

10/100

6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 11/95

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet.....OA.....Pg. 1.....to 5.....
2. Judgment/Order dtd. 22.8.95.....Pg. 1.....to 450 Alloano Removal
OA 48/91, 2194/91, 37, 2105/95
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....11/95.....Pg. 1.....to 33.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S.....Pg. 6.....to 9.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Baril
15/2/98

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI -5.

ORIGINAL APPLICATION NO. 11/95

MISC PETITION NO. _____ (O.A. NO. _____)

REVIEW APPLICATION NO. _____ (O.A. NO. _____)

CONT. PETITION NO. _____ (O.A. NO. _____)

Nagaland Census Employees Association APPLICANT(S)
VERSUS

11.01.1995. RESPONDENT(S)

Mr B.K. Sharma, Advocate for the
MR M.K. Choudhury, S. Sarma, B. Mehta, Applicant.
Advocate for the Respondents

IN CASE

Office Note

Court Orders

17-1-95

20.1.95

This application is filed along with one I.P.O. No. 882718 dated 1-1-95 for Rs. 50/- only and is in form.

Laid before the Bench for favour of orders.

17/1/95
Deputy Registrar (U)
Central Administrative Tribunal,
Guwahati Bench.
17/1

Regis. No. 2242
S. (Sund) vide no. 438-40
dt. 24.1.95

28/1
Memo of appearance
has not been filed.
28/1

Heard Mr M.K. Choudhury, learned counsel for the applicant. Prima facie case disclosed. The application is admitted. Issue notice to the respondents. 8 weeks for written statement. Adjourned to 20.3.95. No interim relief at this stage. Liberty to apply after respondents are served. Mr G. Sarma learned Addl. C.G.S.C. seeks to appear for the respondents. However, notice be issued directly to the respondents. Mr G. Sarma to file memo of appearance.

17/1
Vice-Chairman
17/1
Member

nkm

OFFICE NOTE

COURT ORDERS

20.3.95

Mr B.K.Sharma for the applicant.

Mr G.Sarma, Addl.C.G.S.C for the respondents.

At the request of Mr G.Sarma time to file written statement is extended for a further period of two months from today as last and final chance.

Application be listed for hearing on 24.5.1995.

24.5.95

For hearing.

Adjourned to 8.6.95

By order.

8.6.95

To be listed for hearing on 31.2.95

pg

Vice-Chairman

Member

By order.

Notice sent on R.m. 1.2.3.

1992

W/State mut. chs not been filed.

28/7 4-8-95

Adjourned to Kohima.

D

OFFICE NOTE

DATE

COURT ORDER

22.8.95
(Kohima)

Mr B.K. Sharma for the applicants
Mr G. Sarma, learned Addl. C.G.S.C.,
for the respondents.

Vide common judgment and order
separately declared the O.A. is allowed in
terms of the order. No order as to costs.

[Signature]
Vice-Chairman

[Signature]
Member

20.11.95

① copy of Judg./Order
dt. 22.8.95 issued
to all concerned
vide S/No. 5016 -
5019 dt. 22.11.95.

② Also the same
issued to the
Journals along with
OA. 48/91.

nkm

[Signature]

OFFICE NOTE

DATE

COURT ORDER

OFFICE NOTE

DATE

COURT'S ORDER

23.8.95

(Kohima)

Today Mr Jai Prakash Yadav,
Store Keeper, Technical, Geological
Survey of India, Dimapur, has
appeared on behalf of the applicants
in the above applications ^{O.A.No.48/91 and 105/95} before us
at our residence as there is no
sitting of the Tribunal owing to
today being declared to be a
holiday. He is apprised that the
order has already been passed yester-
day and copy of the order will be
sent to the applicants in due course
from Guwahati.


Vice-Chairman
Member

nkm

O.A. 48/91 with O.A. 11/95 with O.A. 37/95 with R.A. 25/94
in O.A. 2/94 with M.P. 100/94 with O.A. 105/95.

