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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 162/2007

R.A/C.P No.

E.P/M.A No.

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SECTION OFFICER (Judl.)

Salita
04.10.2007

CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI LAUNCH

ORDERS SHEET

1. Original Application No. 162/2007

2. Miscellaneous Petition No. _____

3. Contempt Petition No. _____

4. Review Application No. _____

Applicant(s) Sri Mani Kant Das vs Union of India & Ors

Advocate for the Applicant(s) Mr. S. Sarmu, Mr. Adil Ahmed,
Mr. S. Baishya, Mr. R. Barnah,
Mrs. J. Barthakur Sarmu.

Advocate for the Respondent(s) Adv. C.G.S.C. Meili Das

Notes of the Registry Date _____ Order of the Tribunal _____

This application is in form
is filed/C.F. for Rs 50/-
deposited vide BD
No. 349654292
Dated 12.6.07

26.6.2007

The claim of the applicant is for non grant of Special Duty Allowance (SDA). The contention of the applicant is that he is a permanent resident of North East Region and he was appointed in the N.E. Region but subsequently transferred to Kolkata and thereafter he has been subjected to further transfer to N.E. Region and his case is that he is entitled to SDA. Since identical matters have already been admitted the O.A is also admitted. Issue notice on the respondents.

Post on 9.8.07 for further order.

Vice-Chairman

Steps taken with
envelops

19/6.

For compliance.

126/107

Notice & order sent
to D/Section for issuing 1pgl
to R-1, 2, 3 by regd. A/D
post and others 4, 5
sent to received by
hand.

D/No-679 to 693
12/6/07.

V

19.9.2007

Written statement has not been filed. Two weeks further time allowed for filing written statement. List it on 03.10.07.

Notice duly served on resp. nos - 4-5.

10/7/07

W/s not filed.

nkm

03.10.07

None appears for the applicant nor the applicant is present. Ms. Usha Das, learned Addl. Standing Counsel for the Central Government, undertakes to file reply by to-morrow, after serving the copy of the reply on the counsel for the applicant, call this matter on 14.11.07 for awaiting rejoinder from the applicant.

Vice-Chairman

18.9.07

W/s not filed.

1.10.07

4.10.07

W/s submitted by Resp. Nos 1 to 5 copy served, page 1 to 10.

Lm

(Khushiram)
Member(A)

(Monoranjan Mahanty)
Vice-Chairman

14.11.2007

Call this matter on 13.12.2007 awaiting rejoinder from the Applicant.

(Khushiram)
Member (A)

(M.R. Mohanty)
Vice-Chairman

8.11.07

W/s rejoinder filed. /bb/

13.12.2007

No rejoinder has yet been filed in this case. Mr. S. Sarma, learned counsel appearing for the Applicant, seeks more time to file rejoinder.

Rejoinder not filed.

12.12.07

Call this matter on 02.01.2008 awaiting rejoinder from the Applicant.

Rejoinder not filed.

1.1.08

(Gautam Ray)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

162/07

02.01.2008

In this case rejoinder is to be filed in course of the day. Mr.M.U.Ahmed learned Addl. Standing Counsel appearing for the Union of India seeks four weeks time to file reply to the Rejoinder.

Call this matter on 01.02.2008.

3.1.08
Rejoinder filed
by the Applicant.
Copy stored.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

Lm

WLS and rejoinder
biked by the parties.

01.02.2008

In this case written statement has already been filed. Rejoinder has also been filed. This case is otherwise ready for hearing.

Call this matter on 15.02.2008 for hearing.

(Khushiram)
Member (A)

(M. R. Mohanty)
Vice-Chairman

nkm

The case is ready
for hearing.

31.1.08.

15.02.2008

Call this matter on 28.03.2008 for hearing.

(Khushiram)
Member(A)

M.R.Mohanty
Vice-Chairman

lm

The case is ready
for hearing.

27.3.08.

4-
Vice-Chairman

lm

O.A.162 of 07

28.03.2008

On the prayer made on behalf of the counsel for the Applicant, hearing of this case adjourned to 21st April, 2008.

28.3.08.

Pl. send copies of this order to the Respondents
31.3.08

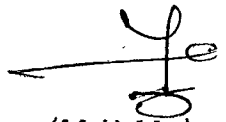
Respondent should cause production of materials to substantiate their stand that the Applicant on his own volition took transfer to be posted in N.E. Region.

Respondents should also ^{Cause} production Annexure -III to their written statement.

Send copies of this order to the Respondents in the address given in the O.A.

order dt. 28/3/08
send to D/Section
for issuing to respondent
by post.

4/4/08. D/No-1661 to 1665.
Dt= 8/4/08.

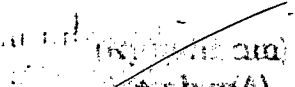

(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.

lm

21.04.2008,, Call this matter on 02.05.2008.

17.4.08.


Member(A)


(M.R. Mohanty)
Vice-Chairman

The case is ready
for hearing.


lm

02.05.2008

Mr. S. Sharma, learned counsel appearing for the Applicant is present. No one for the Respondents.

Call this matter on 26.05.2008.


23.5.08.


(Khushiram)
Member(A)

O.A.162/2007

26.05.2008 Mr. Sukumar Sarma, learned counsel appearing for the Applicant and Mr.M.U.Ahmed, learned Addl. Standing counsel for the Union of India are present.

Call this Single Judge matter on 29.05.2008 for hearing before the Hon'ble Member.



(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman

/bb/

30.05.2008 Mr.Sukumar Sarma, learned counsel appearing for the Applicant has filed a letter of absence. Mr.M.U.Ahmed, learned Addl. Standing counsel for the Union of India is present.

Call this matter on 23.06.2008.


(Khushiram)
Member (A)

/bb/

23.06.2008 Heard Mr S. Sarma, learned Counsel appearing for the Applicant and Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, and perused the materials placed on record. Hearing concluded.

For the reasons recorded separately, the O.A. stands disposed of. No costs.


(M.R. Mohanty)
Vice-Chairman

nkm

The case is ready for hearing.

20.6.08

12.8.08.
Original judgment is ready in O.A. No. 161/07

12.8.08

12.8.08
Copy of the judgment sent to the office for perusal in time to the parties and 1/12.08 for the parties etc

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.161 of 2007

And

Original Application No.162 of 2007

Date of Order: This the 23rd day of June 2008

The Hon'ble Shri M.R. Mohanty, Vice-Chairman

1. O.A.No.161/2007

Sri Ramesh Ch Bardoloi,
S/o Late Kalinath Bardoloi,
Office of the Executive Engineer (Electrical),
Guwahati Electrical Division 1,
Bamunimaidan, Guwahati-21.

..... Applicant

By Advocates Mr S. Sarma, Mr A. Ahmed, Mr S. Baishya,
Mr R. Baruah and Mrs J. Barthakur Sarma.

-versus-

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Urban Affairs,
Nirman Bhawan, New Delhi-110011.

2. The Director General Works
Central Public Works Department,
118- Nirman Bhawan, New Delhi-110011.

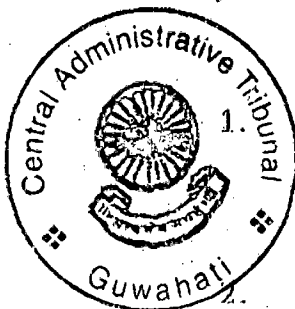
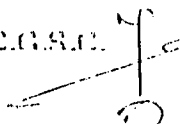
3. The Chief Engineer (E)(EZ)
Central Public Works Department,
Nizam Palace,
234/4, A.J.C. Bose Road,
Kolkata-20.

4. The Superintending Engineer (Electrical)
Guwahati Electrical Division,
No.1, Central Public Works Department,
Guwahati-21.

5. The Executive Engineer (Electrical)
Guwahati Electrical Division No.1,
Central Public Works Department,
Guwahati-21.

..... Respondents

By Advocate Mr M.H. Ahmed, Addl. C.G.S.O.



II. O.A.No.162/2007

Sri Mani Kanta Das,
S/o Late Teka Ram Das,
Resident of Bamunimaidan,
Guwahati-21. by profession
Khalasi in the Office of the
Executive Engineer (Electrical),
Guwahati Electrical Division-1,
Bamunimaidan, Guwahati-21.

..... Applicant

By Advocates Mr S. Sarma, Mr A. Ahmed, Mr S. Baishya,
Mr R. Baruah and Mrs J. Barthakur Sarma.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Urban Affairs,
Nirman Bhawan,
New Delhi-11001.
2. The Director General Works
Central Public Works Department,
118, Nirman Bhawan,
New Delhi-110011.
3. The Chief Engineer (El)(EZ)
Central Public Works Department,
Nizam Palace,
234/4, A.J.C. Bose Road,
Kolkata-20.

The Superintending Engineer (Electrical)
Guwahati Electrical Division,
No.1, Central Public Works Department,
Guwahati-21.

The Executive Engineer (Electrical)
Guwahati Electrical Division No.1,
Central Public Works Department,
Guwahati-21.

..... Respondents

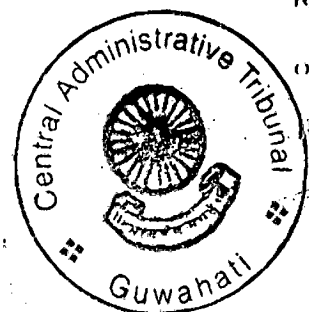
By Advocate Mr M.U. Ahmed, Addl. C.G.S.C.



ORDER (ORAL)M.R. MOHANTY, VICE-CHAIRMAN

Heard Mr S. Sarma, learned Counsel appearing for the Applicant and Mr M.U. Ahmed, learned Addl. Standing Counsel representing the Union of India and the Respondents, and perused the materials placed on record.

2. The Applicant, in O.A.No.161 of 2007, is a person of N.E. Region. He was initially posted in Tezpur (in North Eastern Region) and later posted at Kolkata (outside North Eastern Region) and, on his representation, he was posted back in the North Eastern Region. On his posting in the North Eastern Region (after his transfer from Kolkata), he continued to receive Special (Duty) Allowance ('SDA' for short) for a considerable period. Thereafter, payment of SDA was discontinued; for which he approached this Tribunal in an earlier O.A.No.236/2005. The said case (O.A.No.236/2005) was disposed of, on 09.09.2005, with a direction for consideration of the grievances of the Applicant. As it appears, the Applicant submitted a representation on 04.10.2005; which received consideration of the Respondents under Annexure-7 dated 30.06.2006 and the Respondents turned down the prayer of the Applicant on the ground that the Applicant was posted in North Eastern Region (being transferred from Kolkata) for the reason of his own volition and that he was not granted T/DA or joining time for the said transfer from Kolkata to North Eastern Region.



3. Mr M.U. Ahmed, learned Addl. Standing Counsel for the Union of India, argued that since Bengal and the North Eastern Region comes under one region of the Respondent Organisation, the transfer of the Applicant (from Bengal to a place in North Eastern Region) does not entitle him to get SDA. Mr M.U. Ahmed also pointed out (with instructions from the Respondents) that the Applicant came on transfer from Kolkata to the North Eastern Region on his own volition; for which no TA/DA and joining time was granted and that, therefore, the Applicant is not entitled to get SDA.

