

7

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. F1/2007
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SECTION OFFICER (Judl.)

Sanjita
25/09/17

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:**

CARD SHEET

Original Application No. 71/67

Misce Petition No. _____ /

3. Contempt Petition No. _____ /

4.3 Review Application No. _____

Applicant(s) A. D. Pathre & Ors VS Union of India & Ors

Advocate for the Applicant(s) S.C. Birinway, B. Chaudhury
S. Das, D. Dutta, S. Panadasm

Advocate for the Respondant(s) Adv. CSC & Ms. M. Dev

Notes of the Registry	Date	Order of the Tribunal
<p>1. The application is in form is filed/C.P. for Rs. 50/- copies and vide IPO/BD No. 346.651/624.</p> <p>Dated...13.3.07.....</p> <p><i>Q.M. By, Registrar 16/3/07</i></p> <p>Petition on file for some notices are received.</p> <p><i>P.P. 16/3/07</i></p>	20.3.07	<p>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:-</p>

"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." 2

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. DAS 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

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

Class 110 - 396 to 402
12/4/07. Dt = 18/4/07.

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

Notes of the Registry

Date of the hearing

07.05.07.

No W/S has been
billed.

23
4.5.07.

30.5.2007

No W/S has been
billed.

23
20.5.07.

No W/S billed.

23
21.6.07.

22.6.2007

W/S not billed.

23
23.7.07.

/bb/

W/S not billed.

23
25.9.07.

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.

Vice-Chairman

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

Post on 22.06.2007.

Vice-Chairman

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

Post on 24.7.2007.

Vice-Chairman

24.7.07. Written statement has been filed
matter for hearing on 16.8.07.

0.A71/07

Notes of the Registry

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.

28.9.07

Wts filed by the
Respondents, page 1 to 9
not served.

/bb/


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

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/

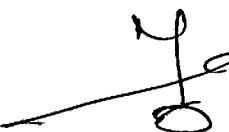
06.12.2007 In this case, reply, rejoinder and reply to the rejoinder have already been filed.

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

10.12.07
W/S submitted
by the Respondents.
Copy served.

Call this matter on 22.01.2008 for hearing.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

The case is ready.

22.01.2008 On the prayer made on behalf of learned counsel for the Applicant call this matter on 07.02.2008 for hearing.

The case is ready
for hearing.


(Khushiram)
Member (A)

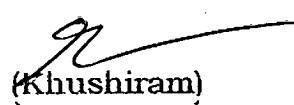

(M.R. Mohanty)
Vice-Chairman

pg

20
6.2.08.

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)

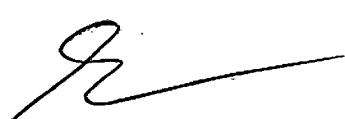

(M.R. Mohanty)
Vice-Chairman

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

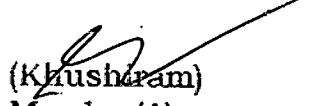


lm

17.03.2008

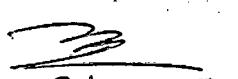
On the request of learned counsel for both the parties, call this matter on 27.03.2008.

The case is ready
for hearing.




(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman



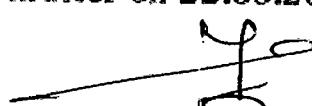
lm

27.03.2008

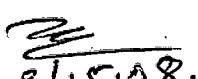
Call this matter on 22.05.2008.

The case is ready
for hearing.

nkm



(M.R. Mohanty)
Vice-Chairman



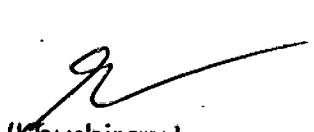
21.5.08.

Heard learned counsel appearing for the parties.

for Respondent No. 4 & 5
received one copy.

With 28/05/08
Senior Superintendent
NSO (For) Gurakati
Regional Office

/bb/



(Khushiram)
Member (A)



(M.R. Mohanty)
Vice-Chairman

Recon
With
10/6/08
R.D.C.S.C.

12.6.08
copy of the budget send
to the Spec. for send in
one to the party

\$

**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)

9

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

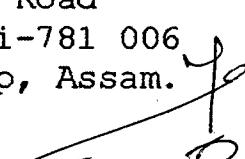
O.A. 71/2007

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

M
— O —

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 Niranjan 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.

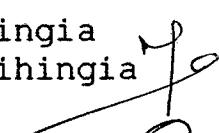
12. Sri Rajib Kumar Das
 S/o. Late Bongshi Dhar Das
 NSSO (FOD)
 Department of Statistics
 Housefed Complex
 3rd Floor, Central Block
 Beltola Basista Road
 Dispur, Guwahati-781 006
 District: Kamrup, Assam.