✓

OFFICE NOTE

DATE

CAUTION ORDER

2.8.95

1.8.95

Written statement
has been submitted
on behalf of the
Respondents.

Adm.

4.8.95

Advised to
Kohima

Bon.

O.A. No. 48/91

None for the applicant.

Mr. S. Ali, Sr. C.G.S.C. for the respondents.

✓ O.A. 11/95

Mr. B.K. Sharma for the applicant/Mr. G.
Sarma, Addl. C.G.S.C. for the respondents.

O.A. 37/95

Mr. B.K. Sharma for the applicant/Mr. G.
Sarma, Addl. C.G.S.C. for the respondents.

B.A. No. 25/94 in O.A. 2/94

Mr. G. Sarma, Addl. C.G.S.C. for the
applicants/Mr. B.K. Sharma for the
respondents.

M.P. 100/94 (O.A. 2/94)

Addl. C.G.S.C.

Mr. G. Sarma for the applicants/Mr. B.K.
Sharma for the respondents.

O.A. 105/95

Mr. T.K. Dutta for the applicants/Mr. G.
Sarma, Addl. C.G.S.C. for the respondents.

All these matters involved common question.
Arguments of Mr. B.K. Sharma, Mr. T.K. Dutta,
Mr. S. Ali, Sr. C.G.S.C. and Mr. G. Sarma,
Addl. C.G.S.C. are heard at length in
common to all the applications. However,
counsel desire to consider the legal
position further and Mr. G. Sarma, Addl.
C.G.S.C. also wants time to produce some
O.M.s in O.A. 37/95 and O.A. 11/95.
Adjourned to 3.8.95.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMIN)

Original Application No. 48 of 1991 (Nagaland)

with

Original Application No. 2 of 1994 (Nagaland)

with

Original Application No. 11 of 1995 (Nagaland)

with

Original Application No. 37 of 1995

with

Original Application No. 105 of 1995

Date of decision : This the 22nd day of August, 1995. *at Kohima*

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

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Original Application No. 48/91 (Nagaland).

Shri M. Lepdon Ao & 46 Others
belonging to C & D Group of employees posted
in the office of the Director, Geological Survey of India,
Operation Manipur-Nagaland, Dimapur, District, Kohima,
Nagaland

... Applicants

By Advocate Mr. N.N. Trikha

- Versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Steel and Mines, Department of Mines, New Delhi.
2. The Director General,
Geological Survey of India,
27, Jawaharlal Nehru Road,
Calcutta-700 016
3. The Deputy Director General,
Geological Survey of India
North Eastern Region,
Asha Kutir,
Laitumkhrach,
Shillong-793003
4. The Director,
Geological Survey of India,
Operation Manipur-Nagaland,
Dimapur.

.... Respondents

By Advocates Mr. S. Ali, Sr. C.G.S.C. and A.K. Choudhury, Addl. C.G.S.C.

G.A. No. 2/94 (Nagaland).

- 8
1. All India Postal Employees Union
P(III) & A.O.A., Divisional Branch
Kohima - 797001, represented by its
Divisional Secretary - Mr. V. Angami.
 2. All India Postal Employees Union
Postman Class IV & E.O.,
Kohima Branch, Nagaland,
represented by its Divisional Secretary - Mr. K. Tali Ao.

..... Applicants

By Advocates Mr. B.K.Sharma with M/s M.K.Choudhury, and S.Sarma.

-Versus-

1. The Union of India,
represented by the Secretary,
Ministry of Communication,
Department of Posts,
New Delhi.
2. The Director General, Posts,
New Delhi-110 001
3. Chief Postmaster General,
N.E.Circle,
Shillong
4. The Director of Postal Services,
Nagaland Division
Kohima

..... Respondents

By Advocate Mr. G.K.Sarma, Addl. C.G.S.C.

G. A. No. 11/95 (Nagaland).

Nagaland Census Employees' Association
represented by its President Mr. L. Angami
Directorate of Census Operations,
Nagaland,
Kohima

..... Applicant

By Advocates Mr. B.K. Sharma with M/s M.K.Choudhury and Mr. S.Sarma.