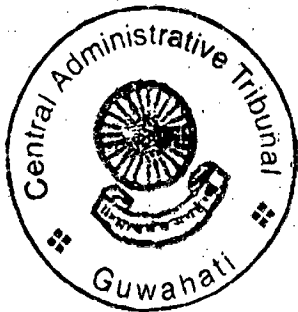
4. When a person from any other part of India is posted in the North Eastern Region and is entitled to get SDA benefit; there is no reason as to why a person from Eastern Region (Kolkata/West Bengal) transferred to North Eastern Region should be denied the said benefit. The first objection of Mr M.U. Ahmed/Respondents is hereby overruled.

5. At the outset of his hearing, Mr S. Sarma, learned Counsel appearing for the Applicant, produced a copy of the views of the Department of Expenditure of the Ministry of Finance of the Government of India dated 26.02.2007, the contents of which reads as under:

"Ministry of Finance
Department of Expenditure
E-II (B) Branch
.....

Sub: proposal seeking clarification as to whether employees posted/transferred in N.E. Region, at their own request from outside N.E. Region are eligible to get SDA.

Reference U.O.No.Admin./1(27)/Shillong/06-07/2412
of Office of Pr. Chief Controller of Accounts(Central Excise & Customs) on pre-page.



There is no restriction for grant of Special Duty Allowance to Central Govt. Employees if they are posted on their own request and are entitled to SDA as per criteria for payment of SDA as mentioned in para 5 of Finance Ministry's O.M.No.11(5)/97-E.II(B) dated 29.5.2005 (copy enclosed). Office of Pr. Chief Controller of Accounts is advised to decide the cases of payment of SDA accordingly.

Sd/-

(R. Prem Anand)

Encl. as above

Under Secretary to Govt. of India.

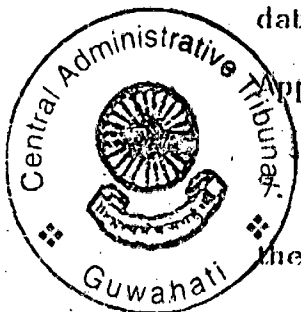
Shri Arvind Kumar, Controller of Accounts, O/o Pr. Chief Controller of Accounts, Central Excise & Customs, A.G.C.R. Building, New Delhi (1st Floor)

M/o Fin.(Expdr.) U.O.No.11(1)E.II(B)/07, dt. 22/2/07

By placing the aforesaid unofficial communication of the Department of Expenditure of the Ministry of Finance of the Government of India, the learned Counsel for the Applicant has tried to say that the Finance Ministry have clarified that posting in the North Eastern Region, on one's own request, do not stand on the way to get SDA.

6. In the above premises, so far as the transfer on own volition is in question, this matter is remanded back to the Respondent Department to examine the matter (in the light of the views of the Department of Expenditure, Ministry of Finance, Government of India as reflected in the unofficial communication dated 26.02.2007 (extracted above) and grant necessary relief to the Applicant, as due and admissible under the rules.

The fresh consideration in the matter should be given by the Respondents within a period of 90 days from the date of receipt of a copy of this order.



[Handwritten signature]

8. Similar is the case of the Applicant in O.A.No.162 of 2007. Regionalisation (covering a part of India including the part covered under North Eastern Region) is no ground to deny SDA to a person who has come on transfer from Cooch Behar (West Bengal) to the North Eastern Region. However, this case also needs reconsideration of the Respondents in the light of the observations of the Department of Expenditure of the Ministry of Finance of the Government of India (extracted above) and therefore, the case of the Applicant in O.A.No.162/2007 also stands remitted for reconsideration of the Respondents.

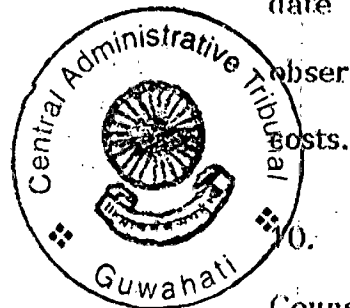
9. The Respondents should communicate the result of the fresh consideration to both the Applicants within 120 days from the date of receipt of a copy of this order. With the aforesaid observations and directions, both the O.A.s stand disposed of. No costs.

10. While parting with the cases, Mr S. Sarma, learned Counsel for the Applicants pointed out that the Sixth Central Pay Commission (in its report) has already advised the Government of India to pay SDA benefits to all such persons posted in the North Eastern Region and that, therefore, the Respondents, while considering the grievances of the Applicants, should give full consideration in the matter.

Date of Application : 11.8.08
 Date on which copy is ready : 11.8.08
 Date on which copy is delivered :
 Certified to be true copy

39. Vice Chairman

Section Officer (Jr'dl)
 A. T. Guwahati Bench
 Guwahati-5.
 11/8/08



13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No- 132/2007

Sri Mani Kanta Das

.....Applicant

-Vs-

Union of India & another

.....Respondents

SYNOPSIS

This application is made against the Order dated 13-6-06 (Annexure-6), issued by the respondent No- 4, by which the applicant is not eligible for payment of Special Duty Allowance (SDA)

The prosecution story is, in brief, that the applicant, a permanent resident of N.E. region, was initially appointed as Khalashi by the Superintending Engineer (Electrical), Guwahati Central Electrical Circle, CPWD, Guwahati dated 30-12-92 and then he was attached to the Assistant Engineer (Electrical), Aviation Electrical Sub Division NO- V, CPWD, Coach Bihar, West Bengal. Thereafter, the applicant was transferred to the office of the Assistant Engineer (Electrical), Guwahati Central Electrical Sub Division NO- 1, CPWD, Guwahati- 21 on 1-5-93 (Annexure- 2), since then the applicant is working as Khalashi in the office of Executive Engineer (Electrical) Guwahati Electrical Sub Division CPWD, Bamunimaidan, Guwahati- 21.

contd....p 2

Mani Kanta Das

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(2)

In paragraph (1) of the office Memorandum dated 30-12-92 (Annexure - 1) it has been clearly stated that apponitment carries with the liability to serve any part of India or outside where the CPWD has an organisation. Accordingly, the applicant was also transferred to the office of the Assistant Engineer (Electrical), Aviation Electrical Sub Division No- V, CPWD, Coach Bihar West Bengla dated 1-5-93 (Annexure- 2)

As per the Cabinet Secretariate Letter dated 2-5-2000, it has been clarified and stated that an employee hailing from NE Region and subsequently posted outside the NE Region and reposted from outside the NE region will be entitled for payment of Special Duty Allowance (SDA) and accordingly he has been drawing SDA from the respondents w.e.f. June 1993 to March 2002 and suddenly the SDA had been discontinued w.e.f. March 2002 till date. Thereafter, the applicant had submitted a series of representations to the respondents, praying for release of SDA in his favour; but the respondents did not take any initiative in this regards.

Finding no alternative, he along with another applicant namely Sri Ramesh Chandra Bordoloi had jointly preferred an Original Application vide O.A. NO- 236/2005 before this Hon'ble CAT for seeking a direction for payment of SDA in their favour. After hearing both the parties, Hon'ble Central Administra-

contd...p 3

Mankanta Das

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(3)

tive Tribunal, Guwahati Bench had disposed off the said Original Application on 9-9-05 (Annexure- 4), directing the applicants to file a fresh representation with all requisite details before the competent respondents within one month and the concerned respondents will dispose off the said representation on merit in the light of the principles stated in common order passed by the Hon'ble CAT in O.A.No- 170/99 and connected cases dated 31-5-05 within a period of 3 months.

Thereafter, the respondents will pass speaking order and communicate the same to the applicants.

Accordingly, the applicant had submitted a representation to the respondent No- 3 (Annexure- 5). But the respondent NO- 4 had rejected the applicant's said representation with a cryptic order dated 13-6-06 (Annexure- 6).

Therefore, it is a fit case for setting aside the said impugned order dated 13-6-06 (Annexure- 6). After setting aside the impugned order dated 13-6-06, the respondent may be directed to release SDA in favour of the applicant for the ends of justice.

Filed by

Baisya (S. Sankar Baisya)
Advocate

Mani Kanta Das

✓b

Original Application No- 162/2007

Sri Mani Kanta Das.

.....Applicant

-VS-

Union of India & another

.....Respondents

I N D E X

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Filed by

Bharat (Sashanka Baridya)
Advocate

Maxi Kantadas

केन्द्रीय प्रशासनिक अपील
Central Administrative Tribunal

12 JUN 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::
GUWAHATI BENCH

Filed by
Sri Mani Kanta Das,
in petition
through
Sukumar Sarma
Advocate
12-06-07

DA 162/2007

BETWEEN

Sri Mani Kanta Das
son of Late Teka Ram Das
Resident of Bamunimaidan,
Guwahati- 21, by profession-
Khalasi, in the office of the
Executive Engineer (Elec-
trical), Guwahati Electrical
Division- !, Bamunimaidan,
Guwahati -21

.....Applicant

-Versus-

1) The Union of India repre-
sented by the Secretary to
the Government of India
Ministry of Urban Affairs,
Nirman Bhawan, New Delhi-
110011

2) The Director General Works
Central Public Works -

contd.....p/2

Mani Kanta Das

(2)

Department 118- Nirman
Bhawan, new Delhi- 110011

3) The Chief Engineer (EL)(EZ)
CPWD, Nizam Palace
234/4A. J.C. Bose
Kolkata- 20

4) The Superintending Engi-
neer (Elecrical),
Guwahati Electrical Division
No- 1, Central Works Depart-
ment, Guwahati- 21

5) The Executive Engineer
(Electrical),Guwahati Elec-
trical Division No- 1, Central
Public Works Department,
Guwahati- 21

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

This application is against the illegality com-
mitted in passing the order vide No- 26/1/98-Admn.
Vol- IV dated 13-6-2006, issued by Superintending
Engineer (P& A) EL i.e. Respondent No- 4, by which
the applican^yt is not eligible for payment of Special
Duty Allowance (SDA).

contd...p/3

Mani Kant Das

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(3)

2) JURISDICTION OF THE TRIBUNAL:-

The applicant declares that such subject matter of the illegality committed for revover~~y~~ of the Special Duty Allowance against which the redressal is sought is within the jurisdiction of the Hon'ble Tribunal.

3) LIMITATION:-

The applicant ~~for~~ further declares that the application is within the period of limitation.

4) FACTS OF THE CASE:-

(i) That the applicant is a citizen of India and a permanent resident of Assam and as such is entitled to the rights and protection as guaranteed by the Constitution of India.

(ii) That the applicant is presently working as a Khalasi under the office of the Executive Engineer (Electrical), Guwahati Electrical Division- 1, Bamunimaidan, Guwahati- 21 who is permanent resident of North Eastern Region and was initially appointed as Khalasi by the Superintending Engineer (Electrical), Guwahati Central Electrical Circle, CPWD, Bamunimaidan, Guwahati -21 Vide Office Memorandum No- 10(7)/GEDII/92/1894 dated 30-12-92 in pursuance of the letter No- 10(I)/GCEC/92/2973 dated 28

oontd.....p/4

Mani Kantadas

(4)

28-12-1992 and then he was attached to the Assistant Engineer (Electrical), Aviation Electrical sub-Division No-V, Central Works Department, Coach Bihar, West Bengal.