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



12

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

12

(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)
Mallow 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
Saradamoni 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
 Saradamoni 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.

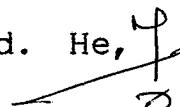
ORDER (ORAL)
22.05.2008

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 those 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.

*Yours
22/05/08*

Khushiram
22.05.08
(KHUSHIRAM)
MEMBER (A)

(MANORANJAN MOHANTY)
VICE-CHAIRMAN

/bb/

16 MAR 2007

गुवाहाटी अदायकी
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

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FILED BY:

FOR OFFICE USE:

S. Das
ADVOCATE

Signature.

20

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. 136 (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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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 and 5.11.1999 The copy of the Office Memorandum. [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].

FILED BY:

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ADVOCATE.

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 applicant 22
through
Dipen Kumar Barik Advocate

23
Dipen Kumar Basak

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. Saizer Sing Mech,
NSSO (FOD) ITI Road,
Near Fire Brigate, 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,

Silchar - 786004,
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),

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.

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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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)

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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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Dibrugarh Development Authority
Dipen Laxman Baruah 78

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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(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 12% 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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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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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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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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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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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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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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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)Accts/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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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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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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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 Suppli (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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Rajendra Kumar Barde

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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of NSSO (F.O.D) 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

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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...

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.

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

Contd...

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Dipu Kumar Baral 59

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Dipendra Baral

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...

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

Contd...

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Dipu Kumar Baruah

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...

Ripon Kumar Baruah

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.

Contd...

Dipen Kumar Basak
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VERIFICATION

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), 4(3), 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 & 19) 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 2007 at Guwahati.

Dipen Kumar Basak
Signature of the Applicant

Contd...

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,
 D.E.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/his 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 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/DBC from the prescribed authority.

-3-

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

4. It may be stated whether the candidate is in 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. Utr. No. 2/8, Central Ghatenagar,
 Maligaon, Guwahati-781011

13/11
 (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.110.11/36/94-95/Nom/3419d 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.

13/11
 (GHAN SHYAM)
 Regional Asstt. Director

REGD. LETTER
with A.D

AX NO-1
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No. 3(3)/ASM/Estt.II/95/A88-92

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

GUWAHATI-781007

MEMORANDUM Dated

31-01-1996

On the recommendations of the Staff Selection Commission, Shri M/S.
Sanghamitra Choudhury is offered a temporary post of
LDC 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/- P.M. 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 forthwith 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/BC from the prescribed authority.

.....3/

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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 in 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 Shrimati Sanghamitra Chowdhury 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 Mills Sanghamitra Chowdhury
 Dr. Sri. Pradeep Chakraborty
 Shyamnand Doley " Nahaglava Road
 Silpu Khuri Grahati - 781003
 Copy forwarded for information to:-

Chowdhury 31/1
 (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 SCC-A-11011/16/1/92-93/Non/p/26 dated 19-01-96.
3. Personal file of Shri Sanghamitra Chowdhury.
4. Superintendent N.S.S.O. (F.O.D.)
5. Joint Director, NSSO (F.O.D.) Eastern Zone, Calcutta.
6. The Estt. I section, Guwahati.

Chowdhury
 (GHAN SHYAM)
 Regional Asstt. Director

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



13/04/06
 (GHANSHYAM)
 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 NSO(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	Bihar
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. Sobha 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.	Ms. 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	M.Sc.	18.08.1998 (AN)	18.08.1998 (AN)	-do-	Bhopal	Madhya Pradesh
12.	Shri Manish Yadav (OBC)	11.01.75	Sr. Secondary	31.08.1998	31.08.1998	-do-	Jaipur	Rajasthan

Sl. No.	Name	Date of birth	Educational Qualification	Date of entry into service	Date of appoint. in the Govt.	Whether Temp./ Pmt.	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 POD (Kerala) - Karnataka
14.	Ms. Thara Kumari T.R.	11.02.72	Pre-University	26.06.1996	03.02.2000	do-	Bangalore	
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 (R. P.)

(GILAN 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.

21st Oct 20014/16/BG/E.IV/E.II(B)
Government of India
Ministry of Finance,
Dept. of Expenditure.

New Delhi, the 1st Dec, 1988.

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:-

(i) 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/- p.m. 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 get 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.

Civil Brdg

*Ex-Officio
CIVIL BRIDGE*

Application No. of 131(G)
 Paid vide Bank Draft.....
 Postal Order No. P.D. 165552

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 Simple 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.

Original To be
 kept
 C. B. B.
 8/89

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

Signature 7.9.89
 Registrar.

Received 6/9/89

C. S. S.
 M.R.C. 4. SC

5.9.89

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

BETWEEN

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

..... Applicants.

