in favour of Union of India. The Hon'ble Supreme Court in judgment delivered on 20.09.94 (in Civil Appeal no.3251 of 1993 in the case of Union of India and ors-Vs- Sri Vijay Kumar and ors) have upheld the submission of the Government of India that Central Government Civilian employees who have all India Transfer Liability are entitled to grant of SDA on being posted to any station in the North East Region from outside the region and SDA would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability. The Supreme Court vide its order dated 05.10.2001 (in Civil appeal no.7000 of 2001 arising out of SLP no.5455 of 1999) held that this appeal is covered by the judgment of this court in the case of Union of India and ors Vs. S.Vijaykumar and ors reported as 1994 (Supp.3) SCC, 649 and followed in the case of Union of India and ors Vs. Executive Officers' Association Group 'C' 1995 (Supp 1) SCC, 757. Therefore, this appeal is to be allowed in favour of the Union of India. The Supreme Court further ordered that whatever amount has been paid to the



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employees by way of SDA will not, in any event, be recovered from them in spite of the fact the appeal has been allowed.

6. In view of the aforesaid judgment, the criteria for payment of SDA as upheld by the Supreme Court was laid down by Government of India vide OM No.11(5)/97-E.II (B), dated 29th May 2002 which is extracted as under:

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

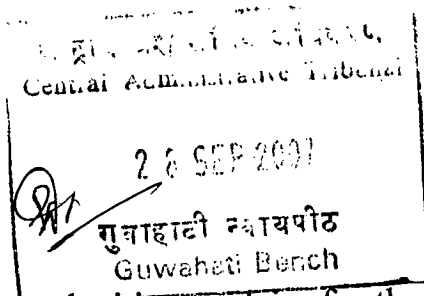
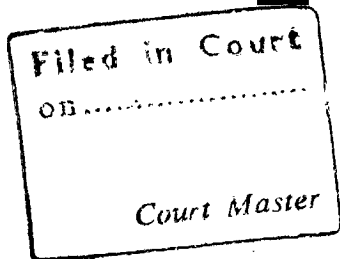
All cases for grant of special duty allowance including those of all India service officers may be regulated strictly in accordance with the above mentioned criteria. All the, Ministries/Departments etc. were requested to keep the above instructions in view for strict compliance. Further, as per direction of the Hon'ble Supreme Court, it has also been decided that-

- (i) The amount already paid on account of SDA to the ineligible persons not qualifying the criteria mentioned above on or before 05.10.2001, which is the date of judgment of the Supreme Court, will be waived. However, recoveries, if any, already made need not be refunded.
- (ii) The amount paid on account of SDA to ineligible persons after 05.10.2001 will be recovered.

'The grant of this allowance only to the officers transferred from outside the region to this region would not be violative of the provisions contained in the Article 14 of the Constitution as well as the equal pay doctrine.'

7. In view of the above facts, since the applicant were neither satisfying the laid down criteria for payment of Special Duty Allowance nor were the petitioners in OA 131(G)/89; and OA 138(G)/89, their representation for payment of Special Duty Allowance on the basis of similar placed

J. Maitra
3/9/2002



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employees was rejected. As such they have no legitimate claim for the grant of SDA and the OA filed by them merits rejections.

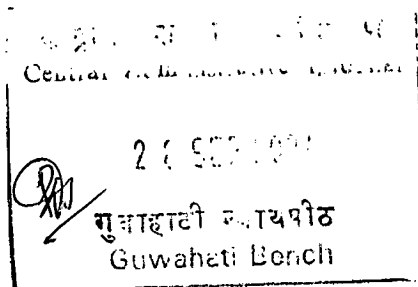
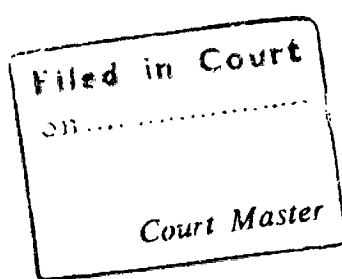
8. Reply to the facts of the case:

8.1 That with regard to the statements made in paragraph 4.1 and 4.1(A) of the application, the humble answering respondent humbly submit that since the applicants are not fulfilling the laid down criteria for grant of Special Duty Allowance, they have no legitimate claim for the same. The non-grant of Special Duty Allowance on the grounds of not fulfilling the requisite criteria can not be construed as violative of the provisions contained in the Article 14 of the Constitution as well as the equal pay doctrine.

S. Maheshwar Das
3/9/2007

8.2 That with regard to the statements made in paragraphs 4.2 and 4.3 of the application, the humble answering respondent begs to state that since none of the applicant is fulfilling the criteria laid down for grant of SDA, hence no one has the legitimate claim for grant of SDA. Moreover, the applicant no.17 Sri Maheswar Das is working on contract basis as Driver and his service is purely temporary hence he has no legitimate claim for grant of SDA on the grounds of non-government civilian employees. It is further submitted that for grant of Special Duty Allowance merely a clause of All India Transfer Liability is not sufficient and the applicant have to fulfill the laid down criteria for grant of Special Duty Allowance.