(iii) That, thereafter, the applicant was transferred to the office of Assistant Engineer (Electrical) Guwahati Central Electrical Sub Division No-1, Central Public Works Department, Guwahati-21 from the office of the Assistant Engineer Electrical, Aviation Electrical Sub Division NO-V, CPWD, Coach Bihar, West Bengal vide office No-10(1)/AESD-V/COB/93/336 dated 1-5-1993 and since then, he has been continuously working as a Khalashi in the office of Executive Engineer (Electrical), Guwahati electrical Sub Division-1, Central Public Works Department, Bamunimaidan, Guwahati-21, Assam till date.

(iv) That *the Respondent No-1* is the Union of India represented by the Secretary to the Government of India, Ministry of Urban Affairs, Nirman Bhawan, New Delhi -110011

The *Respondent No-2* is the Director General, Works, Central Public Works Department 118, Nirman Bhawan, New Delhi-110011.

The Respondent No-3 is the Chief

contd.....p/5

Mahil Kantadars

(5)

Engineer, (EL) (EZ), CPWD, Nizam Palace, 234/4A J.C.
Bose Road, Kolkata- 20.

The *Respondent No- 4* is the Superintending Engineer (Electrical) Guwahati, Central Electrical Circle, CPWD, Bamunimaidan, Guwahati- 21

The *Respondent No- 5* is the Executive Engineer (Electrical) Guwahati Electrical Division NO- 1 Central Public Works Department, Guwahati- 21

(v) That the applicant was appointed by the respondent No- 4 and his condition service is primarily regulated by the respondent NO- namely as regards leave salary and allowances etc.

(vi) That the applicant begs to state that in the office Memorandum dated 30-12-1992 in paragraph (4), it has been clearly stated that appointment carries with the liability to serve any part of India or outside where the CPWD has an organisation. Accordingly, the applicant was also transferred to the office of the Assistant Engineer (Electrical), Guwahati Central Public works Department Guwahati- 21 from the office of the Assistant Engineer (Electrical) Aviation Electrical Sub Division NO- V, CPWD, Coach Bihar, West Bengal vide office order No- 10(1) AESD-V/COB/93/336 dated 01-05-93..

contd...p 6

(6)

A copy of official Memorandum dated 30-12-92 and office order dated 1-5-93 are annexed herewith and marked as ANNEXURES 1 and 2 respectively

(vii) That the applicant further begs to state that as per the Cabinet Secretariate Letter No-20-12-1993, EA-12-1799 dated 02-05-2000, it has been clarified and stated that an employee hailing from NE Region and subsequently posted outside the NE region and reposted from outside the NE region to NE region will be entitled for payment of Special Duty Allowance (SDA) and accordingly he had been receiving S.D.A. from the respondent w.e.f. ^{June '93} ~~June '93~~ to ^{March '02} ~~March '02~~ and suddenly the S.D.A. had been discontinued w.e.f. ^{March 2002} ~~March 2002~~, the reason is best known to the respondents.

(viii) That the applicant begs to state that since he is entitled to get a special duty allowance as per said Govt. of India, Cabinet Secretariate letter No-20-12-1999.EA-12-1799 dated 02-05-2000; but the respondents did not pay such allowance to the applicant although other similarly situated persons of other department of the central Government have already received such allowances as per aforesaid

contd.....p 7

(7)

Cabinet decisions and as such the applicant finding no alternatives has filed series of representations on several dates requesting the authorities to release the said Special Duty Allowance in his favour ; but to the utter surprise of the applicant , the respondent has rejected his such prayer without assigning any valid reason.

A copy of one of the said representations vide No- 377/ orgl. dated 3-5-05, issued to the Superintending Engineer (Electrical) Guwahati Central Electrical Circle, CPWD, Guwahati- 21 is annexed herewith and marked as ANNEXURE- 43

(ix) That the applicant begs to state that finding no alternative he had preferred an Original Application- Vide - O.A.NO- 236 of 2005 before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati-5 , for seeking a direction for payment of special duty allowance in favour of the applicant as per Govt. of India, Cabinet Secretariate letter NO- 20-12-1999-EA-12-1799, dated 02-05-2000

That after hearing both the parties Hon'ble Tribunal had disposed off the said Original Application on admission stage on 9th September' 2005 -

contd....p/8

Mam Kantadas

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(8)

directing the applicant to file a fresh representation with all requisite details before the competent respondent within one month. The concerned respondent will dispose of the said representation on merits in the light of the principle stated in the common order passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O.A. NO- 170 of 1999 and connected cases dated 31-5-05 and in accordance with the law within a period of 3 months thereafter. The respondent will pass speaking order and communicated the same to the applicants.

A copy of the said order dated 9-9-05 in O.A. NO- 236/05 passed by the Hon'ble Central Administrative Tribunal is annexed herewith and marked as ANNEXURE- ~~4~~ 5

x) That, accordingly in compliance with the said order dated 9-9-05, passed by the Hon'ble CAT in O.A. NO- 236/2005 (Annexure-), the applicant had duly submitted a representation to the Chief Engineer (EL)(EZ), CPWD, Nizam Palace, 234/4A, J.C.Bose Road, Kolkata- 20 i.e. the respondent No- 3, highlighting the facts and circumstances for which he is eligible to get special duty allowance and requesting him to take necessary steps and action and release his spe-

contd....p/9

Manikanta Das

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(9)

cial duty allowance from the respective date of his joining at the NE Region from outside the NE Region.

In the said representation, the applicant had clearly stated that as he being a permanent resident of N.E. Region was initially appointed as Khalasi by the Superintending Engineer (Electrical), Guwahati Central Electrical Circle, CPWD, Bamunimaidan, Guwahati- 21, vide Office Memorandum NO- 10(7)/GEDII /92/1894 dated 30-12-94 in pursuance of the letter No- 10(I)/GCEC/92/2973 dated 28-12-92 and he was attached to the Assistant Engineer (Electrical), Aviation Electrical Sub Division NO-5, Central Public Works Department, Coach Bihar, West Bengal. In the said office memorandum, dated 3-12-92 in paragraph (4), it has been clearly stated the appointment carries with the liability to serve any part of India or outside where the CPWD has an organisation. Accordingly the applicant was transferred to the office of the Assistant Engineer (Electrical), Guwahati Central Electrical Sub Division- 1, Central Public Works Department, Guwahati- 21 from office of the Assistant Engineer (Electrical) Aviation Electrical Sub Division NO- 5, CPWD, Coach Bihar, West Bengal vide Office Order No- 10(1)/AESD-V/ COB/93/336 dated 1-5-1993.

(xi) That, under the above facts and circum-

contd...p/10

Mani Kant Das

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(10)

stances, the applicant begs to state that as per the Cabinet Secretariate Letter NO-20-12-1999-EA-12-1799 dated 2-5-2000 and as per common order dated 31-5-2005 in O.A. NO- 170 of 1999 and connected case, state that an employee belonging to NE Region and subsequently posted to outside NE Region and retransferred to NE Region is entitled for grant of Special Duty Allowance.

A Copy of the said representation dated 27-9-05 is annexed herewith and marked as ANNEXURE-5

(xii) That, the applicant begs to state that after receiving the representation dated 27-9-05 from the applicant in compliance with the Order dated 9-9-05 in O.A. NO- 236/2005 , the Superintending Engineer (p & A) EL i.e the Respondent No- 4 had rejected the prayer of the applicant with a criptic order. The relevant portions of which is described as follows:-

“ (3)...the representation of Sri Das has been examined in consultation with the competent authority. It is noted that Sri Das was appointed as Khalasi under Guwahati Central Electrical Division No- II, CPWD, Guwahati, in the year 1992 and posted in the office of Assistant Engineer, Aviation, Electrical Sub Division No- V, CPWD, Coach Bihar, West Bengal vide order dated 03-12-92. He was subse-

contd.....p/11

Mahanta Das

quently transfered to Guwahati i.e. his home state in the year 1993 on his own request by Superintending Engineer (Electrical) GCEC vide Order dated 31-3-93

“(4)....The payment of SDA to Group ‘C’ ‘D’ and works charge official of CPWD, posted in North Eastern Region was examined in consultation with the Ministry of Finance Department of Expenditure, New Delhi and it has been clarified by the office of DGW, CPWD, New Delhi vide office order No- 14/21/91-EC IV (C) dated 7-1-2002 (copy enclosed) that the official falling in the above category whose recruitment, transfer and seniority are regionalised are not entitled to SDA.

“(5)....The order dated 2-5-2000 of Cabinet Secretariate New Delhi stipulates the near clause in the appointment order makes an employee eligible for the grant of SDA. Determination of admissibility of SDA to an Central Government Civil employee having all India transfer liability will be done by applying the test i.e. (a) whether the recruitment to the service/ cadre/ post has been made on all India basis. (b) Whether the promotion is also done on the basis of common all India seniority for the service/ cadre/ post as a whole.

“(6) Transfer of Sri Das from Coach Bihar to Guwahati was not on public interest and has been ordered on his own request. In addition, Sri Das does

contd...p/12

Mahil Kantadas

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(12)

not satisfy the conditions as mentioned in paragraph (5) above. As per clarification issued by office of DGW, being a Group D staff. he is not eligible for payment of SDA.

“(7) In view of facts mentioned above, Sri Das is not eligible for payment of SDA

A copy of the said Order dated 13th June' 2006, issued by the Superintending Engineer (P & A) E is annexed herewith and marked as ANNEXURE- 6

xiii) That the applicant begs to state that although he had highlighted in his representation on 13-6-06 in compliance with the order dated 9-9-05, passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench in O. A NO- 236/05 for payment of special duty allowance, which are described as follows:-

(a) That he was attached to Aviation Electrical Sub Division No- V CPWD, Coach Bihar West Bengal.

(b) That he was transferred to the office of Assistant Engineer (E), Guwahati Central Electrical Sub- Division - 1, CPWD, Guwahati, vide order dated 1-5-93.

contd...p/13

Mahil Kant Das

(c) That as per Cabinet Secretariate ,New Delhi's letter dated 2-5-2000, an employee hailing from N.E Region and subsequently posted outside NE Region and reposted outside NE Region to N.E. Region will be entitled to payment of SDA

(d) That he is saddled with All India Transfer liability and with the said liability he has been transferred from Coach Bihar to Guwahati

(e) In view of the above facts he is entitled to SDA.

But the respondent had arbitrarily passed the impugned order without considering the aforesaid issues properly by rejecting the said representation.

Therefore it is permanently a fit case for setting aside the said order No- 26/1/98-Admn.Vol- 4 dated 13-6-06, issued by the Superintending Engineer (P & A) EL i.e. the respondent No- 4 after setting aside the impugned order dated 13-6-06, the respondents may be directed to release the Special Duty Allowance (SDA) in favour of the applicant for the ends of justice.

GROUND FOR RELIEF WITH LEGAL
PROVISIONS

- a) For that the impugned order dated 13-6-06 is prima facie, malafide and has been issued by rejecting the genuine prayer of the applicant

contd...p/14

Mani Kantavale

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(14)

in receiving Special Duty Allowance (SDA) as per due procedure of law and thus giving undue harassment to the applicant.