AND

- i. Union of India represented by the Secretary,
Ministry of Planning, Deptt. of Statistics,
Govt. of India, West Block No. 8, Wing No. 6
R.K. Puram, New Delhi-110066. (a) ^(a) ~~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. Kekati 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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Filed 5-
B.A. Sharma
P.C. 4.9.99
for the applicant

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 is 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, Sadiati-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 interest 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 requisites 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 "A".

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 ~~expx~~ 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. 4-19011/10/76-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 '6'.

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

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sustainable inasmuch 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 x 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 memorandum 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 N.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.G. & 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 Health and Family Welfare, Shillong; Odisha-Visual Publicity, Rayadhara, 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 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. dtu. 14.12.83.

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

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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.

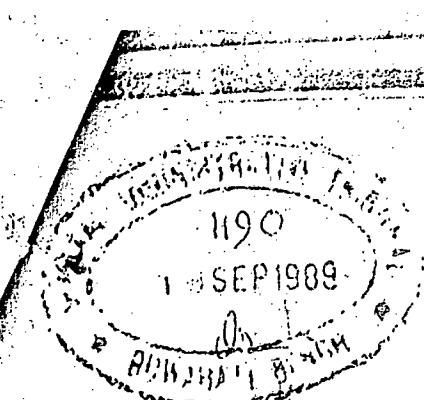
VERIFICATION.

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)



ANNEXURE - 06/17/89

Application fee of Rs. 50/-
Paid vide Bank Draft.....
Postal Order No. D.A./165/1420
Dated 1 SEP 1989

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUANIKOTI BRANCH.

(Application under Section 13 the A.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.

Date of filing: 19/9/89

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

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Signature
Lalit*

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Sakember Kr. Sarma 200
Affidavits
18/9/56
18/9/56
34-
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUAHATI BENCH.

BETWEEN

1. Sri Sailendra Kr. Sarma.
2. Chitta Ranjan Nemesudra.
3. Smt. Manjusha Kaha.
4. Smt. Aya Chakraborty.
5. Shri Dilip Debnath.
6. Smt. Kekha Das.
7. Shri Gaurab Dev.
8. Smt. Geeta Furkayastha.
9. Shri Kripacip Kr. Barkar.
10. Shri Nagen Daimary.
11. Shri Samir Bhukherjee.

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, Mr. D.L. Rakati Rosu, Gauhati-7.

....Respondents.

12. 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. 1.12.86. 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.

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' & 'E'. 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-S.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. Be 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 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.

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already being drawn subject to the condition that the total of such Special (Duty) allowance plus Special Pay/Reputation (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 1.12.88 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 installments 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-Batt.1 dtd. 18.9.84, wherein it was laid down that the allowance in question was not admissible to the categories of staff vice

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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 meted out by the aforesaid memorandum is violative of Article 14 of the Constitution of India. However, the ~~maximum~~ applicants ~~maximum~~ 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)As in deference to the aforesaid memorandum on S(D)As. 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)As to the applicants. The applicants pray that this honorable Tribunal may be pleased to call for those correspondances made by respondent no. 3 ~~with~~ with the respondent no. 2. The All Indian Association of Ministerial Staff (non-Gazetted) within Unit also espouse the cause of the applicants by filing representation, but to no avail.

viii. 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)As granted by the aforesaid 2 memorandums. It will be pertinent to mention

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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'. The applicants are similarly situated with the Investigators. The said Association also espouse its cause viz 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 Gachati 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

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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 dtu. 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 memorandum 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 relied 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, within 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 applicants from such a benefit will be highly discriminatory and violative of Art. 14, 16 and 21 of the Constitution of India.

....contd.

- 10 -

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; Odisha Visual Publicity, Rayadhara, Song & Drama Division, Kendriya Vidyalaya Sangathan, Central Ground Water Board, National Savings Organisation, O.P.I.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 memorandum dtd. 14.12.85 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 ~~supposedly~~ 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 dtu. 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 :-

i. 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/M.TV/MTI(B) dtd. 1.12.86, extending the benefit of 25% S(D)A to all the ~~marketeers~~ applicants.

ii. To quash the said O.Ms dtd. 14.12.85 and 1.12.86, 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 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. DD 657690
(ii) Date 13.9.89
(iii) Payable at : Guwahati, M.P.

12. List of Enclosures :

As stated in the Index.

.... contd.

76-72-

60-46-
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- 13 -

VERIFICATION.