8.3 That the humble answering respondent deny the correctness of the statement made in paragraph 4.4 of the application for want of records. However, it is submitted that the claim will only be considered on their posting to NE Region from outside the region. It is further stated that only a few who have been transferred always got their posting within North-East region and none of them has ever been transferred outside North-East region and re-posted to North East Region from outside the Region.



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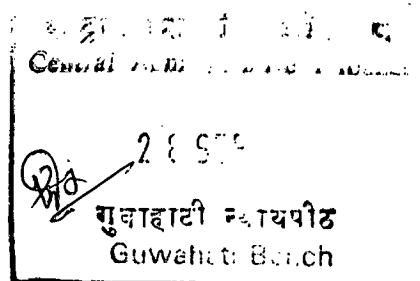
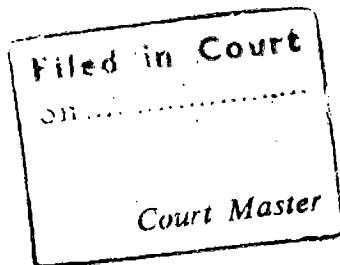
8.4 That with regard to the statements made in paragraph 4.5 of the application, the humble answering respondent begs to state that the applicants have to fulfill the criteria laid down for grant of SDA. Since none of them is satisfying the laid down criteria, thus they have no legitimate claim for grant of Special Duty Allowance.

8.5 That the Hon'ble answering respondent vehemently denies the correctness of the statement made in paragraph 4.6 of the application. It is however, submitted that in view of the laid down criteria, the applicant besides having all India Transfer Liability are also required to fulfill the laid down criteria for grant of SDA. It is further submitted that the eligibility criteria has been clearly defined by Government of India vide OM dated 12.01.1996 and 29.05.2002 annexed as Annexure 10 and 17 respectively to the Original Application and the applicants are required to fulfill the laid down criteria for grant of SDA.

A. Manohar
3/9/2001

8.6 That with regard to the statements made in paragraphs 4.7, 4.8 and 4.9 of the application, the humble answering respondent begs to state that since the applicants in the present OA were not the applicants in the aforesaid OA no.131(G)/89 and OA no.138 (G)/89 thus, the benefits flowing out of orders issued in the said OA cannot be extended to them as they deemed to have been the non-applicants in the said OA. However, the benefits flowing out of the judgments dated 28.02.1990 passed by the Hon'ble Tribunal were extended only to the petitioners in OA no.131(G)/89 and OA no.138 (G)/89 since the said order attained finality. However, the applicants were neither in the aforesaid OA nor fulfilling the laid down criteria for grant of SDA. As such, the applicants have no legitimate claim for the grant of Special Duty Allowance.

8.7 That with regards to the statements made in paragraph 4.10 of the application, the humble answering respondent beg to state that the applicant no.1 and 12 joined the service on 30.06.1999 and 03.04.2000 respectively and they were never given SDA by the department since they



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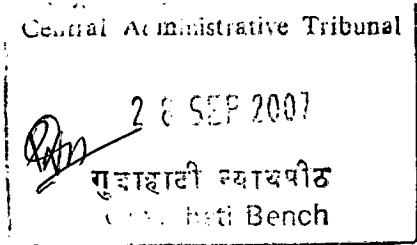
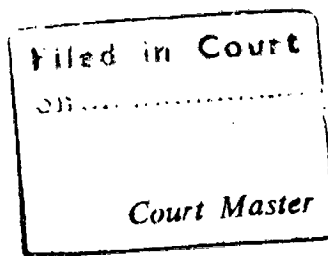
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do not fulfill the criteria laid down for grant of SDA. However, the payment of SDA being paid to the ineligible employees were withdrawn in the light of the Hon'ble Supreme Court judgment dated 20.09.94 (in Civil Appeal no.3251 of 1993 in the case of Union of India and ors -VS- Sri Vijaykumar and ors) wherein the Apex Court have upheld the submission of the Government of India that Central Government Civilian Employees who have All India Transfer Liability are entitled to the grant of SDA on being posted to any station in the North East region from outside the region and SDA would not be payable merely because of a clause in the appointment order relating to All India Transfer Liability. It being so, for the grant of SDA, the applicants are required to fulfill the requisite criteria of posting in NE Region from outside the region besides the clause of all India Transfer Liability in their appointment letter.

S. Maitra
31/12/2007

8.8 That with regards to the statements made in paragraph 4.11, 4.12 and 4.13 of the application, the humble answering respondent beg to state that the judgment dated 28.02.90 passed by the Central Administrative Tribunal, Guwahati Bench was implemented since the same attained finality and accordingly the benefits flowing out from the aforesaid judgments extended to the applicants in the related OAs. However, from 01.09.1999 payment of SDA was stopped to all ineligible employees in view of the Supreme Court's judgment passed on 20.09.94 in Civil Appeal no.3251/1993 in the case of Union of India and others-Vs- S. Vijaykumar and others. Accordingly the Government of India issued an OM dated 12.01.96 clarifying that:

“ The Civilian Employees who have All India Transfer Liability are entitled to grant of SDA on being posted to any station in the North East Region from outside the region and SDA would not be payable merely because of the clause in the appointment order relating to All India Transfer Liability.”