- b) For that the impugned order is passed in most arbitrary manner in violation of all established norms and procedures as well as the Principles of Natural Justice and as such the impugned order is liable to be set aside and quashed.
- c) For that the impugned order dated 13-6-06 was passed behind the back of the applicant without showing any genuine cause to the applicant, which is punitive in nature and the same being passed arbitrarily without affording the applicant any opportunity of being heard and as such the impugned order can not be sustained in law and liable to be set aside.
- d) For that the Hon'ble Central Administrative Tribunal had clearly stated in para (3) and (4) of the order dated 9-9-2005 in O.A.NO- 236/05, preferred by the applicant that--

“ This Tribunal had occasioned to consider the question of admissibility of SDA in common order dated 31-5-05 in -

contd...p/15

Mahil Kantadas

O.A.NO- 170 of 1999 and connected case. The principles deduced from the various Govt. order and the decisions of courts and Tribunal are summed up in para (52) and (53) of the said which reads thus---

“(52)...The position as it obtained on 5-10-2001 by virtue of Supreme Court's decision, the Government orders can be summarised as---

Special Duty Allowance is admissible to central govt. employee having all India transfer liability on posting to North Eastern Region from outside the region.. By virtue of the cabinet clarification mentioned earlier and employee belonging to NE Region and subsequently posted to outside NE Region if he is retransferred to NE Region he also be entitled to grant of SDA”....and as also be entitled to grant of SDA”....and as such as per aforesaid decision as well as as per common order 31-5-05 in O.A. NO- 170 of 1999 and connected cases, the applicant, an employee belonging to N.E. Region and subsequently posted to outside NE Region again retransferred to N.E. Region is entitled to grant of SDA from the respondents; for which the Hon'ble Tribunal had directed the applicant to file a fresh representation with all -

contd...p/16

Mazlikanta Das

(16)

requisite details before the competent respondents and the respondents would dispose of the said representation on merits in the light of the Principles stated in the common order extracted above and in accordance with the law. But the respondents did not dispose of the said representation on merits, rather rejected the said representation arbitrarily and whimsically in a cryptic order in compliance with the order passed by the Hon'ble Central Administrative Tribunal and in the light of the principles stated in the common order and as such the impugned order is liable to be set aside and quashed.

- e) For that although the applicant is also entitled to get SDA as per cabinet Secretariate letter No- 20-12-1999- EA-12-1799 dated 2-5-2000 as he being an employee hailing from N.E. Region i.e. from Guwahati, Assam and subsequently posted outside of the NE Region i.e. Coach Bihar, West Bengal and reposted from outside of NE Region i.e. Coach Bihar, West Bengal to Guwahati, Assam will be entitled for payment of Special Duty Allowance (SDA); but even then the respondents had rejected his genuine prayer in a most arbitrary and mechanical manner; for

contd....p/17

Mahil Kantadas

(17)

which the impugned order is liable to be set aside and quashed.

f) For that although the applicant was saddled with all India Transfer liability and as per Specific clause in the appointment order and being an employee of CPWD [Central Public Works Department]; the office of which exist in all over india like similarly situated other central Govt. Departments; for which with the said liabilities; the applicant being an employee of North Eastern Region had been transferred from the office of the Assistant Engineer (Electrical), Aviation Electrical Sub Division No- V, CPWD , Coach Bihar, West Bengal to the office of the Assistant Engineer (Electrical), Guwahati Central Electrical Sub Division--1, Assam; but even then the respondents had wrongly interpreted all the provisions of law and thus rejected his genuine prayer arbitrarily and with malafide intention of granting SDA and as such the impugned order is liable to be set aside and quashed for the ends of justice.

g) For that the respondents had stated in the impugned order clause (6) that the transfer of the applicant from Coach Bihar, West Ben

contd...p/18

Mani Kantadas

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gal to Guwahati, Assam was not made on public interest, but on his own request is completely false and fabricated, the applicant being an employee of Central Govt. Department like similarly situated employee and as per specific clause in the appointment order regarding All India Transfer liability; he has been duly transferred from Coach Bihar to Guwahati on public interest but not on his own request and as such the impugned order is liable to be set aside and quashed.

h) For that the impugned order was passed mechanically without considering the genuine prayer of the applicant for granting SDA which has already been granted to some similarly situated persons working as Central Govt. employees which amounts to a clear violation of fundamental rights guaranteed under Article 14 of the Constitution of India and as such the same is liable to be set aside and quashed.

i) For that the respondent No....had stated in paragraph (4) of the impugned order dated 13-6-06, the relevant portion of which is that the officials falling in the category of Group , C, D and work change officials of CPWD

contd...p/19

Mani Kanta Das

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posted in NE Region and whose recruitment, transfer and seniority are regionalised are not entitled to SDA which is wrongly interpreted by the respondent and only to deprive the applicant from his legitimate right of availing SDA as per due procedure of law; because of the fact that Coach Bihar, wherein the applicant being an employee of NE Region was transferred to is situated in West Bengal i.e. completely outside the territory of the NE Region and as such the applicant who was transferred from Cach Bihar to Guwahati in Assam can not be treated as regionalised i.e. with the same region and as such the impugned order is liable to be set aside and quashed for the ends of justice; otherwise the applicant shall suffer irreparable loss and injury.

- j) For that due to sincere service and long experience the applicant was duly promoted from Grade IV to Grade III post having all India Transfer liability and as such he is also entitled to get SDA as per due procedure of law but the respondents had wrongly interpreted all the provisions of law as a result of which the applicant was deprived

contd....p/20

Mani Kant Das

from his legitimate right of getting SDA which amounts to a clear violation of Principles of law for which the impugned order is liable to be set aside.

6) DETAILS OF REMEDIES EXHAUSTED:-

That the applicant made several representations to the respondent and lastly a representation was submitted on 3-5-05 to the respondent No- 5 praying for granting Special Duty Allowance as he is entitled to get the same as per due procedure of law; but the said representation was returned by the respondent No- 5 by rejecting his genuine prayer.

Thereafter the applicant finding no alternative had preferred an Original Application before this Hon'ble Tribunal, which has been registered as O.A. NO- 236/2005. After hearing both the parties this Hon'ble Tribunal had passed an order on 9-9-05 by which the said application was disposed of with a direction to the applicant to file a fresh representation with all requisite details before the competent respondent within one month from that date. The concerned respondent would dispose off the said representation on merits in the light of the Principles stated in the common order as mentioned in the said order and in accordance with the law within a period of 3 months thereafter.

contd.....p/21

Mani Kanta Das

Accordingly, in compliance with the said Order the applicant had duly submitted a representation in detail on 27-9-05 to the Chief Engineer (EL) (EZ), CPWD, Kolkata- 20 i.e. the respondent No- 3 highlighting all his grievances. After receiving the said representation the respondent No- 4 had rejected the prayer of the applicant.

Hence finding no alternative the applicant had to prefer the instant Original Application praying for setting aside the impugned order and to grant SDA as per due procedure of law in his favour.

Hence this Hon'ble Tribunal is the only Tribunal through which the applicant may get proper remedy.

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

The applicant although instituted an Original Application which had been registered as O.A. NO- 236/05, before this Hon'ble Tribunal ; but the same was already disposed off on 9-9-05, hence the applicant has not filed any other application , writ petition etc in any other court for getting relief.

8) RELIEF SOUGHT FOR:-

Under the above facts and circumstances the applicant prays for the following reliefs:-

contd....p/22

Mani Kant Das

(22)

(1) That, the impugned Order vide No- 26/1/98-Admn. Vol- IV dated 13-6-06, issued by the Superintending Engineer (P & A) EL i.e. the respondent No- 4 may be set aside and quashed.

(2) That, after setting aside and quashing the aforesaid Order dated 13-6-06, the Special Duty Allowance may be released in favour of the applicant from the respective dates of his joining at North Eastern Region i.e. at Guwahati, Assam from outside the North Eastern Region i.e. Cochin Bihar, West Bengal as per due procedure of law.

9) INTERIM RELIEF PRAYED FOR:-

The applicant has not prayed for interim relief.

10) DETAILS OF INDEX:-

An index in duplicate containing the details of the documents to be relied upon is enclosed.

11) POSTAL ORDER 3461

Postal Order No-- 654292

Date--- 12/6/07

Issuing Post Office---Guwahati

Payable--at Guwahati

12) LIST OF ENCLOSURES:-

As per the index regarding documents (Annexure....to...submitted herewith plus one Vakalatnama.

contd....p/23

Mahakantadas

VERIFICATION

I, Sri Mani Kanta Das, son of Late Tekaram Das, aged about 39 years, resident of Bamunimaidan, Guwahati -21 under police station- Chandmari, by profession- service, by religion- Hindu do hereby varify and declare that the statements made in paragraphs 1 and 12 are true to my knowledge and belief and that I have not supressed any material facts.

And I sign this verification on this ^{June} 12th day of 2007 at Guwahati.

Mani Kanta Das

Signature

Mani Kanta Das

Govt. of India
Central Public Works Department.

No. 10(7)/CEDII/92/1894

Date 30/12/92.

MEMORANDUM

In pursuance of the Superintending Engineer (E),
Gauhati Central Elect. Circle, C.P.W.D., Gauhati letter
No. 10(1)/CEEC/92/2973 dt. 28.12.92, Sri Mani Kanta Das (son
of Late Tika Ram Das) is hereby offered a purely temporary
appointment as Khalasi until further orders concerning his
no right of confirmation on the following terms and conditions.

1. An initial pay of Rs. 750/- p.m. in the scale of pay 750-12-870-EB-14-940/- plus usual allowances as admissible.
2. The appointment will take effect from the date he actually joins duty.
3. No travelling allowances will be paid for joining this appointment.
4. The appointment carries with it the liability to serve in any part of the India or outside where the CPWD has an organisation.
5. His services are liable to be terminated by the Govt. at any time without assigning any reasons but ordinarily one month notice will be given. If, however, he wishes to remain, he has to submit his resignation and wait for its acceptance by the Govt. In case he goes away without its acceptance, he will be treated as having been dismissed from service with a disqualification for future employment under the Central Govt.
6. He is required to produce a certificate of Character from a stipendiary or a District Executive Magistrate (including a District Magistrate or a Sub-Divisional Magistrate) or from two Gazetted Officers who are known to him for the last three years but not related to him before he is allowed to join the appointment. Medical fitness certificate from District Medical Officer must be submitted before the joining.
7. Original certificate and testimonials in support of his qualification, experience and age should be produced before joining duty.
8. If he has been employed anywhere previously he will have to submit a discharge certificate from his last employer.
9. In case it is proved after the acceptance of offer and appointment that he is dismissed employee of the Union or State Govt. disqualifying him for future employment under Govt. or that he has obtained employment deceitfully he will be dismissed from service without any remuneration.
10. He is an Indian national.

Contd....2...

Attended by
Sri. Ratul Baruah
Advocate

11. He will not keep two wives at any time through out his service.
12. His service will be terminated if he is found to be an alcoholic.
13. He has to take oath of allegiance to the constitution of India at the time of taking up of the appointment.
14. His appointment will be provisional subject to him being declared medically fit.
15. He will be on probation for a period of 2 years and liable to be extended by the appointing authority.
16. He will have to fill in a declaration of temporary service on joining the department.
17. He will be governed by the subordinate services disciplinary control and Appeal Rules etc. as framed by the Govt. of India from time to time.
18. He will have to give details of his movable and immovable property within 4 weeks from the date of his appointment. Similar information will have to be furnished in respect of his family members.
19. He will not leave the department on an offer being received from any other department where he might have applied before nominated here. Also he will not apply direct for any post outside the CPWD.
20. He will have to give his Home Town declaration within 7 days.
21. Scheduled Tribe/Scheduled Caste candidate will have to furnish a Certificate in the prescribed form in support of his claim to belong to a Scheduled Caste/Tribe.
22. His appointment will be governed by the relevant rules and orders of Govt. issued from time to time.
23. If any declaration given or information furnished by the candidate proves to be false or if the candidate is found to have willfully suppressed any material information, he will be liable to be removed from service and such other action taken as governed may deem necessary.
24. If he is accept the offer on the terms given above he should report for duty to the Assistant Engineer (E), Avn. Elect. Sub-Division No. V, CPWD., Cochin on or before 18.11.93. If the candidate fails to report for duty by the prescribed date, the offer will be treated as cancelled.
25. The formal appointment order will be issued on his joining after completing required formalities by the Executive Engineer (E) of the concerned Division.