I, Shri Sailendra Kumar Sarma, son of Sri
Kanak 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 belief 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)

6

73-

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	Smti. 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	Smti. 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	Smti. 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, Saradamoni Lane, College Road, Silchar - 788004, Cachar.	30.8.1999
7	Sri. Akon Mech, Peon	08.04.1983	Tezpur SRO	Late. Saizar 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, Daftary	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

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	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. Aliram Sonowal	NSSO (FOD) Business Centre cum Market, Office Complex, Dibrugarh Development Authority, East Chowkidinghee, Mankatta Road, Dibrugarh - 786001, Assam	30.8.1999
17	Sri. P. Dihingia, Daftary		Dibrugarh R.O.	Sri. Chandra Dihingia	NSSO (FOD) Business Centre cum Market, Office Complex, Dibrugarh Development Authority, East Chowkidinghee, Mankatta Road, Dibrugarh - 786001, Assam	30.8.1999

THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

AX No - 7
- 60 -

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), Doptt. of Statistics, Ministry of Planning, Ulubari, Guwahati-7.
2. Shri Agni Prasad Sarma, Unit Secretary, All India Association of Investigators, National Sample Survey Organisation, (Field Operation Division), Doptt. of Statistics, Ministry of Planning, Ulubari, Guwahati-7.

.... Petitioners

-Veroius-

1. Union of India represented by (a) The Secretary, Ministry of Planning, Doptt. of Statistics, Govt. of India, West Block No.0, 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), Doptt. of Statistics, Ministry of Planning, Govt. of India, West Block No.0, Wing No.6, R.K. Puram, New Delhi
3. The Regional Asstt. Director, National Sample Survey Organisation (Field Operation Division), Doptt. of Statistics, Ministry of Planning, Govt. of India, Ulubari, Dr. B.K. Kakati 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.

COURT:

THE HON'BLE MR. 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?

THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

C. B. B. Singh

~~80~~ - ~~92~~ - 76-
~~75~~ - 69 - 98
JUDGMENT

MARYA.J.

In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner 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.II(E) dated 1.12.1986 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 petitioner 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 1.12.1986 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 125% of their basic....

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76-62-99

alloway subject to a maximum of Rs.1000/- Further, it is to be found in the said office memorandum that such amount will be payable to those civilian employees who have an 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 party goes to the effect 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, according to the opposite party, the members of the investigators, namely, the members of the Association are not entitled to Special (Duty) Allowance.

5. We have heard Mr. D.K. Shinde, the learned counsel for the plaintiff, including Mr. D.K. Dubebarwala 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 1.12.1980, 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 that members of the Association are not entitled to any Special (Duty) Allowance because they are actually never transferred outside the State.

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) Allowances, 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 right for liability on All India basis, cases of Central Government employees covered under the above mentioned memorandums [an] one of the conditions of service which 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 12.4.1909. 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 upon the conditions of service imposed on 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 case of the present nature the only question now remaining to be determined as 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 Division) working in North Eastern Region have All India Transfer liability."

In another paragraph it is stated as follows:

"The Investigators of National Sample Survey Organisation (Field Operations Division) working in North Eastern Region 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 Q.M. dated 14.12.1903 and 1.12.1900 of the Ministry of Finance."

On a perusal of Annexure 11, which is a letter of appointment issued in favour of one Investigator, Shri Daudali Hora, it is found in para (iv) as follows:

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

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 employee 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. Sarmo, 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 1.12.1980. 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

Copy to P.D. B.L.

D.C.P.

1/2

Re. (J.A.M.)

(D.C.R.O.)
26-2-80

MR&EN

1/1/80

Sd/-

(K.R.ACHARYA)

24-2-80

VICE-CHIEFMIN

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

Date of decision : The 28th 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),
Dept. of Statistics, Ministry of Planning,
Ulubari, Guwahati-7.

2. Shri Chitta Ranjan Namasudra.
3. Smt Manjusha Raha
4. Smt Ave Chakraborty
5. Shri Dillip Debnath
6. Smt Rekha Das
7. Shri Gaurab Dev
8. Smt Geeta Purkayastha
9. Shri Pradip Kr. Sarkar
10. Shri Nagen Daimary
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)
Dept. of Statistics, Ministry of Planning,
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 Operation
Division), Deptt. of Statistics,
Ministry of Planning, Govt of India,
Ulubari, Dr. B.K. Kakati Road, Guwahati-7

..... Respondents

For the applicant - Mr. B.K. Sharma,
Mr. B.M. Bazarbaruah and
Smt Archana Sharma, Advocates

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

COURT:

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 of 1917/18.
3. Whether Their Lordships wish to see the fair copy of
the judgment?

Central Baisya

ACHARYA.J.

81 - 67 - 304

In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioners pray to issue appropriate directions to the Opposite party 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 1.12.1986 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.

83-84

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. . . .

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 Debnath. The very same condition...

tion 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.