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However, the claim for grant of SDA is now being considered in those cases that are covered by the instructions issued by the Ministry of Finance vide Office Memorandum dated 29.05.02

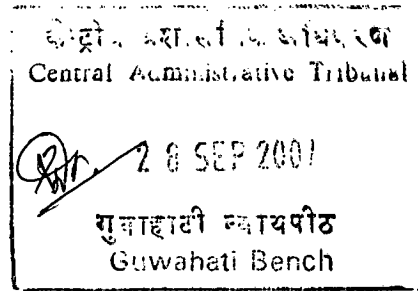
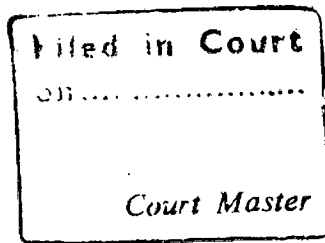
8.9 That with regards to the statements made in paragraph 4.14, 4.15, 4.16 and 4.17 of the application, the humble answering respondent has nothing more to add in view what has been submitted in preceding paragraphs and brief facts of the case. The applicants are merely repeating this aspect in all the paragraphs of OA and the same is denied being contrary to the Government instructions on grant of Special Duty Allowance.

8.10. That with regards to the statements made in paragraph 4.18, 4.19 and 5.1 of the application, the humble answering respondent beg to state that the SDA has been allowed to the employees/officers who were the applicants in OA No.131 (G/89) and 138 (G/89) only because the order dated 28.02.90 passed by the Central Administrative Tribunal, Guwahati had attained finality. Further, the applicants in the present OA were neither the applicants in OA no.131 (G/89) and 138 (G/89) nor they even fulfill the conditions as laid down in Ministry of Finance, Office Memorandum dated 12.01.96 and 29.05.02. Thus, they have no legitimate claim for the grant of SDA.

8.11 In reply to paragraph 5.2, it is humbly submitted that since the judgment dated 28.02.90 had attained finality, the same was implemented in the case of the applicants only. There was no question of its acceptance or non-acceptance. However, the benefits flowing out from the said judgment cannot be extended to the non-applicants as a matter of rule.

8.12 In reply to the averments made in paragraph 5.3 to 5.6 the respondents humbly submit that for the grant of Special Duty Allowance, the applicants are required to fulfill the criteria laid down for grant of Special Duty Allowance. However, the applicants do not fulfill the criteria and as such they have no case for grant of SDA.

S. Maitra
3/9/2007

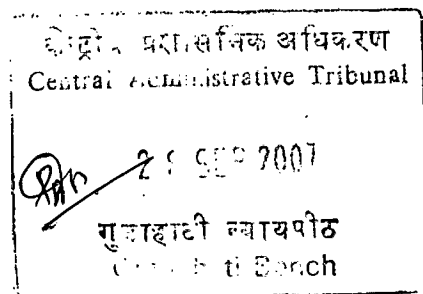
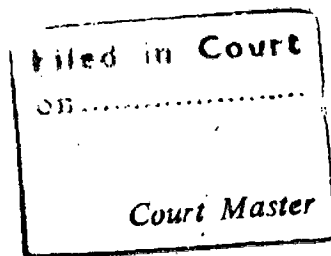


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8.13 In view of what has been submitted in the preceding paragraphs and in the brief facts of the case, the respondents have nothing more to add in reply to paragraphs 5.7 and 5.8 except that the applicants have no legitimate claim for the grant of SDA.

S. Maitra
3/9/2007



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VERIFICATION

I, Sri ..S..MAITRA..... son of late..S..K..MAITRA presently working as Director, National Sample Survey Organisation, (Field Operations Division), Housefed Complex, Guwahati-6 do hereby verify that the statements made in paragraphs 1to 8.13 are true to my knowledge and are based on records.

I have not suppressed any materials thereof.

And I sign this verification on

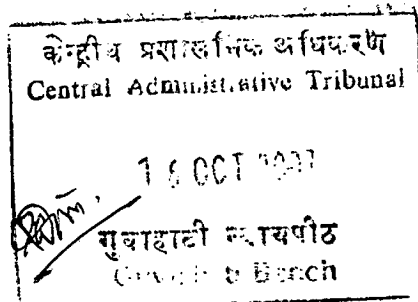
3rd day of Sept 2007



S. maitra
3/9/2007

निदेशक/Director
भारत सरकार/Govt. of India
रा.प्र.सर्वे.से. (क्षे.से.प्र.) गुवाहाटी
NSSO (FOD) GUWAHATI.