Executive Engineer (E),
Gauhati Elect. Division No. 11,
CPWD., Gauhati Airport, Ghy-16.
Contd....

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- 3 -

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To
Sri Mani Kanta Das,
Mirzapur, P.O. Azara,
Gauhati-15.

Copy for information to :-

1. The Superintending Engineer, Gauhati Central Elect. Circle,
CPWD., Gauhati-21 with reference to his letter no. mentioned
above.
2. The Zonal Officer (RZ), CPWD., Calcutta-20.
3. The Assistant Engineer (E), Avn. Elect. Sub-Divn. No- V,
C.P.W.D., Coochbehar.

Executive Engineer (E),
Gauhati Elect. Divn. No- 11,
CPWD., Gauhati-15.

GOVERNMENT OF INDIA
CENTRAL PUBLIC WORKS DEPARTMENT

ANNEXURE-2

NO. 10(1)/AED-V/COI/93/336

dt. 1/6/93.

OFFICE ORDER

In pursuance of the Superintending Engineer (E), Guwahati Central Electrical Circle, C.P.W.D., Guwahati-21 office order No. 10(1)/COI/93/433. dt. 31/3/93. Sri Mani-Kanta Das, Khalasi has been relieved from this Sub-Division on 1/5/93. A.N., to report duty under Assistant Engineer (E), Guwahati cent. Elect. Sub-Divn. No. I, C.P.W.D. Guwahati-21.

(A. SINHA ROY)
Assistant Engineer (E)
Avn. Elect. Sub-Divn. V,
C.P.W.D., Khudiram Baroni,
Cooch Behar.

Copy to:-

1. The Executive Engineer (E), GED-II, C.P.W.D., Guwahati-15 for his information please.
2. The Superintending Engineer (E), CCEC, C.P.W.D. Guwahati-21 for information W.R.T. office order quoted above. Sri Mani Kanta Das, Khalasi has been paid by this office up to 30/4/93. His pay details are furnished below for 4/93.

- | | | |
|------|-------------|-----------|
| i) | Pay | Rs. 750/- |
| ii) | D.A. | Rs. 623/- |
| iii) | H.R.A. | Rs. 70/- |
| iv) | M.E. | Rs. 15/- |

Deduction:-

- | | | | |
|----|----------------|----------|-----|
| i) | Insurance - 15 | Rs. 15/- | (B) |
|----|----------------|----------|-----|

Gross Amount Rs. 1450/- (A)

Net amount paid during the month 4/93....XXXX (A - B) Rs. 1443/-

4. Liveries:-

1. Soap : Due from 01/93
2. Duster : Due from 03/93
3. Summer Liveries:-
 - a) Terricotton Trousers: Due from (not yet received since joined on 1/5/93)
 - b) Terricotton bush shirt: Due from ---do---
 - c) Welled Chappal: Due from ---do---
 - d) Cap: Due from ---do---
4. Winter liveries:-
 - a) Short Coat: Due from ---do---
 - b) Long Pant: Due from ---do---
 - c) Welled Shoe: Due from ---do---
 - d) Winter Journey : Due from ---do---

Attested by
Rahul Baruah
Advocate

ASSISTANT ENGINEER

No. 377/0891.

At.

3/5/05

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Dated, Guwahati the 3rd May, 2005.

To
The Superintending Engineer (Elect.)
Guwahati Central Electrical Circle
CPWD, Guwahati 21.

Copy/Dairy No. 231
Date 16/5/05
Through Proper Channel

Sub:- Special Duty Allowance in respect of Shri Mani Kanta Das, Khalashi.

Sir,

Most respectfully, I have the honour beg to state that I have been appointed and posted as Khalashi in the office of Assistant Engineer, (E), Aviation Electrical Sub-division No.V, CPWD, Cooch Behar (W.B). Subsequently, I have been transferred and posted at Guwahati under Guwahati Electrical Division No.I, CPWD, Guwahati 21. Sir, in accordance to the Circular in respect of Special Duty Allowance ; officers/staff who have been transferred and posted from outside NE. Region are being allowed to draw Special Duty Allowance (SDA). It is regretted to inform you that in my case the same rules are not being maintained.

Therefore, I request your benign-self to kindly look into the matter so that I am not deprived of my legitimate dues please.

With kind regards,

Yours faithfully,
M.K.Das
(Mani Kanta Das)
Khalashi

Guwahati Central Electrical Sub-division
CPWD, Guwahati 21.

Forwarded to En Engr (E) G.E.D-I for duplicate
for favour of further onward
transmission.

16/5/05

Assistant Engineer (Elect.)
Guwahati Cent. Elect. Sub-Div
CPWD, Guwahati 21

Attested by
Ratul Baruah
Advocate

3/5/05

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.236 of 2005

Date of Order: This the 9th Day of September, 2005.

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

1. Shri Mani Kanta Das
Son of Late Teka Ram Das
Khalasi
Office of the Executive Engineer(Electrical)
Guwahati
Electrical Divjision-1 Bamunimaidam,
Guwahati-21.

2. Shri Ramesh Chandra Bordoioi,
Son of Late Kall Nath Bordoloi
Lift Operator
Office of the Executive Engineer(Electrical)
Guwahati
Electrical Division-1
Bamunimaidan
Guwahati-21.
By Advocate Mr.A. Ahmed

Applicants

-Versus-

1. The Union of India represented by the Secretary
To the Government of India,
Ministry of Urban Affairs, Nirman Bhawan,
New Delhi-110011.

2. The Director General Works,
Central Public Works Department, 118-
Nirman Bhawan,
New Delhi-110011

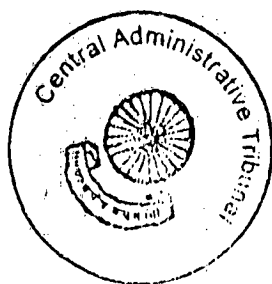
3. The Chief Engineer(EL)(EZ)
CPWD, Nizam Palace,
234/4A.J.C.Bose Road,
Kolkata-20.

4. The Superintending Engineer
(Electrical), Guwahati Central Electrical Circle
Central Public Works Department
Bamunimaidan, Guwahati-21.

5. The Executive Engineer(Electrical)
Guwahati Electrical Division No.1
Central Public Works Department, Guwahati-21

Respondents

By Advocate Mr.A.K. Choudhury, Addl.C.G.S.C.



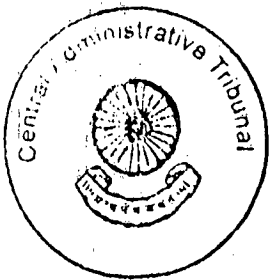
Attested by
Ratul Baruah
Advocate

ORDER (ORAL)SIVARAJAN, J(V.C):

The applicants are presently working as Khalasi and Lift Operator respectively, under the Respondents. Their grievance is that though they are entitled to Special Duty Allowance (SDA for short) for working in the N.E.Region under various Government orders and the decisions of Courts and Tribunals, the Respondents are not paying SDA to the applicants. The applicants made representations to the Respondent, which were returned by the 5th Respondent stating that :

"We should not forward this type of case to SE (E) when no. of such rep. has been turned down by Govt./Sup. Court. He may file the case in Guw. CAT."

2. I have heard Mr. A Ahmed learned counsel for the applicant and Mr.A.K. Choudhury, learned Addl.C.G.S.C. appearing for the Respondents. Mr. A.Ahmed counsel for the applicant submits that it is in the above circumstances the applicants are forced to file this application for the relief sought for therein. I also heard Mr. A. K. Choudhury, learned Addl, C.G.S.C. appearing for the Respondents. As already noted the applicants are claiming SDA on the basis of various Government orders and the decisions of this Tribunal. In order to get SDA the applicants have to satisfy various conditions stipulated Government orders granting SDA. In the circumstances it is a matter for the applicants to place all relevant facts before the authorities and it is for the authorities to take decision thereon with reference to the Government order on the point and the decision of the Tribunal and the court in the first instance. In the instant case though the



for

applicants had preferred representation in that regard they were returned of the endorsement noted herein before.

3. This Tribunal had occasion to consider the question of admissibility of SDA in the common order dated 31.5.2005 in O.A.No.170 of 1999 and connected cases. The principle deduced from the various Government orders and the decisions of Courts and Tribunals are summed up in paragraphs 52 and 53 of the said order which reads thus:-

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

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

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

4. In the circumstances I am of the view that this application can be disposed of with the following directions:-

The applicants are directed to file a fresh representation with all requisite details before the competent Respondent within 1 month from to day. The concerned Respondent will dispose of the said representations on merits in the light of the principles stated in the common order extracted above and in accordance with the law within



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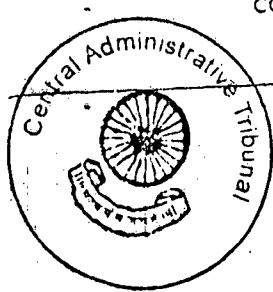
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a period of three months thereafter. The Respondent will pass speaking order and communicate the same to the applicants.

The O.A. is disposed of as above at the admission stage itself. This will be produced alongwith the representations before the concerned respondent for compliance.



Sd/VICE CHAIRMAN

LM

TRUE COPY

प्रतिलिपि

Noted
15.9.05
अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी ब्रांच
GUWAHATI BRANCH
गुवाहाटी, Assam-781005

15/9

To

Dated 27:09:05

The Chief Engineer (EL) (EZ)
CPWD Nizam Palace,
234/4A, J.C. Bose Road,
Kolkata - 20.

Ref.: O.A. No.236/2005 - Sri Mani Kanta Das & another -Vs.- The Union of India & Others.

Sub: Representation submitted with reference to the direction issued by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati on 9th September, 2005 in Original Application No.236/2005.

Respected Sir,

Most humbly I beg to state that I have filed an Original Application No.236 of 2005 before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for seeking a direction for payment of Special Duty Allowance to me as per Government of India Cabinet Secretariat letter No.20-12-1999-EA-1-1-1789 dated 02-05-2000. The Hon'ble Tribunal disposed off the said Original Application at the admission stage on 9th September 2005 directing me to file a fresh Representation with all requisite details before the Competent Respondent within one month. The concerned Respondent will dispose off the said Representation on merits in the light of the principle stated in the common order passed by this Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati in O.A.No.170 of 1999 and connected cases dated 31-05-2005 and in accordance with the law within a period of 3 (three months) thereafter. The Respondent will pass speaking order and communicated the same to the Applicants. Hence, I have submitted the following representation before you for kind and sympathetic consideration of the matter and may be pleased to pass appropriate order.