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

Sd/-

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

Sd/-

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

TRUE COPY

Duly Registered and
Received
J.C. Roy
28-2-90

30.2.70

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-28-

Annexure - 9

Telegram :—STATSURVEY

GOVERNMENT OF INDIA

Ministry of Planning

Department of Statistics

NATIONAL SAMPLE SURVEY
ORGANISATION

(Field Operations Division)

"C" Block, 3rd Floor,

Pushpu Bhavan, Madangir Road,
New Delhi—110062

Dated the 01 JAN 1996

भारत गवर्नर

योग्यता गंतव्यात्मक

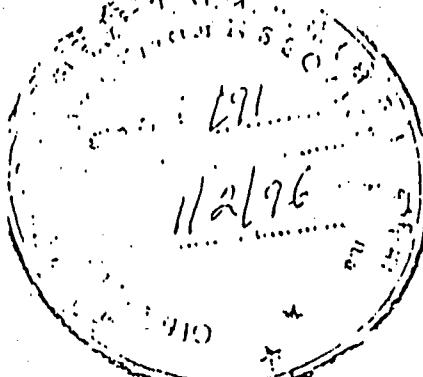
साहियकी प्रियांग

श्री प्रतिवर्षा संयोजन संगठन

(वेत्त्र संकाय प्रियांग)

'सी' घर, श्रीपीप तल,
गुरुग्राम, गदगांव रोड,
गोदावरी—110062

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



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.

To

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

N.M. SHAMY

JOINT DIRECTOR
Tel. No. 6985284

DDO

Reference Paper
General Job

to us necessary also- it
No. 11(3)195-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

87-
Ax No 10 109

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. 3/2001/3/00-E.IV dated 14.12.83 and 20.4.1987 read with OM No. 3/2001/10/06-E.IV/E.II(B) dt. 10.12.88 on the subject mentioned above:

1. 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".

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.

2. 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.

3. 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 is enclosed.

(C. Balachandran),

Under Secy to the Govt. of India

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

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

89-34-

Annexure -

6.08.1999

11.11.99

मानव विकास
मानव संकाय
मानव संस्कृति
राज्यीक मानव विकास
(संस्कृति विभाग)
"C" विभाग, राज्यीक विभाग,
गोपनीय, नवाजीवन विभाग,
नई दिल्ली-110062

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

fax 302126

Telex 302126/STATS/99

GOVERNMENT OF INDIA

Ministry of Planning

Department of Statistics

NATIONAL SAMPLE SURVEY
ORGANISATION

(Field Operations Division)

"C" wing, 3rd Floor,

Pushpa Bhawan, Madan Singh Road,
New Delhi-110062

Mr. K. V. B. K. Murthy
Secretary
General
Administrator

Replies
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/Megh./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/-

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संस्कार

मार्ग याकार

पोखरा, मुम्पालप

पांच्याको विनाप

राष्ट्रीय प्रतिसर्व पर्यावरण संगठन

(क्रोति संकायं प्रभाय)

"पी" घट, शुभा तल,
पुक्कालप, पदमपार रोड,
नई जिल्ली-११००६२



०९८३३२६

Teleg. ०१८३३२६

GOVERNMENT OF INDIA

Ministry of Planning

Department of Statistics

NATIONAL SAMPLE SURVEY
ORGANISATION

(Field Operations Division)

"C" wing, 3rd Floor,
Pulpha Bhavan, Madangir Road,
New Delhi-110062

- २ :-

मिति
Dated

- १ NOV १९९०

००६/११०१ -

(ii) 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 represent-
ations 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.

Copy for information and necessary action to:-

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

(SARITA PURI)
DEPUTY DIRECTOR(ADMIN.)

- 36 - 91
A/mex 01 - 2012
A/mex 10 : 13

NO. 1(76)ACCTS/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 INSTALMENTS	REMARKS
1.	UP TO 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 intimation please.


(H. BORAH)
DEPUTY DIRECTOR

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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

SKB

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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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

DSB

contd/-

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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

मराठी लिपि

(K.N.A. 11/99)
Section Officer (I)
M.G.M. Legal Service Bureau
Central Arbitration Commission
Dwarka Sector 14, Dwarka
Govt. of N.H.R.D. (Delhi)
Date 21/11/99

11/11/99

560463
Mr. Nav
F20397

Ax No 14 18

965

In the Central Administrative Tribunal
Guwahati Bench vs. Guwahati.

Title of the Suit : O.A. No. 369 /99

All India Association of Investigators
S. K. Sharma vs.

All India Association of Investigators

Association

Association and others

Applicants.

- Versus -

Union of India and others Respondents.

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In the Central Administrative Tribunal

Guwahati Bench :: Guwahati.