-Versus-

1. The Union of India
represented by the Secretary
Ministry of Home Affairs,
New Delhi-1
2. The Registrar General of India,
2/A, Mansingh Road,
New Delhi-110001.
3. The Director of Census Operations,
Nagaland,
Kohima

..... Respondents

By Advocate Mr. G. Sarma, Addl. C.G.S.C.

O.A. No. 37/95

Shri N. Aier,
Assistant and 126 Others

..... Applicants

By Advocates Mr. B.K.Sharma with M/s M.K.Choudhury and S. Sarma

~~-Versus-~~

1. ~~The Union of India,~~
represented by the Secretary
Ministry of Home Affairs
New Delhi-1.
2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
Kohima
3. The Assistant Director
Subsidiary Intelligence Bureau
Ministry of Home Affairs,
Government of India
Kohima

..... Respondents

By Advocate Mr. G. Sarma, Addl. C.G.S.C.

O.A. No. 105/95

Shri P.H. Babu and 17 Others

..... Applicants

By Advocate Mr. T.K. Dutta.

-Versus-

- x 1. Union of India,
represented by the Secretary to the Govt. of India,
Ministry of Steel and Mines,
Department of Mines,
New Delhi.
- x 2. The Director General,
Geological Survey of India,
27, J.L. Nehru Road,
Calcutta-700 013
- x 3. The Deputy Director General,
Geological Survey of India
North Eastern Region
Asha Kutir, Laitumkhrah,
Shillong-793003
- x 4. The Director,
Geological Survey of India
Operation Manipur-Nagaland,
Dimapur

..... Respondents

By Advocate Mr. G. Sarma, Addl. C.G.S.C.

Judgement

CHAUDHARI J. (V.C.).

All these applications relate to similar claim made by Group ^B_C and D employees of the different departments of Govt. of India (concerned in the respective applications) posted in Nagaland and common questions of law arise for determination hence for the sake of a comprehensive consideration of material issues involved and convenience these are being disposed of by this common Judgement.

2. The case of the applicants is that Central Government B, C & D Group employees posted in Nagaland they are eligible for free furnished accommodation but none has been provided to them and therefore they are entitled to be paid compensation in lieu of the rent free accommodation (consisting of licence fee and House Rent Allowance) but since that is being denied to them and their various representations have not yielded any positive result, they have approached the Tribunal for redressal. They pray that they be held entitled to get the licence fee and house rent allowance retrospectively from due dates.

3. Facts in O.A. 48/91

(a) This application has been filed by 47 Group C and D employees of Geological Survey of India (Ministry of Steel and Mines, Govt of India) who are posted in Nagaland. Their claim is mainly based on following Memoranda & Orders :

1. O.M. No. 2(22)-E-II(B)/60 dated 2.8.60 read with letter No. 41/17/61 dated 8.1.62 from the D.G. P & T Annexure A.4.
2. O.M. No. 11013/2/86-E-II(B) dated 23.9.86 issued by Ministry of Finance, Govt. of India consistently with the recommendations of the 4th Central Pay Commission and Order No. 11015/41/86-E-II(B)/87 dated 13.11.87 and
3. Earlier decisions of Central Administrative Tribunal, Gauhati Bench with the decision of Hon'ble Supreme Court.

(b) The respondents have filed a common written statement and resist the application. They have raised the bar of limitation on the ground that the cause of action had arisen in 1986 and that

12
could not be agitated in 1991 and contend on merits interalia that there have been no instructions from the Ministry of Finance that Central Government Employees posted at Dimapur are entitled to rent free accommodation. They however state that O.M. dated 19.2.87 provides that where rent free accommodation is not available the Group A, B, C & D are entitled to House Rent Allowance plus licence fee in lieu of rent free accommodation. Thus the gravamen of the defence is that since the applicants are not persons eligible to get the benefit at Dimapur they do admit that in lieu of rent free accommodation where it is not provided House Rent Allowance plus licence fee would be payable in lieu thereof.