That sir, I am working as Khalasi under the office of the Executive Engineer (Electrical), Guwahati Electrical Division - 1, Bamunimaidan, Guwahati - 21. I am a permanent resident of North Eastern Region and I was appointed as Khalasi by the Superintending Engineer (Electrical), Guwahati Central Electrical Circle, CPWD, Bamunimaidan, Guwahati - 21 vide Office Memorandum No.10(7)/GEDII/92/1894 dated 30-12-1992 in pursuance of the letter No.10(1)/GCEC/92/2973 dated 28-12-1992

Attended by
Ratul Baruah
Advocate

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issued to me. I was attached to the Assistant Engineer (Electrical), Aviation Electrical Sub-Division No.V, Central Public Works Department, Coach Bihar, West Bengal. In the said Office Memorandum dated 3-12-1992 in paragraph 4 it has been clearly stated the appointment carries with the liability to serve any part of India or outside where the CPWD has an organisation. I was transferred to the office of the Assistant Engineer (Electrical), Guwahati Central Electrical Sub-Division no.1, Central Public Works Department, Guwahati - 21 from Office of the Assistant Engineer (Electrical), Aviation Electrical Sub-Division No.V, CPWD, Coach Bihar, West Bengal vide Office order No.10(1)/AESD-V/COB/93/336 dated 01-05-1993.

That sir, as per Cabinet Secretariat letter No.20-12-1999-EA-12-1799 dated 02-05-2000 it has been clarified and stated that an employee hailing from NE Region and subsequently posted out side of the NE Region and reposted from out side of NE Region to NE Region will be entitled for payment of Special Duty Allowance.

That sir, I am saddled with All India Transfer liability and with the said liability I have been transferred from the office of the Assistant Engineer (Electrical), Aviation Electrical Sub-Division V, CPWD, Coach Bihar, West Bengal to Office of the Assistant Engineer (Electrical), Guwahati Central Electrical Sub-Division No.1.

That sir, regarding payment of Special Duty Allowance the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati in a common order dated 31-05-2005 in O.A.No.170 of 1999 and connected cases held that an employee belonging to NE Region and subsequently posted to out side NE Region and retransferred to NE Region, he will also be entitled for grant of Special Duty Allowance.

From the above, it is very clear that I am also entitled for Special Duty Allowance as per Cabinet Secretariat letter dated 02-05-2000 and also as per observation made by the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati on 31-05-2005 in O.A.No.170/99 and other connected cases.

- 35 -

I, therefore, humbly pray before your honour to take necessary steps and actions in this matter and also to release my Special Duty Allowance from the respective date of my joining at NE Region from out side of NE Region.

Thanking you in anticipation,

Yours faithfully,

Encl.: As above.

M.K. Das
(Mani Kanta Das)
Son of Late Teka Ram Das
Khalasi
Office of the Executive Engineer
(Electrical),
Guwahati Electrical Division - I
P.O. - Bamunimaidan,
Guwahati - 21.

MOST IMMEDIATE
COURT CASE

No. 26/1/98-Admin.Vol-IV

GOVERNMENT OF INDIA
Central Public Works Department
O/o the Chief Engineer (E)EZ
234/4, A J C Bose Road,
Nizam Palace, Kolkata - 20.

Nizam Palace, Kolkata-20

Dated the 13th June, 2006.

OFFICE MEMORANDUM

Sub: Representation of Shri Mani Kanta Das, Khalasi with reference to the direction issued by Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati on 9th September, 2005 in original application No.236/2005 - Passing of speaking order regarding.

In pursuance of the direction issued by Hon'ble CAT, Guwahati Bench on 09.09.05 in O.A. No.236/2005 filed by Shri **Mani Kanta Das, Khalasi** for payment of Special Duty Allowance (SDA), Shri Bordolai submitted a representation dt.27.09.05 addressed to Chief Engineer(E)EZ in support of his aforesaid claim.

2. Following issues have been highlighted by Shri Das in his representation:

- (a) That he was attached to Aviation Electrical Sub-Division No.V, CPWD, Cooch Bihar, West Bengal
- (b) That he was transferred to the office of Asst. Engineer (E), Guwahati Cent. Elect. Sub-Division No.I, CPWD, Guwahati vide order dt.01.05.93.
- (c) As per Cabinet Secretariat, New Delhi's letter dt.02.05.2000, an employee hailing from North-Eastern Region and subsequently posted outside NE Region and reposted from outside NE Region to NER will be entitled to payment of SDA.
- (d) That he is saddled with all India transfer liability and with the said liability he has been transferred from the Cooch Bihar to Guwahati.
- (e) In view of the above facts, he is entitled to SDA.

3. The representation of Shri Das has been examined in consultation with the competent authority. It is noted that Shri Das was appointed as Khalasi under Guwahati Cent. Elect. Division No.II, CPWD, Guwahati in the year 1992 and posted to the office of Asst. Engineer, Aviation Electrical Sub-Division No.V,

Attested by
Ratul Baruah
Advocate

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- 37 -

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CPWD, Cooch Bihar, West Bengal vide order dt.03.12.92. He was subsequently transferred to Guwahati, i.e. his home state; in the year 1993 on his own request by SE(E), GCEC vide order dt.31.03.93.

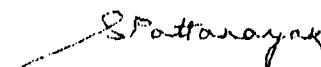
4. The payment of SDA to Gr. 'C', 'D' & Work Charged officials of CPWD posted in NE Region was examined in consultation with the Min. of Finance, Deptt. of Expenditure, New Delhi and it has been clarified by the office of DGW, CPWD, New Delhi vide office order No.14/21/91-EC IV (C) dt.07.01.02 (copy enclosed), that the officials falling in the above category whose recruitment, transfer & seniority are regionalized are not entitled to SDA.

5. The order dt.02.05.2000 of Cabinet Secretariat, New Delhi stipulates that a mere clause in the appointment order regarding All India transfer liability does not make an employee eligible for the grant of SDA. Determination of admissibility of SDA to any central government civil employee having all India transfer liability will be done by applying the tests i.e. (a) whether the recruitment to the service / cadre / post has been made on all India basis & (b) whether the promotion is also done on the basis of common all India seniority for the service / cadre / post as a whole.

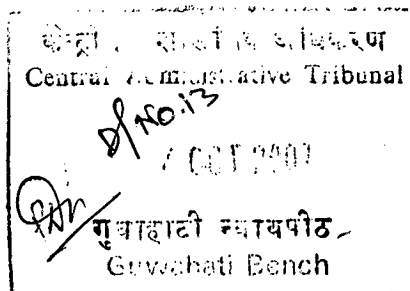
6. Transfer of Shri Das from Cooch Bihar to Guwahati was not on public interest and had been ordered on his own request. In addition, Sh. Das does not satisfy the conditions as mentioned in Para-5 above. As per clarification issued by office of DGW being a Group 'D' staff, he is not eligible for payment of SDA.

7. In view of facts mentioned above, Shri Das is not eligible for payment of SDA.

Encl: As stated


(ER. S. PATTANAYAK)
Superintending Engineer (P&A) EL

To
Shri Mani Kanta Das, Khalasi, Guwahati Central Elect. Division No.1,
CPWD, Guwahati through SE(E), GCEC, CPWD, Guwahati.



Filed by
The Respondents Through
Deba Das
Addl. C.S.C.
Date 03/10/07 54

1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

IN THE MATTER OF

OA NO. 162/2007

Shri M. K. Das

...Applicant

-Versus-

Union of India & others

.... Respondents

-AND-

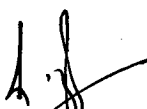
IN THE MATTER OF

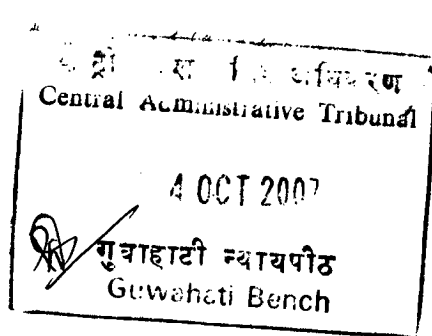
Written Statement submitted by the Respondent No. 1 to 5

WRITTEN STATEMENT:

The humble answering respondents submitted their written statement follows:

- 1(a) That I am....Data Ram Rathore....at...present...working
...as...Executive Engineer (E)....Guwahati Elect. Division
...No. 1, C.P.W.D., Guwahati-21 and respondent No. 5.....in the above
case. I have gone through a copy of the application served on me and have understood the
contents thereof. Save and except whatever is specifically admitted in this written
statements, the contentions and statements made in the application and authorized to file
the written statement on behalf of all the respondents.
- (b) The application is filed unjust and unsustainable both facts and in law.
- (c) That the application is bad for non-joinder of necessary parties and misjoinder
unnecessary parties.


Executive Engineer (E)
Guwahati Elect. Divn. No. 1,
C.P.W.D., Guwahati-21



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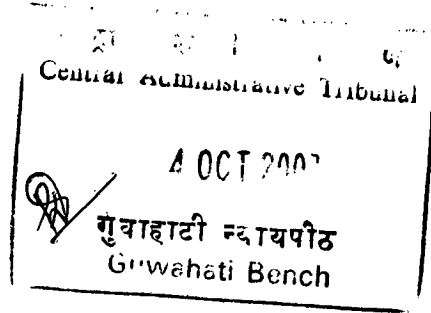
- (d) That the application is also hit by the principles of waiver estoppels and acquiescence and liable to be dismissed.
- (e) That any action taken by the respondents was not stigmatic and ^{same} ~~some~~ were for the sake of public interest and it cannot be said that the decision taken by the Respondents, against the applicants had suffered from vice of illegality.

It is further submitted that Shri M. K. Das appointed as Khalasi under Guwahati Central Electrical Division II, Guwahati in the year 1992 and posted to the office of Assistant Engineer (E), Aviation Electrical Sub- Division No. V, CPWD, Cooch Bihar, West Bengal vide order dated 03.12.1992. He was subsequently transferred to Guwahati, i.e. his home state in the year 1993 on his own request by SE (E), GCEC vide order-dated 31.3.1993. Since then he has ^{been} not transferred out from his place of posting i.e. from Guwahati to outside NER. He belongs to Group D and his transfer and seniority are regionalized. He does not have all India transfer liability. He is not entitled to SDA as he does not have all India transfer liability and his transfer & seniority is regionalized (Office order dated 02.5.2000 of Cabinet Secretariat and Office Order No. 14/21/91-EC IV (C) dated 07.1.2002 of DG (W)). Also the transfer from Cooch Bihar to Guwahati was not in ^a public interest ^{transfer} as it was done on his own request.

1. That with regard to the statement made in paragraphs 1 to 4(vi) of the OA, the respondents do not admit anything contrary to the case.