DISTRICT: KAMRUP



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

ORIGINAL APPLICATION NO. 71 /2007

SMTI. ANJU DOLY PATIR AND OTHERS.

----- APPLICANTS.

-Versus-

THE UNION OF INDIA AND OTHERS.

----- RESPONDENTS.

Rejoinder filed on behalf of all the applicants -

I, Sri. Dipen Kumar Basak, S/o. Sri. Anil Kumar Basak, aged about 37 years, Resident of: N.S.S.O. (F.O.D), Department of Statistics, Housefed Complex, 3rd Floor, Central Block, Beltola Basistha Road, Dispur, Guwahati - 781006, in the District of - Kamrup, Assam, do hereby solemnly affirm and declare as follows -

- 1) That I am one of the applicants in the above applications and well acquainted with the facts and circumstances of the case and being authorised by the co-applicants is competent to file this rejoinder.
- 2) That, save and except the statements which are specifically admitted in this Written Statement,

Filed by
Kumar Basak
Applicant
through S. Dipen,
Advocate.
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Dipen

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Dipen Kumar Basak

rest of the averments made in the written statement are deemed to be denied. The applicants further denied whatsoever is not borne by records.

- 3) That with regard to the statements made in Para 1, 2, and 3 of the Written Statement, the applicant have no comment.
- 4) That with regard to the statements made in Para 4 of the Written Statement, the applicants admits that Special duty allowances was granted to the Central Government employees serving in the States and Union Territory of North Eastern Region vide O.M. Dated: 14.12.1983 which has the sanction of the Hon'ble President of India, and the same was reiterated by O.M. dated: 1.12.1988 and in this regard, the applicants stated in details in Para 4.5 of their application and under such circumstances O.M. dated: 20.04.1987 has no application.
- 5) That with regard to the factual parts stated in Para 5 of the Written Statement, the same being the matter of record and the applicant has no comment. However, it is reiterated that the O.M. dated: 12.01.1996 was issued by the Ministry of Finance, Department of Expenditures in view of the Hon'ble Supreme Court Judgment and Order passed in the Civil Appeal No. 3251/1993 but the Respondents failed to appreciate the fact that

Contd...

16 OCT 1991

गुनाहादी न्यायपीठ
Bench

- 3 -

the member of the Applicant association have been drawing the S.D.A. in terms of the Judgment and Order dated: 28.02.1990 passed in O.A. No. 131(G)/1989 and O.A. No. 138(G)/1989, whereby the Hon'ble Tribunal declared their entitlement of drawal of S.D.A. Therefore, the Office Memorandum dated: 12.01.1996 has no application in the instant case of the applicants for the purpose of drawal of S.D.A. as because the Judgment and Order dated: 28.02.1990 is still in force and the executive Order dated: 12.01.1996 cannot curtail when the same was passed by the Hon'ble Tribunal, as such, the applicants are entitled to drawal of S.D.A. So long the Judgment and Order dated: 28.02.1990 is in force.

- 6) That with regard to the statements made in Para 6 of the Written Statement, applicants states that the authority issued impugned O.M. dated: 1.11.1999 and 5.11.1999 on the basis of the aforesaid Judgment of the Apex Court which were challenged before this Hon'ble Tribunal vide O.A. No. 189/96 and O.A. No. 109/1997 which were allowed vide Judgment (Annexure No. 13). On the basis of several applications were preferred before this Hon'ble Tribunal by some of the colleagues of the applicants of the same department. Two such applications are O.A. No. 368/1999 and O.A. No. 369/1999 which were allowed by this Tribunal vide common Order dated:

Contd...

Dipen Kumar Basak

16 OCT 2001

गुवाहाटी न्यायपीठ
Guwahati Bench

- 4 -

19.12.2000, whereby this Hon'ble Tribunal held since the orders dated: 28.02.1990 passed in O.A. No. 138(G)/1989 and O.A. No. 131(G)/1989 holding those applicants entitled to S.D.A. remained unchallenged. Therefore, the same attains finality and accordingly set aside the illegal Memorandum regarding recovery and stoppage of S.D.A. and directed the Respondents to comply with the Judgment and Order dated: 28.02.1990.

The Government of India preferred Writ Petition before the Hon'ble High Court challenging the verdict of the Hon'ble Tribunal. The Departmental authority preferred W.P. (C) No. 7324/2001 against the Order dated: 19.12.2000 passed in O.A. No. 368/1999 and O.A. No. 369/1999. All the aforesaid cases were clustered and heard together and disposed of vide Judgment and Order dated: 04.01.2006. The Hon'ble High Court after perusal of records and after hearing arguments of the parties held that the right of the employees/offices accrued under the Order dated: 20.02.1990 passed by this Tribunal which attained finality cannot be taken away because of the decision of the Apex Court in Sri. S. Vijay Kumar Case (1994 Supply (III) S.C.C. 649). The Respondent authority also could not place any direction of the Apex Court that the said decision shall effect all the Judgment already rendered by any Competent Court/Tribunal and accordingly directed the Respondent authority to scrutinise each of the claim of the

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Dipen Kumar Basak

16 OCT 2001

गुवाहाटी न्यायपीठ
Guwahati Bench

- 5 -

employees for S.D.A. and pass necessary order in that regard.