(c) Arguments of Mr. Trikha and Mr. Ali have been heard.

4. Facts in O.A. 2 of 1994.

(a) All India Postal Employees Union Postmen (III) and Extra Departmental Agents and the All India Postal Employees Union Postmen Class (IV) and Extra Departmental Kohima Branch are espousing the cause of Group C and Group D employees of Postal Department posted throughout Nagaland Division, ~~in this application.~~ Their grievance is the same, namely, that they are entitled to rent free accommodation or compensation in lieu thereof with House Rent Allowance @ applicable to B Class Cities but the respondents are denying to extend that benefit to them and have not responded to their representations. Additionally their grievance is that although between January 1974 and December 1979 they were paid House Rent Allowance @ 15% of pay plus Additional House Rent Allowance @ 10% of their pay that has been illegally reduced to 7.5% from 1.5.1980. They rely on self-same material as relied upon by the applicants in the companion cases and

buck

their contentions are also the same. They pray similarly for a declaration that all the employees of Postal Department posted in Nagaland are entitled to House Rent Allowance applicable to Central Government Employees posted in 'B' Class Cities with effect from 1.10.1986 and for a direction to the respondents to release the same accordingly with effect from 1.10.1986.

(b) The respondents have filed a common written statement and the contentions raised are similar as in companion cases. They deny the claim. They inter alia contend that the staff of P & T Department is not eligible to the benefit claimed.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl.C.G.S.C. have been heard.

5. Facts in O.A. 11/95.

This application has been filed by the Nagaland Census Employees' Association for and on behalf of Group C & D employees of Census Operation, posted in Nagaland. Their contentions are similar to these made by the applicants in O.A. 48/91. They rely on certain additional material as they have approached the Tribunal in 1995 whereas the other O.A. was filed in 1991. These applicants state that by virtue of the Presidential Order issued on 8.1.62 the cities in the State of Nagaland are equated to cities which have been classified as 'B' Class cities for the purpose of payment of House Rent Allowance and it is still operative and entitles the applicant employees the benefit of House Rent Allowance. They further state that the State of Nagaland is considered to be a difficult area for the purpose of rented accommodation. The employees posted in the State are therefore entitled to rent free accommodation or House Rent Allowance in lieu thereof applicable to 'B' Class cities. The applicants

4

also point out that in view of the Arbitration Award which held that employees of the Directorate of Census Operations posted in Nagaland are entitled to get House Rent Allowance and personal allowance at the same rate as that of employees of Post & Telegraph Department from 1.5.1976 and although pursuant thereto respondents have been paying the House Rent Allowance that is being paid at the rate meant for 'C' Class cities they have denied payment at the rate meant for 'B' Class Cities to which they are entitled. They also make a grievance that a differential treatment is being given to them in denying that benefit whereas Central Government employees in other departments have been given that benefit. They contend that all Central Government Employees posted in Nagaland are entitled to House Rent Allowance at the rate admissible to B-Class cities and they are also entitled to compensation in lieu of rent free accommodation. The applicants state that they have filed representations to the respondents but have received no response hence they have approached the Tribunal for relief. They pray for a declaration to the effect that all Group 'C' and 'D' employees of the Directorate of Census Operation posted in Nagaland are entitled to House Rent Allowance as well as compensation in lieu of Rent Free Accommodation applicable to the Central Government Employees posted in B Class cities with effect from 1.10.1986 and for a direction to the respondents to release to them House Rent Allowance @ 15% and compensation in lieu of rent free accommodation with effect from 1.10.1986.

(b) The respondents by a common written statement resist the application. Their contentions interalia are as follows :

1. There is no provision for providing rent free accommodation to employees of Directorate of Census Operations, Nagaland.

- ii. For Government accommodation the employees/occupants are supposed to pay licence fee hence it cannot be termed as rent free accommodation.
- iii. House Rent Allowance is being paid according to pay slab of the individual employees as per rules and there is no special order issued for payment at higher rate.
- iv. The applicants cannot compare themselves with other departments where higher House Rent Allowance may have been paid looking to the nature of duties and responsibilities under different working conditions. Likewise essential services cannot be equated with non-essential services. Thus applicants are not similarly circumstanced employees.