(An application under Section 19 of the Central Adminis-
trative Tribunal Act, 1985)

C.A. NO. _____ /99

Between

1. All India Association of Investigators,
National Sample Survey Organisation,
(Field Operation Division),
Dept. of Statistics, Ministry of
Planning and Programme Implementation,
Central Block, House Fed Complex,
Basilica 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), Dept. of Statistics,
Ministry of Planning Programme -
Implementation, Central Block,
House Fed Complex, Basilica Road,
Dispur, Guwahati.

3. Shri Bishor Bardolei
Son of Shri A.K. Bardolei
Investigator, NSO, (FOD),
Central Block, House Fed Complex,
Basiltha Road, Dispur,
Guwahati-6.

4. Shri Siddharta Bhattacharjee
Son of Late S.C. Bhattacharjee,
Investigator, NSO (FOD),
Silchar Sub Regional Office,
Showme Building, Darapur,
Dist. Silchar-3. Applicante.

-Versus-

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

2. Deputy Director General,
Field Operation Division,
NSO Pushpa Bhavan,
Nadan Sir Road,
New Delhi -62.

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

4. Deputy Director (Administrative)

E.S.S.O.(P.D.),

Pushpa Bhawan, Madan Gor 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 dx 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.D/Adacts/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 applicant declares that this application is filed within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1995.

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. Date of the Case.

4.1. That all the applicants are the citizens of India ^{they} as such 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 Organisation (Field Operation), Ascom 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 6 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 1997 as the grievances and the relief are common in this application. All the members of the

Q 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".

An extract of Office Memorandum dated 14.12.1983 and C.R. dated 1.12.1988 and 22.7.93 are annexed hereto and the same are marked as Annexures 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. The said application was duly contested by the present Respondents and the O.A. No. (131/1989) was decided on 28.2.1990 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
 "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 1.1.1983 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 above it is quite clear that the Hon'ble Tribunal declared their entitlement of grant of SDA to the applicants (members of the association).
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138(6)/89
A copy of judgement and order of C.A. No. 131/89 dated 28.2.90 is annexed as Annexure-3.

4.5. That your applicants beg to state that the said judgement and order dated 28.2.90 was accepted and implemented by the respondents following the decision of the Director & N.B.S.C. 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 judgement and order dated 28.2.1990 passed in C.A. No. (131/89) in respect of the applicants (association) letter accepted the said order of the judgement and paid arrears as well as the current SDA to the (members of the) applicants' (association).
138(6)/177
131/88

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 Acctt. Director, Kohima that in view of the judgement 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.

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Stops
Feb/97

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But inspite of such instructions the payment of SDA was withheld for the period from February '97 to 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 25.6.96 and memorandum dated 1.1.96 (and representation dated 28.11.98) are enclosed as Annexures- 4, 5 (and 6) 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 1.11.98 informed the local head office NSOO (FOD) Guwahati while disposing the representation of staff of NSOO (FOD) 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 O.M. no. 131/6/1989 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 future force.

*Judgment
is still
in force*

A copy of the O.M. dated 12.1.96 is enclosed

as annexure -O. 8

4.7. Most surprisingly the Deputy Director (Administration), New Delhi vide impugned O.M. issued under letter I-46011/3/94-OM (Vol. III) dated 1.11.99 informed the local Head offices of NSSO (IOD), Guwahati while disposing the representation of the staff of NSSO (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(B) dated 12.1.96 requested to recover the amount of SDA already paid after 20.9.94 in easy instalment and rejected the

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/ADM/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- 9 & 10 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 sifir 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 & 10 11 & 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 yoy 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 the association has been declared by the Hon'ble Tribunal in its Judgment and order dated 28.2.1990 passed in O.A. No. 134/1989 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 passed by the Hon'ble Tribunal 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 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 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 applicant's association in the light of the judgment and order dated 28.2.99 passed in ¹³⁸⁽⁶⁾⁽¹⁾¹⁹⁹⁰ O.A. No. 131(6)/1990 by this Hon'ble Tribunal.

8.2. That the Hon'ble Tribunal be pleased to set aside and quash 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.M. dated 1.11.99 and 5.11.99 (annexure 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.

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VERIFICATION

I, Shri Ashokbaran Talukdar son of Shri Handesar Talukdar aged about years unit Secretary Assam All India Association of Investigators, N.S.S.O. (NID), Department of Statistics and Programme implementation presently resident of Dibrugarh, Assam, ^{one} of the applicant in this C.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.

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 Compex, 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),
Dept. of Statistics, Ministry
of Planning and Programme Implementation,
Central Block, House Fed Complex,
Basistha Road, Dispur, Guwahati & 3 Ors.