2) That with regard to the statement made in paragraphs 4(vii) to 4(xiii) of the OA, the answering respondents beg to submit that as per DG (W) CPWD, New Delhi office order No. 14/21/91-EC-IV(C) dated 07.01.2002, that payment to group 'C' and 'D' and work charged employees posted in NE

Executive Engineer (E)
Guwahati Elect. Divn. No-1.
C.P.W.D. Guwahati-21



3

Region for whom recruitment, transfer and seniority are regionalized are not entitled to Special Duty Allowance (SDA). The decision of the competent authority in this regard has already been conveyed to the applicant by the Superintending Engineer (Elect.), GCEC, CPWD, Guwahati-21 vide office order No. 9(36)/GCEC/2001-02/ dated2002 and Chief Engineer (Elect.) EZ, CPWD, Kolkata-20 vide office order No. 26/1/98-Adm. Vol. IV dated 13.6.2006 as annexed by the applicant vide Annexure- 4 and 7 with the OA. The Hon'ble Supreme Court in Judgment delivered on 20.6.1994 (in Civil Appeal No. 3251/1994 in the case of Union of India and others Vs. S. Vijay Kumar and ors.) 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 North Eastern Region from out side 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 as per office memorandum No. 11051/9/E-II(B) dated 29-5-2002 of the Under Secretary to the Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi.

Copies of the of the letter dated 07.01.2002 and 29.05.2002 are annexed herewith and marked as Annexure- R -I and R -II respectively.

3) That with regard to the statement made in paragraphs 5 (a) to 5 (c) of the OA, the answering respondents state that the allegation made by the applicant is baseless and misleading. Therefore the plea if the applicant should be rejected.


4) That with regard to the statement made in paragraph 5 (d) of the OA, the answering respondents while reiterating and reaffirming the statements made above beg to submit that in pursuance of the direction of the Hon'ble CAT, Guwahati Bench on 09.09.2005 in OA No. 236/05 filed by the applicant

Executive Engineer (B)
Guwahati Beat, Divn. No-1,
C.P.W.D., Guwahati-21

for payment of SDA, the representation of the applicant was examined in consultation with the competent authority and it was noted that the Division No. II, CPWD, Guwahati in the year 1992 and posted to the Assistant Engineer (Elect.), Aviation Electrical Sub- Division, CPWD, Cooch Bihar, West Bengal vide memo No.10 (7) /GED-II /92/ 1894 dated 30.12.1992. Subsequently the applicant was transferred to Guwahati i.e. his home State in the year 1993 on his own request by the Superintending Engineer (Elect.), Guwahati Central Electrical Circle, CPWD, Guwahati vide order No. 10(1)/GCEC/93/433 dated 31.3.1993. The decision for ineligibility of SDA conveyed to the applicant by the Chief Engineer (Elect.) EZ, CPWD, Kolkata vide his O. M. No. 26/1/98-Admn.-Vol-IV dated 13.6.2006. Thus the applicant is not entitled for payment of Special Duty Allowance.

5) That with regard to the statement made in paragraphs 5 (e) of the OA, the answering respondents beg to submit that the payment of SDA to Group 'C', 'D' and Work Charge officials of CPWD posted in NE Region was examined in consultation with the Ministry of Finance, Department of Expenditure, New Delhi and it has been clarified by the office of the DGW, CPWD, New Delhi vide office order No. 14/21/91/EC-IV (C) dated 07.1.2002 (Annexure-6 annexed with the OA) that the officials falling in the above category whose, recruitment, transfer and seniority are regionalized are not entitled to SDA.

6) That with regard to the statement made in paragraph 5(f) of the OA, the respondents beg to submit that transfer of the applicant from Cooch Bihar to Guwahati was not on public interest and has been ordered on his own request. In addition the applicant does not satisfy the conditions as mentioned in Para (e) above. As per clarification issued by office of DGW (Annexure-1) being a group 'D' staff, the applicant is not eligible for payment of SDA.



Assistant Engineer (B)
Guwahati Elect. Divn. No-1.
C.P.W.D. Guwahati-21

7) That with regard to the statements made in paragraph 5(g) of the OA, the respondents beg to reiterate and reaffirm the statements made above. It is clearly mentioned in the transfer order issued vide office memo No. 10(1)/GCEC/93/433 dated 31.3.1993 of the Superintending Engineer (Elect.), Guwahati Central Electrical Circle, CPWD, Guwahti-21 that no TA/DA is admissible to the applicant as the transfer is at his own request (Annexure-III) which is not completely false and fabricated as claimed in the OA. It is proved that the transfer of the applicant was not in public interest but on own request. The OA is devoid of merit hence liable to be dismissed with cost.

8) That with regard to the statement made in paragraphs 5(h) to 5(j) of the OA, the respondents while reiterating and reaffirming the statements beg to submit that the allegation of the applicant is baseless and misleading. The plea of the applicant should be rejected.

9) That with regard to the statements made in paragraphs 6 and 7 of the OA, the respondents offer no comment.

10) That with regard to the statement made in paragraph 8, 8.1 and 8.2 of the OA, the answering respondents beg to rely and refer upon the statements made above and further submit that since the applicant has been transfer at his own request he is not entitled for payment of SDA. In view of the submission made above the applicant is not entitled to any relief as sought for in the OA hence liable to be dismissed with cost.


Executive Engineer (B)
Guwahati Elect. Divn. No-1.
C.P.W.D. Guwahati-21

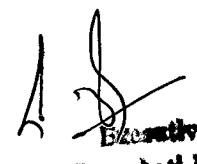
1 OCT 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

VERIFICATION

I SHRI DALA RAM RATHORE, aged
 about 47 years at present working as
EXECUTIVE ENGINEER (E), GUWAHATI ELECT. DIVISION NO.1, C.P.W.D.,
GUWAHATI-21, who is one of the respondents and taking steps in this case, being
 duly authorized and competent to sign this verification for all respondents,
 do hereby solemnly affirm and state that the statement made in paragraph
1(A), 1(A), 9, 10 are true
 to my knowledge and belief, those made in paragraph
3 to 8. being matter of records, are
 true to my information derived there from and the rest are my humble
 submission before this Humble Tribunal. I have not suppressed any material
 fact.

And I sign this verification this 04th day of September 2007 at Guwahati


 Executive Engineer (E)
 Guwahati Elect. Divn. No-1.
 C.P.W.D. Guwahati-21

DEPONENT

No. 1001/PI-EC, IV(C)
 Government of India
 Directorate General of Works
 Central Public Works Department

Nirman Bhawan, New Delhi.
 Dated the 7 January, 2002.

OFFICE ORDER

Subj:- Payment of Special Duty Allowance to Group 'C', 'D' and Work Charged officials of CPWD in North East Region.

The payment of Special Duty Allowance (SDA) to the employees posted in the North East Region was sanctioned vide M/o Finance O.M. No. 20014/3/83-E.IV dated 14.12.1983 as amended from time to time. Some employees' Unions in CPWD have also raised the issue before the Hon'ble CAT, Guwahati Bench in OA No. 95 to 100 of 1999 where the Hon'ble CAT has issued Order dated 19.12.2000 to review this Directorate's Order of even number dated 24.2.1999.

The matter has been considered in consultation with M/o Finance (Dept. of Expenditure). All pending cases in the North East Region may be decided as under:-

1. Group 'C', 'D' and Work-Charged employees of NER for whom recruitment, transfer and seniority are regionalized, are not entitled to Special Duty Allowance. These employees need to be considered individually and a reasoned order detailing all the reasons for non-entitlement of SDA to any such employee considered ineligible will be issued by the concerned Superintending Engineers. Such reasoned order should be addressed individually and served by Registered Post / Peon Book.
2. Junior Engineers recruited and promoted on All India basis and posted to any station in NE Region from outside may be entitled to SDA.
3. Office Superintendents and stenographers, Grade I promoted on all India basis may also be entitled to SDA if posted in NE Region.

JAN. 07 2002 0015777

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4. The payment of Special Duty Allowance to ineligible officials must be stopped immediately henceforth. As regards recovery of the amount already paid, the out off date for the purpose will be intimated as soon as the decision is taken by the competent authority.

(V.K. KONDAL)
Dy. Director Admin.

To

1. Addl Director General (Works),
Eastern Region, CPWD,
Kolkata-20.

2. Chief Engineer (NEZ),
CPWD, Dibrakhet,
Shillong.

3. ~~Supy. Engineer (NEZ)~~
Eastern Region, Kolkata-20.

4. To All Applicants in O.A. No. 95 to 100 of 1999.

Copy also forwarded to:-

Chief Controller of Accounts, Nirman Bhawan, New Delhi with reference to his U.O letter No. U-Misc/SDA/Pr.AO/TC/2001-02/2739 dt. 15.6.2001.

(U.K. SINHA)
Section Officer

Add Regd. Post

Suzanne
APK

7/1/02

(3/1)

Armed (34) R-II

F No 11(5197-E.II(B)
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, dated the 29th May, 2001.

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.(V dated 14.12.83 and 20.4.1987) read with OM No.20014/16/86-E.(V/E.II.(B) dated 1.12.88, and OM No.11(3793-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 rule of incumment 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. 3231 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.3443 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. Vijayekumar & Ors reported as 1994 (Supp.3) SCC, 649 and followed in the case of UOI & Ors vs. Executive Officers' Association 'Group E' 1995.

Added
Addl case

copy (P/W)
25.1.02

6/10/02

55/10/02

(4/1)

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-2-

(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 in spite of the fact that the appeal has been allowed.

5. In view of the aforesaid judgement, 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 revolved. However, recovery, 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
(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.A. Ad, JPSC etc. as per standard endorsement list.

File in Court on 21/08
D/A
Court Officer.

केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
3 JAN 2008
गुवाहाटी बेंच
Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:: GUWAHATI

Filed by
Sri Mani Kanta Das
through
Sukumar Sarmah
Advocate
2/01/08

IN THE MATTER OF:-

O.A. NO- 162/07

Sri Mani Kanta Das

.....Applicant

-Versus-

The Union of India & ors.

.....Respondents

-AND-

IN THE MATTER OF:-

Rejoinder filed by the applicant
to the written statement filed
by the Respondents

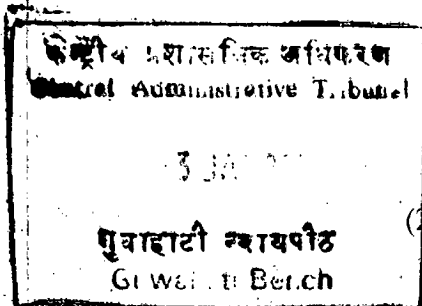
The humble applicant submit this Rejoinder as follows:-

1) That I am the Applicant of the Original Application No- 162/07 and the Respondents have filed Written Statement in the aforesaid O.A. A copy of the same has been served upon me through my counsel. I have gone through the written statement filed by the respondents and understood the contents thereof and I emphatically deny each and every averments made therein except those which are specifically admitted herein.

Received
Shashan
Advocate
02/11/2008

Mani Kanta Das

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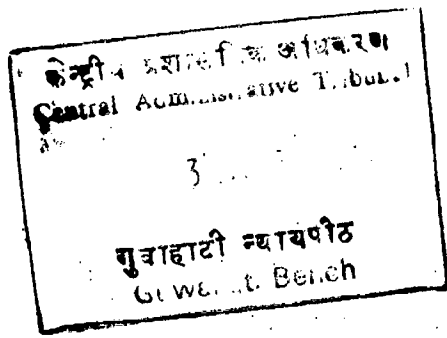


2) That with regard to the statements made in paragraph 1.(b); (c); (d) of the written statement filed by the respondents Nos- 1,2 & 5, the answering deponent/ Applicant has strongly denied the same.