(c) The thrust of the defence therefore is to say that applicants are not eligible for rent free accommodation and it is not disputed that on being found to be eligible to the same they would be entitled to the prescribed compensation in lieu of the rent free accommodation.

(d) Arguments of Mr. B.K.Sharma and Mr. G.Sharma, Addl. C.G.S.C. have been heard.

6. Facts in O.A. 37/95

(a) The 127 applicants are employees of Subsidiary Intelligence Bureau posted in the State of Nagaland. Applicants at serial Nos. 1, 2, 4, 13, 18, 33, 56, 62, 70, 76, 79, 80, 105 and 124 are Group 'B' (non-gazetted) employees and others are Group 'C' & 'D' employees. They pray for a declaration to the effect that they are entitled to House Rent Allowance and compensation in lieu of Rent Free Accommodation at the rate applicable to Central Government Employees posted in 'B' Class cities with effect from 1.10.1986 and for a direction to the respondents to release the House Rent Allowance

16 to them accordingly @ 15% and compensation in lieu of rent free accommodation with effect from 1.10.1986. They contend that cities in Nagaland are declared 'B' Class Cities and they are entitled to be given rent free accommodation or compensation in lieu thereof. They rely on the Presidential Order dated 8.1.62, the O.M. dated 23.9.86, the recommendation of 4th Pay Commission, the Arbitration Award relating to employees in Directorate of Census Operations who are similarly placed, the judgement in O.A. 42/89 alongwith the Supreme Court decision therein and the circumstance of the benefit extended to employees in other departments of Central Government and also point out that their representations have not yet been replied. Their submissions are the same as in the other O.A.s.

(b) The respondents have filed their written Statement.

They oppose the application. It is contended that Kohima & Dimapur in Nagaland are the only cities which are classified as 'C' Class Cities and rest of the Nagaland is unclassified and therefore the claim of applicants for House Rent Allowance at the rate payable to Central Government Employees in 'B' Class Cities is untenable. Other contentions are on the same lines as in companion O.A.s.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl. C.G.S. have been heard.

7. Facts in O.A. 105/95.

(a) This application has been filed on behalf of 47 Group C and D employees working under the Director, Geological Survey of India, Operation Manipur-Nagaland at Dimapur. They were not parties to O.A. ^{48 of 91} ~~42 (6)/89~~ although similarly placed with those applicants and their grievance is that they are not being given benefit of

1.11.88

14

the order in that O.A. on the ground that they were not parties and that they are entitled to get House Rent Allowance applicable to 'B' Class Cities @ 15% and also compensation @ 10% in lieu of Rent free accommodation. They claim to be entitled to such accommodation. Their representations have not brought them relief hence they have approached the Tribunal. They have raised contentions similar to these as have been raised by the applicants in the other companion O.A.s. They pray for an order for payment of House Rent Allowance at B-2 Class City rate with effect from 1.10.86 to the staff in Group C and D by extending the benefit of judgement and order in the earlier O.A. They also rely on the (pre-review) decision in O.A. 48/91.

(b) Although respondents could not file written statement so far we have permitted Mr. G.Sarma, the learned Addl. C.G.S.C. to make his submissions on instructions as may have been received and the learned counsel adopts the contentions urged by the respondents in their written statement in answer to O. A. 48/91.

(c) Arguments of Mr. B.K.Sharma and Mr. G.Sarma, Addl. C.G.S.C. have been heard.

Points

8. The points that arise in all these applications for consideration in common are as follows :

- i. Whether the applicants in the respective O.A.s are eligible to the concession of Rent free accommodation ?
- ii. What are the components of the compensation payable in lieu of the rent free accommodation where it is not made available and what quantum ?
- iii. Whether the licence fee as one of the components of compensation is payable @ 10% of pay ?