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

Applicants

-versus-

Union of India & Ors.Respondents

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

ORDER (ORAL)

CHOWDHURY J.(V.C.).

Similar question arise for consideration in these
two applications hence those 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. Respondents instead of complying with the Tribunal's order time to time issued orders contrary to 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 the orders of the Tribunal passed in O.A. No. 138(G) of 1989 and 131 (G) of 1989. The impugned O.A. No. A-16011/3/94-O.M. (Vol.III) dated 1.11.1989 and O.A. No. 1(76)Accts/ASM/yy dated 5.11.99 (Annexures 8 and 9 to the O.A. No. 368/99 and Annexureu 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)
X/112/12/17/1990
22/12/1990

Section Officer (S),
Central Administrative Tribunal
Court of Appeals
Government of India
New Delhi, India

Application for copy.	राख्या सूचित करने की तिथि 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.	113 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. 16 135

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 Proforma
 Respondents.

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 Pal and others Respondents

For the Petitioner : Mr. K.K.Mahanta
 Advocate

For the Respondents Mr. A.P.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

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

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 123.5.03 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



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 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

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authority by issuing any order or office memorandum, 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



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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. I. Katrekey
Judge

Sd. B. S. Reddy
Chief Justice

SERIALIZED TO BE TRUE COPY
Sd. B. S. Reddy
Date 31/10/06
Signer (Signature)
High Court
Authorized U/S 76 Act 1 1872

23/10/06

Par 47356
31/10/06

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Ax No 17
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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.

11C
N.W.LIII

115. Date 30/5/02

(Supp 1) SCC, 757. Therefore, this appeal is to be allowed in favour of the UOI. The Hon'ble Supreme Court further ordered that whatever amount has been paid to the employees by way of SDA will not, in any event, be recovered from them inspite of the fact that the appeal has been allowed. 16 128 149

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
 (GURBINDA KALITA)
 Peon

AxNo: 19

X30
No. DIR/ASM/ WP(c)/7324-01/06/ 7550-46
GOVERNEMENT OF INDIA
MINISTRY OF STATISTICS & P.I
NATIONAL SAMPLE SURVEY ORGANISATION
(FIELD OPERATIONS DIVISION)

15
'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 Esstt.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 Khaslagir, 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, Dastry	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
A. Maitra
(S.MAITRA) 15/12/2006
Director (R)

Filed in Court
on..... 16.9.07
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Central Administrative Tribunal

Guwahati Bench

26 SEP 2007

①
Filed by: -
The Respondents
Through -
Mr. Maitra
Adv. C.G.S. &
CAT
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J. Maitra
3/9/2007

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-

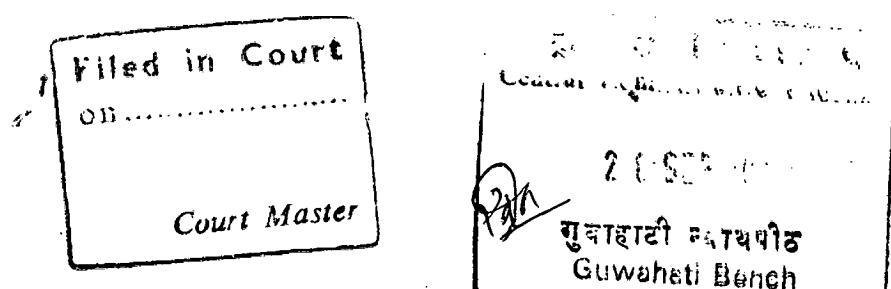
In the matter of:

Written statement on behalf of
all the respondents.

(WRITTEN STATEMENT ON BEHALF OF ALL THE RESPONDENTS)

I, Sri ...S. Maitra..... son of Lt. 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



(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.

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

J. marsh
3/9/2001

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Court Master

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 21 SEP 2001
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 Guwahati Bench

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(S)/97-E.II (B), dated 29th May 2002 which is extracted as under:

A. Maitra
3/9/2007

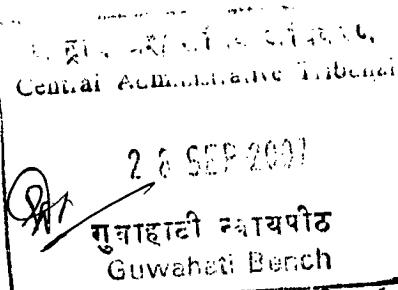
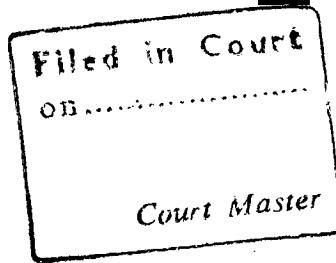
“The Special Duty Allowance shall be admissible to Central Government Employees having All India Transfer Liability on posting to North Eastern Region (Including Sikkim) from outside the region”.