- 7) That with regard to the statements made in Para 7 of the Written Statement, the same are not correct and the applicants while denying the same reiterates their contention made in Para 5 of this rejoinder.
- 8) That with regard to the statements made in Para 8(1) of the Written Statement, the applicants states that in view of the earlier Judgments of this Hon'ble Tribunal and also in consideration of the facts that most of the colleagues who were appointed from the North Eastern recruitment zone and with All India Transfer Liability getting S.D.A. and under such consideration the present applicants are also entitled for S.D.A. since they have fulfilled the requisite criteria.
- 9) That with regard to the statements made in Para 8.2, 8.3 and 8.4 of the Written Statement, the same are not correct and the deponent while denying the same reiterated the statements under Para 4.2, 4.3, 4.4 and 4.5 of their application and also in consideration of the statements made in Para 5 of this rejoinder.
- 10) That with regard to the statements made in Para 8.5 of the Written Statement, the same are not correct and

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Dipen Kumar Basal

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गुवाहाटी न्यायपीठ
Ch

- 6 -

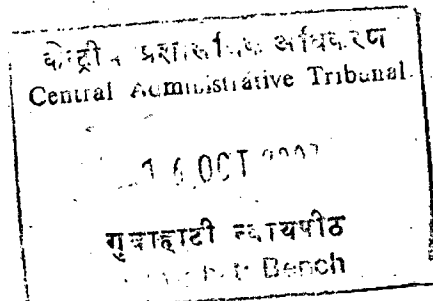
Dipen Kumar Basak 167

the deponent denies the same. In this regard, the deponent reiterates their statements made in Para 4.5 of their application and also begs to state that O.M. Dated: 12.01.1996 was challenged before this Hon'ble Tribunal and this Hon'ble Tribunal while Judgment passed on O.A. No. 189/96 and O.A. No. 107/99 held that the same has not any effect unless the Hon'ble Apex Court review the Order Dated: 8.2.1991 passed by this Hon'ble Tribunal in O.A. No. 208/1991 and till date the same has been received by the Hon'ble Supreme Court and as such the applicants are also entitled for S.D.A.

11) That with regard to the statements made in Para 8.6 of the Writ Statement, the applicants state that, they are also liable for the benefits of Judgment dated: 28.02.1990 in O.A. No. 131(G)/1989 and O.A. No. 138(G)/1989 as they are exactly similarly situated and appointed candidates like the aforesaid two applications. The present applicants did not earlier approached this Hon'ble Tribunal along with those applicants since at the relevant time were getting S.D.A. at the relevant time.

12) That with regard to the statements made Para 8.7 of the Written Statements, the same being matter of record, the deponent has no comment. However, they reiterates their statements made in Para 4.10 of the application.

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13) That with regard to the statements made Para 8.8 and 8.10 of the Written Statements, the first part of the said Para are admitted. However, with regard to the statement made in the second part of the said Para the applicants states that, in view of the Judgments passed in O.A. No. 189/96 and O.A. No. 107/1999 passed by this Hon'ble Tribunal they are also entitled to S.D.A. The Respondent authorities cannot denied the payment of S.D.O. to the applicants when they are paying S.D.A. to similarly situated person/applicants in O.A. No. 189/1996 and O.A. No. 107/1999 on the plea of decision quoted therein which will amount to serious discrimination and inequality on the eye of law.

14) That with regard to the averments made in Para 8.11, 8.12 and 8.13 of the Written Statement, the same are not correct and the applicants denies the same. The applicants submits in view of the facts and circumstances of the case, earlier decisions of this Hon'ble Tribunal and the grounds set forth under Para 5 of the application, the applicants are entitled for the relief as well as the interim relief as prayed under Para 8 and 9 of the original application.

Contd...

Dipen Kumar Basak 168

গুৱাহাটী ন্যায়পীঠ
Guwahati Bench

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I, Sri. Dipen Kumar Basak, S/o. Sri. Anil Kumar Basak, aged about 37 years, Resident of: NSSO (FOD), Department of Statistics, Housefed Complex, 3rd Floor, Central Block, Beltola Basistha Road, Dispur, Guwahati - 781006, in the District of - Kamrup, Assam, one of the applicant in this application, do hereby verify that the statements made in paragraphs 1 to 17 of the accompanying application are true to my knowledge, and belief and those made in Paragraphs _____ are the matter of records, and that I have not suppressed any material facts. I have been duly authorised to sign this verification on behalf of the other applicants.

And, I set my hand on this verification today
the 16th day of October' 2007 at Guwahati.

Dipen Kumar Basak
Signature of the Applicant

Contd...