18

- iv. Whether HRA (as component of the compensation) is payable @ 15% of pay ?
- v. Whether HRA otherwise is payable @ 15 % ?
- vi. From what date above payments are applicable ?
- vii. Whether applicants are being given differential treatment vis-a-vis other Central Government Departments ?
- viii. What relief, if any ?

9. Since all the applications raise same points we shall deal with the entire material relied upon in all these cases together and also deal with submissions of learned counsel appearing for respective applicants and the respondents in the respective applications together. Our answers to above points are as indicated in the concluding part of this order for the reasons that follow.

10. Reasons :

It will be convenient to take a note of relevant Memoranda, Orders and Circulars issued by the Govt. of India from time to time in regard to providing rent free accommodation or compensation in lieu thereof in the first instance and then to take a note of the decisions cited before proceeding to examine the claim of the respective applicants.

11. Mr. S.Ali the learned Sr. C.G.S.C. representing Union of India in all these cases has strongly relied upon an old O.M. G.I. M.H. & W. with O.M. No. 12-11/60 Acc I, dated 2nd August, 1960 and contends that it is still in operation and holds the field. It was not brought to the notice of the Tribunal either in O.A. 42/91 or O.A. 2/94 or O.A. 48/91. It was produced in review application No. 12/94 in O.A. No. 48/91 for the first time (wrongly mentioning as 12-11/63 Acc I though copy annexed shows it as 12-11/60). Now after so many proceedings the respondents cannot describe it as a new

discovery of evidence. That is laying premium on the lapse of the Departments concerned or laches on their part. However, as it goes to the root of the matter according to Mr. Ali and as several employees of various departments are concerned and a vexed question is involved we have permitted to refer to it.

12. That O.M. restricts the concession of rent free accommodation only to a limited class of employees who are required to reside in the campus or in the vicinity of places of work where their presence on duty is essential and does not confer that benefit generally on all the employees, ~~posted in Nagaland (or N.E. Region).~~ It is submitted by Mr. Ali that the O.M. dated 23.9.86 and the clarificatory letter dated 13.11.87 on which all the applicants have based their claim are to be read and understood as applicable to only those employees who fall within the ambit of criteria prescribed by the aforesaid O.M. (12-11/60 Acc-I dated 2.8.60) and since none of the applicants have stated that they fulfil the criteria of that O.M. they are not eligible to get rent free accommodation or compensation in lieu thereof. He submits that their claim all along has been based on a wrong assumption and as they are not at all eligible for the concession of rent free accommodation the entire edifice of their claim must fall down and as the earlier decisions were based upon erroneous hypothesis these cannot confer a right upon the applicants to get the benefit as they were never eligible for the same. These arguments have also been adopted by Mr. G. Sarma the learned Addl. C.G.S.C. Thus question of eligibility has been raised.

13. The Office Memorandum No. 11013/2/86-E-II(8) dated 23.9.86 was issued consequent upon the recommendations of the Fourth Pay Commission containing the decision of the Govt. of India relating

20

to grant of compensatory (City) and House Rent Allowance to Central Government Employees. It recites that the President of India was pleased to decide in modification of the Ministry's (Ministry of Finance, Department of Expenditure) O.M. No. F 2(37)-E-II (8) 64 dated 27.11.65 as amended from time to time for the Compensatory (City) and House Rent Allowances to Central Government Employees to be admissible at rates mentioned therein.

14. Under the above O.M. (dated 23.9.86) a slab-wise rate of House Rent Allowance was prescribed in place of percentage basis and (in so far as material here) it was provided that the House Rent Allowance at these rates shall be paid to all employees (other than those provided with Govt. owned/hired accommodation) without requiring them to produce rent receipts etc. It further provided that where House Rent Allowance at 15 percent of pay has been allowed under special orders, the same shall be given as admissible in A, B-1 and B-2 Class Cities.

It further provided that these orders will apply to civilian employees of the Central Government belonging to Groups B, C & D only and shall be effective from 1.10.86.