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



(4)

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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.

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.

J. Maheshwar
3/9/2021

Filed in Court on.....	Central Government of India Court Master
	21/5/2001 Guwahati Bench

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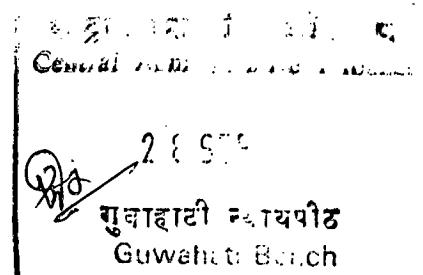
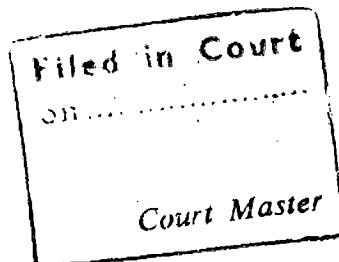
8.4 That with regard to the statements made in paragraph 4.5 of the application, the humble answering respondent begs to state that the applicants have to fulfill the criteria laid down for grant of SDA. Since none of them is satisfying the laid down criteria, thus they have no legitimate claim for grant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

J. Mohanta
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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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.

A. Manik
3/9/2009

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.”

Filed in Court
On
Court Master

26 SEP 2007
गुवाहाटी बायादपीठ
Guwahati Bench

(7)

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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.

J. Maitby
3/9/2007

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.....
Court Master

संघीय नियंत्रण न्यायालय
Central Administrative Tribunal

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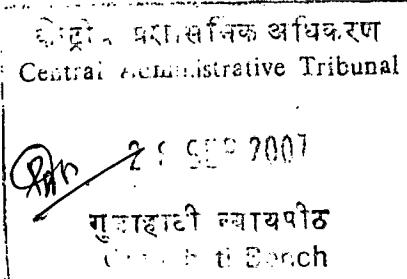
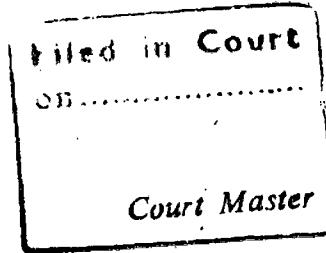
गुवाहाटी न्यायपीठ
Guwahati Bench

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J. maitra
3/9/2007

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.



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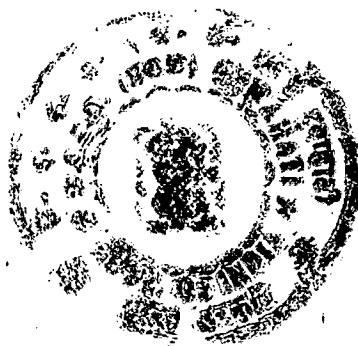
VERIFICATION

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 1 to 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.सै. (क्षे.सै.प्र.) गुवाहाटी
NSSO (FOD) GUWAHATI.

16 OCT 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

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,

16
Filed by Kumar Basak
Applicant
for and on behalf of Dipen
Dipen Kumar Basak
16 OCT 2007

16 OCT 1997

गुरुवारी न्यायालय
Court Bench

- 2 -

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

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Bansal
Kumar
Dipen

16 OCT 1991

- 3 -

गुरुवाहारी न. रायपुर
3rd B.A. Bench

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:

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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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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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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.

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Dipen Kumar Basak

VERIFICATION

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.

Digen Kumar Basak
Signature of the Applicant

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

File No. 2
The Respondents
through
Magistrate
S. C. S. V.
Accd. T. 07
6/12/07
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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.

J. maitra

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Gauhati Municipal Corporation

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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, benefit of SDA extended to them under the judgment of the Hon'ble CAT.

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

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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

J. Maini

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.”

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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 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.

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Guwahati Bench

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, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14..... are true to my knowledge ; and those made in the paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 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THE CENTRAL ADMINISTRATIVE TRIBUNAL
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SL. NO. 2. 188

(2)

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ANNEXURE-A

18

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

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

The 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.

.....Applicants

By Advocate Mr A. Ahmed.

- 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.

.....Respondents

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

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
4.12.1983 and Office Memorandum No.20014/16/36 IV/E II (B) dated

certified to be true

M. S. Adell C. G. A.
6/12/07

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1.12.1983 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 were 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.

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 aforesaid, the 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

प्राधिक अधिकारी ।

Section Officer (I)

आधिकारी (प्राधिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्राधिकारी अधिकारी
Guwahati Bench, Guwahati-9
प्राधिकारी अधिकारी, प्राधिकारी

45/18/2001