Since the applicant had clearly stated that as he being a permanent resident of N.E. Region was initially appointed as Khalashi by the Superintending Engineer (Electrical) ,Guwahati Central Electrical Circle, CPWD, Bamunimaidan , Guwahati-21 vide Office Memorandum No- 10(7)/ GEDII/92/1894 dated 30-12-94 in pursuance of the Letter No- 10(1)/ GCEC/ 92/ 2973 dated 28-12-92 and he was attached to the Assistant Engineer (Electrical), Aviation Electrical Sub Division No-5, CPWD, Coach Bihar (West Bengal). In the said office memorandum dated 3-12-92 in paragraph(4), it has been clearly stated the appointment carries with the liability to serve any part of India or outside where the CPWD has an organisation. Accordingly the applicant was transferred to the office of the Assistant Engineer (Electrical), Guwahati Central Electrical Sub division - 1, CPWD. Guwahati- 21 from office of the Assistant Engineer (Electrical) Aviation Electrical Sub Division No- 5, CPWD, Coach Bihar , West Bengal vide office order No- 10(1)/ AESD-V/ COB/ 93/336 dated 1-5-1993 and as such as per the Cabinet Secretariate Letter No- 20-12-1999-EA-12-1799 dated 2-5-2000 and as per common order dated 31-5-2005 in O.A. NO- 170/1999 and connected cases, an

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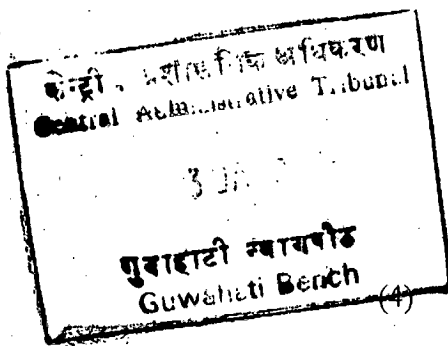
(3)

employee belonging to NE Region and subsequently posted to outside NE Region and retransferred to N.E. Region, is entitled for grant of Special Duty Allowance (SDA), for which the application filed by the applicant is just and sustainable both in fact and in law.

3) That with regard to the statement made in para 1(e) of the written statement, filed by the respondents, the applicant has strongly denied the same. The respondents had stated in the said para that transfer of the applicant from Coach Bihar, West Bengal to Guwahati, Assam as Khalasi under under Guwahati Central Electrical Division II, Guwahati in the year 1992 and posted to the office of the Assistant Engineer (E), Aviation Electrical Sub Division No-V, CPWD, Coach Bihar, West Bengal vide order dated 3-12-92. He was subsequently transferred to Guwahati in the year 1993 on his own request, which is completely false and fabricated, the Applicant being an employee Central Govt. Departments like similarly situated employees and as per specific clause in the Appointment Order regarding All India Transfer Liability, he had been duly transferred from Coach Bihar to Guwahati on public interest but not on his own request and as such the impugned order is liable to be set aside and quashed.. In this regard the Hon'ble Central Administrative Tribunal, Guwahati Bench had already passed a common order dated 1-8-2007 in O.A. NO- 48/2006

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with O.A. NO- 25 of 2006 with O.A. NO- 207 of 2006 with O.A. NO- 216 of 2006 with OA. NO-229/2006 after discussing various judgement of the Hon'ble Supreme Court and also the O.Ms (Official Memorandums), it is stated in para (20) of the said Judgement that ..."From the legal position as discussed above it is clear that if a person is posted in other reason and transfer to NE Region and person who has been originally posted in NE Region transferred to other region and retransferred to NE Region and a person who belongs to NE Region, originally appointed in NE Region and transferred to other region and retransferred to any region, all are entitled to get the benefit of SDA. On the scrutiny of the evidence available in record it is clear that the applicants will come under one of the above categories and they are all entitled to get the benefit of SDA since this Court has found that they are having all India transfer liability for the period they have actually worked in NE Region which has to be worked out separately. This court had occasion to consider this issue in O.A. 294 of 2005, which was allowed vide order dated 2-7-2007. Therefore I declare that the applicants are entitled to the said benefits, as above." and as such the applicant is also entitled to get SDA in the light of the said order passed by the Hon'ble Tribunal as his case is also covered with the said order for the ends of justice.

The applicant creaves leave to produce the

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copy of the said Judgement dated 1-8-07 in O.A.48/06 along with other Original Applications as mentioned above at the time of hearing before this Hon'ble Tribunal, Guwahati Bench.

4) That with regard to the statement made in para 1(B) of the written statement the answering applicant has strongly denied the same as the respondent had failed to state clearly the specific reason regarding the statement made in para [1 to 4(vi)] of O.A. which are not admitted by them.

5) That with regard to the statement made in para 2 of the written statement, the applicant had strongly denied the same.

In this regard, this Hon'ble Tribunal already passed an order on 1-8-07 in O.A. NO- 48/06 along with the connected cases as already mentioned in (3) of this Rejoinder by which it is stated in para 19 of the said order that.....".....The applicant have produced offer of appointment letters where all India TRansfer liability has been specifically prescribed, but the respondents would argue that mere mentioning in the appointment letters that the employees have all India Transfer liability does not *ipso facto* mean that the applicant are liable to be transferred on all India basis. But the material placed on record will show that subsequently also an All India Seniority list has been drawn by the respondents of these employees

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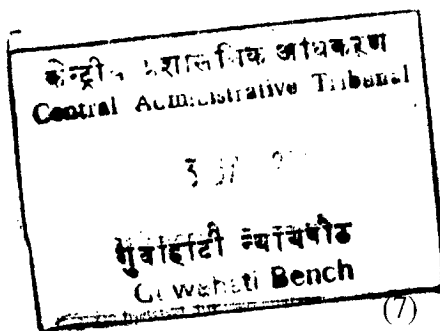
Manikantadas

(6)

which is a clear indication that the applicants do have all India transfer liability. Their contentions that the transfer is now restricted to zonal basis, which consist West Bengal, J&K and NE Region as a zone, and even if their transfer have been made within the zone and SDA can not be allowed to the applicants can not be accepted. This probably may be only to circumvent to grant the benefit to the applicants even if it is zonal transfer. A person transferred from other state to NE Region has the same difficulty as that of the persons coming on all India transfer. The hardship that one has to under go in the NE Region can not be alleviated by stating that they do not have all India transfer liability but only zonal transfer liability. Therefore, it will not stand to logic to deny the benefit under the plea that they are coming from neighbouring state to the NE Region which forms a zone. However, without entering in the merits of that aspect, on the basis of the materials placed on records, I find that all the applicants in these OAs do have an All India Transfer Liability when they were initially appointed and any change in rule cannot have a retrospective effect. Therefore, they are entitled to get the benefits...." and as such as per said order, since the applicant who was duly promoted to Grade IVth to Grade IIIrd having All India Transfer Liability when he was initially appointed cannot be restricted to Zonal basis as they have stated in the said para and as such as per

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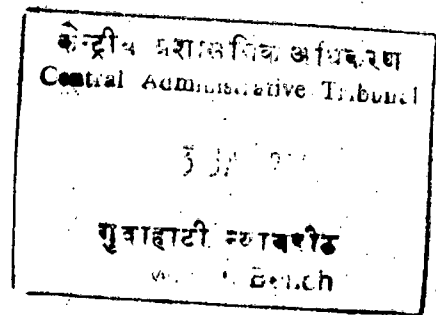
aforesaid order 1-8-07, passed by this Hon'ble Tribunal any charge in rule can not have any retrospective effect by which the applicant is also entitled to get the same benefit and as such the impugned order dated 13-6-06 (Annexure-6 of the O.A.) is liable to be set aside for the ends of justice.

6) That with regard to the statement made in para (3) of the written statement, the same are strongly denied. The allegation which are specifically mentioned in para [5(a) to 5 (c) of the Original Application are never baseless and misleading under the above facts and circumstances.

7) That with regard to the statements made in para (4), (5) & (6) of the written statement, the same are strongly denied by the answering applicant and while reiterating and reaffirming all the statements along with the grounds for relief with legal provisions as mentioned in the O.A. and also the above statements made in this Rejoinder, the impugned order dated 13-6-06 (Annexure-6 of O.A.) which has been passed by the respondent No-4 is a creptic order without assigning any valid reason, but on the other hand the applicant who is a permanent resident of NE Region and was initially appointed as Khalasi on 28-12-92 and then he was transferred to the office of the Assistant Engineer (Electrical) Aviation Electrical Sub Division No-V, Central Works Public

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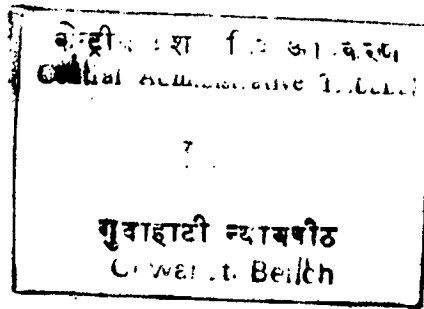
(8)

Department, Coach Bihar, West Bengal and thereafter he was again transferred to the office of the Assistant Engineer (Electrical) C.P.W.D., Guwahati- 21 on 1-5-93 and since then he has been working as a Khalasi under the respondent No- 5 and as such he is entitled to get all the benefits of SDA as per said order dated 1-8-07, passed by this Hon'ble Tribunal for which the impugned order dated 13-6-06 9 (Annexure- 6 of the O.A.) is liable to be set aside.

8) That with regard to the statement made in para (7), (8), (9) & (10) of the written Statement filed by the respondents are strongly denied by the answering applicant. Since due to his sincere service and long experience, the applicant was duly promoted to grade IVth to grade IIIrd post having All India Transfer Liability and as such he is transferred from West Bengal to Assam i.e. NE Region was in public interest, but not by his own interest as alleged by the respondents for which he had already get SDA from the respondents authority w.e.f. the month of June '93 to March' 2002, but suddenly the SDA is being discontinued w.e.f. April' 2002 by the respondent without assigning any valid reason and under the above facts and circumstances the applicant is entitled to get the benefit of SDA as per the recent order passed by this Hon'ble Tribunal as well as the Hon'ble Gauhati High Court and the Hon'ble Apex Court and as such the impugned order dated 13-6-06 -

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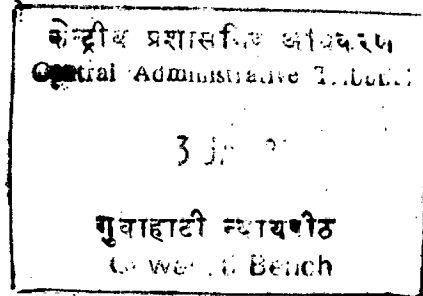
(9)

(Annexure- 6 of O.A.) is liable to be set aside for the ends of justice.

Therefore, the Applicant respectfully submits that the Written Statement filed by the Respondents is wholly bereft of substance and no credence ought to be given to it. Thus , in view of the abject failure of the Respondents to refute the contentions, averments, questions of law and grounds made by the Applicant in the Original Application filed by the Applicant deserved to be allowed by this Hon'ble Tribunal.

VERIFICATION IN PAGE- 10

Mani Kantasas



(10)

VERIFICATION

I, Sri Mani Kanta Das, son of Late Tekaram Das, aged about 37 years, resident of Bamunimaidan, Guwahati-21 under police station- Chandmari, by profession- Service, by religion - Hindu do hereby verify and declare that the statements made in above rejoinder are true to my knowledge and rests are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this 2nd day of ~~January~~ 2008 at Guwahati.

Mani Kantadas

Signature of the Applicant