केन्द्रीय प्रशासनिक अपील बोर्ड
Central Administrative Tribunal
7 DEC 2007
गुवाहाटी न्यायपीठ
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

IN THE MATTER OF:

O.A.No.71/07

Smt. Anju Doly Patir and ors.
...Applicants

-Vs-

Union of India and ors.
...Respondents.

-AND-

IN THE MATTER OF:

Reply statement on behalf of the
respondents to the rejoinder.

(REPLY STATEMENT ON BEHALF OF THE RESPONDENTS)

I, Shri .SUPRABHAT.....MAITRA... son of Late...S.K...MAITRA
presently working as the Director, National Sample Survey
Organization, (Field Operations Division), Housefed Complex,
Guwahati-6 do hereby solemnly affirm and state as follows:-

1. That, I am the Director, National Sample Survey Organization,
(Field Operations Division), Housefed Complex, Guwahati-6. The
copies of the aforesaid application has been served upon the
respondents including me where I have been impleaded as party
respondent no.4. I have gone through the same and have understood
the contents thereof. I have been authorized to file this written
statement on behalf of all the respondents.
2. That I do not admit any of the averments except which are
specifically admitted hereinafter and the same are deemed ad
denied.
3. That with regards to the statements made in paragraphs 1, 2
and 3 of the rejoinder, the humble answering respondent has nothing
to make comment on it. He, however, does not admit any of the
statements which are contrary to records.

Filed by: —
The Respondents
Through
Ms. Anju Doly Patir
Advocate - E.S.S. C
AT
6/12/07

S. Maitra

17 DEC 1999

मुंबई न्यायालय
Bombay Bench

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4. That with regards to the statements made in paragraph 4 of the rejoinder, the humble answering respondent has nothing to make comment on it as they are being matters of records of the case.

5. That with regards to the statements made in paragraph 5 of the rejoinder, the humble answering respondent begs to state that the judgment of the Hon'ble Tribunal passed on 28.01.1990 in OA no.131(G)/1989 and OA no.138 (G)/1989 was implemented and SDA was paid to all the applicants of the OA. As per the OM dated 12.01.1996 issued by the Ministry of Finance, Department of Expenditures, Central Government employees who have All India Transfer Liability on being posted to any station in the NE Region from outside the region only are entitled for grant of SDA and SDA will not be payable merely because of the clause in the appointment letter relating to All India Transfer Liability. The present applicants do not fulfill the criteria laid down in the said OM dated 12.01.1996 and since they were not the applicants of OA no.131 (G)/1989 and 138(G)/ 1989, ^{no} benefit of SDA extended to them under the judgment of the Hon'ble CAT.

S. Maitra

6. That with regards to the statements made in paragraph 6 of the rejoinder, the humble answering respondent begs to state that it is fact that the O.M. dated 01.11.1999 and 05.11.1999 issued by the authority in the light of the Hon'ble Supreme Court judgment dated 20.09.1994 (in civil appeal no.3251 of 1993) for stoppage of SDA and recovery of the amount already paid were challenged before this Hon'ble Tribunal vide O.A.no.368/1999 and O.A no.369/1999 which were allowed by this Hon'ble Tribunal vide order dated 19.12.2000. The Hon'ble Tribunal held that since the judgment dated 28.02.1990 on O.A. 131(G)/89 and OA 138 (G)/89 was not challenged and was not set aside by any forum, the order dated 28.02.1990 attained finality and the benefits given to the applicants vide the order cannot be taken away. Departmental authority filed WP(C) no. 7324/2001

before the Gauhati High Court against the order dated 19.12.2000. The Hon'ble High Court also held that the order dated 28.02.1990 passed by the Hon'ble CAT attained finality and the benefits given to the applicants cannot be taken away and directed the authority to scrutinize the claim of the employees for SDA and pass necessary orders in that regard. Departmental authority complied with the order and SDA was paid to all the applicants of OA 131 (G)/1989 and OA 138 (G)/1989. The present applicants were not the applicants of the abovementioned OAs, therefore the benefit of SDA was not extended to them.

7. That with regards to the statements made in paragraph 7 of the rejoinder, the humble answering respondent begs to state that as none of the present applicants have been posted in the NE region from outside the region, so they do not satisfy the criteria laid down for grant of SDA nor they were the applicants of OA 131 (G)/89 and OA 138 (G)/89, therefore they are not entitled for grant of SDA.

8. That with regards to the statements made in paragraph 8 of the rejoinder, the humble answering respondent begs to state that in view of the Hon'ble CAT's judgment dated 28.02.1990 and 19.12.2000 all the applicants of OA 131 (G)/89 and 138(G)/89 have been granted SDA. The present applicants are not the applicants of abovementioned OAs nor they have been posted to NE states from outside the NE states, therefore, they are not entitled for grant of SDA.

In this connection the humble answering respondent begs to state that like the present applicants earlier some applicants namely Sri Swapan Kr. Deb and 27 others approached before the Hon'ble Tribunal vide O.A.no. 375/99 with a prayer for a direction to the respondent to give effect to OM dated 04.12.83 and 01.12.88 and payment for the SDA. In the said case the Hon'ble Tribunal after

S. Mani

7 DEC 2001

गुवाहाटी न्यायपीठ
Guwahati Bench

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hearing the parties was pleased to dispose of the said Original Application vide judgment dated 26.02.2001 and ordered as follows:

"As regards the others, who were not applicants in O.A no.82/1990, question of providing them SDA does not arise, more so in view of the pronounced view of the Supreme Court and also the subsequent decision of the Tribunal."

Copy of the said order dated 26.02.01 is annexed herewith and marked as annexure 'A'.

9. That with regards to the statements made in paragraph 9 of the rejoinder, the humble answering respondent reiterates and reaffirms the statements made in paragraph 8.6 of the written statement.

10. That with regards to the statements made in paragraph 10 of the rejoinder, the humble answering respondent begs to state that the Deputy Assistant Director General, Ministry of Health and Family Welfare issued one letter dated 27.08.1996 stopping the SDA on the basis of OM dated 12.01.1996 of Ministry of Finance, Department of Expenditure. The letter dated 27.08.1996 issued by the Deputy Assistant Director General, Ministry of Health and Family Welfare had been challenged vide OA no.189/96 before this Hon'ble Tribunal by the employees those who were getting SDA on the basis of order passed by this Hon'ble Tribunal on 08.02.1991 in OA no.208/91. The Departmental Authority filed SLP before the Supreme Court against the Tribunal's order dated 08.02.1991 on OA no.208/91 but the SLP was dismissed by the Hon'ble Supreme Court as time barred. The Hon'ble Tribunal while heard the OA no.189/96 observed that since the SLP was dismissed and not set aside the Hon'ble Tribunals order dated 08.02.1991 therefore, the said order attained finality and the applicants would be getting the benefit flowing out of it.

In this connection it is to be stated here that in the instant case the present applicants are not the applicants of the above respective

Amrit

O.A. 189/96 or O.A. 208/91. Further the OM dated 29.05.02 issued by the Ministry of Finance superceded the earlier all OM relating to the grant of SDA. The humble answering respondent further reiterates and reaffirms of the statements made in paragraph 8.8 of the written statement.

11. That the hum'ble answering respondent denies the correctness of the statements made in paragraph 11 of the rejoinder.

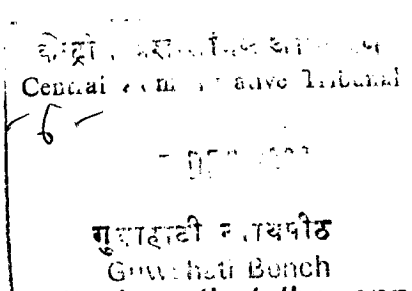
Further reiterates and reaffirms the statements made in paragraph 8 of the reply statements of the rejoinder as well as the statements made in paragraph 8.6 of the written statement.

12. That with regards to the statements made in paragraph 12 of the rejoinder, the humble answering respondent reiterates and reaffirms the statements made in paragraph 8.7 of the written statement.

13. That with regards to the statements made in paragraph 13 of the rejoinder, the humble answering respondent begs to state that in the judgment of 189/96 the Hon'ble Tribunal delivered the verdict which is reproduced below:

" in so far as the present case was concerned after dismissal of the SLP by the Supreme Court as barred by the Limitation, the Tribunals order dated 08.02.1991 passed in OA no.208/91 became finalSupreme Court passed the order dated 23.07.1992 in other case stating that local candidates would not be entitled to get the SDA, but that would not affect the present case which reached its finality. Therefore the applicants are entitled to get the SDA on the basis of the judgment passed by this Tribunal in OA no.208/91."

Smriti



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The above judgments make it clear that the applicants were granted SDA as because the Tribunal's earlier verdict on their OA became final.

Further the applicants are covered by the OM dated 29.05.2002 which is enforce and in pursuance of the said memorandum which was issued in the light of Supreme Court judgment the applicant are not entitled to get the benefit of SDA.

14. That with regards to the statements made in paragraph 14 of the rejoinder, the humble answering respondent reiterates and reaffirms the statements made in paragraph 8.8, 8.11, 8.12 and 8.13.

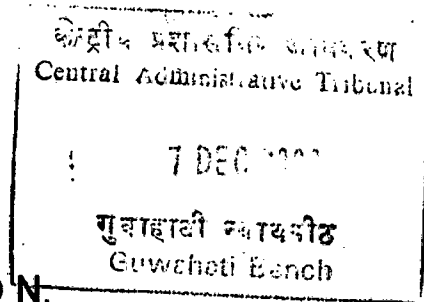
Further, the Hon'ble Tribunal's judgment dated 28.02.1990 which attained finality was implemented in the case of the applicants only. The benefit flowing out of the said judgment cannot be extended to the non applicants as a matter of rule.

15. It is submitted that for grant of SDA the applicants are required to fulfill the criteria laid down in the in the instruction of the Government of India for grant of SDA. The present applicants do not fulfill the criteria and as such they have no case for grant of SDA. Hence the Original Application is liable to be dismissed.

S. Narayan

-7-

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VERIFICATION.

I, Shri .SUPRABHAT.MAITRA. son of late .S.K.MAITRA presently working as the Director, National Sample Survey Organization, (Field Operations Division), Housefed Complex, Guwahati-6 aged about 50..years do hereby verify that the statements made in paragraphs...1,2, and 3.....are true to my knowledge ; and those made in the paragraphs ...4 to 14.....are being matters of records of the case derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

S. maitra

I have not suppressed any material facts.

And I sign this verification on this 5th December 2007 at Guwahati.

S. maitra

SIGNATURE

THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 375 of 1999

Date of decision: This the 26th day of February 2001

Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

Hon'ble Mr K.K. Sharma, Administrative Member

Shri Swapan Kumar Deb and 27 others

All the applicants are working in the
Office of the Regional Sample Survey Organisation
(Field Operation Division), Meghalaya Region,
Shillong.

By Advocate Mr A. Ahmed.

.....Applicants

- versus -

1. The Union of India, represented by the
Secretary, Ministry of Planning,
Department of Statistics,
New Delhi.
2. The Director National Sample Survey Organisation
(Field Operation Division),
Department of Statistics,
Government of India,
New Delhi.
3. The Regional Assistant Director,
National Sample Survey Organisation
(Field Operation Division),
Meghalaya Region, Shillong.
4. The Superintendent,
National Sample Survey Organisation
(Field Operation Division),
Meghalaya Region,
Shillong.

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....Respondents

ORDER (ORAL)

CHOWDHURY, J. (V.C.)

The issue pertains to payment of Special (Duty) Allowance
(SDA for short). Out of the twentyeight applicants, twentythree of them
earlier approached this Tribunal praying for a direction on the respondents
to give effect to the Office Memorandum No.20014/3/83 E-IV dated
4.12.1993 and Office Memorandum No.20014/16/96 IV/E II (B) dated

certified to be true

MS
Addl. Secy. G.A. &
CAT
6/12/07

1.12.1988 and for payment of the said amount. Considering the earlier decisions of the Tribunal on the issue, the Tribunal directed the respondents to pay SDA with effect from 1.11.1983 or from the date on which the aforesaid applicants joined their respective posts in the North Eastern Region, whichever was later, within a specified period. As per the order the applicants of the above O.A. were paid. Furthermore, on the strength of the communication dated 29.12.1990 the benefit of the Tribunal's order in O.A.No.82 of 1990 disposed of on 31.8.1990 was given to the non-petitioners for the period they worked or were working in the Region in accordance with the instructions contained in the Ministry of Finance O.M.s dated 14.12.1983 and 1.12.1988. Subsequently, by order dated 9.1.1999, the authority reviewed the order and ordered that the amount paid on account of SDA to the ineligible persons after 20.9.1994 have been ordered to be recovered. Hence this application.



2. We have heard Mr A. Ahmed, learned counsel for the applicants and also Mr A. Deb Roy, learned Sr. C.G.S.C.

3. The Judgment and Order of the Tribunal in O.A.No.82/1990 disposed of on 31.8.1990 had attained its finality, since the aforesaid order was not assailed in any forum. Therefore, we are not inclined to accept the plea of Mr Deb Roy that those twentythree applicants are also not entitled for SDA since they are also residents of the N.E. Region. As alluded, the aforesaid order of the Tribunal attained its finality, and therefore, the question of refusing the benefit of SDA to the aforesaid twentythree applicants did not arise. The respondents are accordingly directed to comply with the order of the Tribunal dated 31.8.1990. Consequently, the question of recovery of SDA, so far these twentythree applicants are concerned, also does not arise. As regards the others, who were not applicants in O.A.No.82/1990, question of providing them SDA does not arise, more so, in view of the pronounced view of the Supreme Court and also the subsequent decisions of the Tribunal. The order dated 9.11.1999 will, therefore, not be applicable in the case of the twentythree applicants of O.A.No.82/1990

The aforesaid order will, however, not be operative for the applicants in this O.A., who were not party to O.A.No.82/1990. It may, however, be made clear that the recovery of SDA will start from 9.1.1999 and question of recovery of the earlier amount paid prior to 9.1.1999 to the non-applicants of O.A.No.82/1990 also will not arise. If any amount has been paid to the non-applicants from 9.1.1999, the same may be recovered in instalments.

5. The application is accordingly disposed of. There shall, however, be no order as to costs.



Sd/ VICE CHAIRMAN

Sd/ MEMBER (Adm)

Certified to be true Copy

प्रमाणित प्रतिलिपि

Dection Officer (A)

आनुमान अधिकारी (आधिकारिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय
Guwahati Bench, Guwahati-8

नगरपालिका: गुवाहाटी, प्रशासकीय-८

18/4/2001