15. It is necessary to understand the true impact of this O.M. It clearly deals only with the quantum of House Rent Allowance payable from 1.10.86 to all Central Government employees in A, B-1 and B-2 Class cities and does not refer to compensation payable in lieu of rent free accommodation where such accommodation is required to be provided. It does not make any reference to eligibility for getting that concession. Rather the words "Other than those provided with Govt. owner/hired accommodation" make it inapplicable to that category of employees who are eligible for rent free accommodation. The claim of the applicants founded on the basis of this Memorandum appears to be misconceived to the extent House Rent Allowance is

claimed as a component of compensation in lieu of rent free accommodation. With this nature of the O.M. there is obviously no reference in it to the O.M. dated 2.8.60 (12-11/60 Acc I).

The respondents however have not chosen to produce the Resolution No. 14(1)/IC/86 dated 13.9.86 or O.M. No. F 2937)-E-II(8)/64 dated 27.11.65 to enlighten us whether these refer to O.M. dated 2.8.60. We cannot therefore assume that these refer to the aforesaid O.M. dated 2.8.60.

16. The claim of the applicants has to be clearly understood. It is for compensation in lieu of rent free accommodation on the hypothesis that they are entitled to it. It is the O.M. (12-11/60) dated 2.8.60 which provides for the compensation consisting of 2 components namely :

1. Licence fee @ 10% and
2. House Rent Allowance (at prescribed rate).-

subject however to the eligibility criteria prescribed therein. As far as House Rent Allowance is concerned the concept has to be understood in two different ways. One, as House Rent Allowance payable to all Central Govt. Employees except those who are eligible for rent free accommodation and two, as one of the components of compensation payable in lieu of rent free accommodation where such accommodation is not made available. It will however be rational to say that the rate of House Rent Allowance payable as part of compensation should also be the same as prescribed for all civilian employees from time to time such as under the O.M. dated 23.9.86. The applicants however have confused between the rate of House Rent Allowance as payable and eligibility to get compensation of which House Rent Allowance is one of the components. As a result of this confusion they have laid much emphasis on the payment of House Rent Allowance and its rate and have

not clearly shown as to under what specific rule or O.M. or decision of the Government all of them can claim the compensation in lieu of rent free accommodation.

22

17. The applicants rely upon O.M. No. 2(22)-E-II(B) 60 dated 2.8.60 issued by the President of India in respect of P & T staff and O.M. 41-17-61 dated 8.1.62 as the basis to contend that they are entitled to rent free accommodation as it is provided as a concession to the employees posted in Nagaland which is regarded a difficult area.

O.M. 2(22)-E-II(B) 60 dated 2.8.60 containing the order of the President of India applicable to P & T staff working in NEFA and NHTA - on the subject of revision of allowances, same provided in Clause (1) (iii) as follows :

"Rent free accommodation on a scale approved by the local administration, the P & T staff in NHTA, who are not provided with rent free accommodation, will however draw HRA in lieu thereof at the rates applicable in 'B' class cities contained in Col. 4 of paragraph I of the Ministry of Finance O.M. No. 2(22)-E-II(B)/60 dated 2.8.60".

The O.M. 41-17/61 dated 8.1.62 continued the HRA at rates of B Class cities. It is contended by the respondents in O.A. 2/94 that these concessions were sanctioned to the staff of P & T Department posted in NEFA and NHTA only.

18. As stated earlier the respondents rely upon G.I. M.H & W O.M. No. 12-11/60-Acc-I also dated 2.8.60. It stated that the position as regards the criteria laid down in O.M.s dated 26.11.49 and August 1950 for grant of rent free accommodation has been reviewed in the light of observations made by 2nd Pay Commission and it has been decided that ^{where} ~~where~~ for the efficient discharge of duties it is necessary that an employee should live in or near the premises where he works it would be desirable that he should be provided with a Govt. residence which should be rent free or rent recovered at

reduced rates only if the nature of his duties or conditions under which they have to be performed are such that a higher scale of pay or special pay etc. would be granted but for the concession of rent free accommodation or recovery of rent at reduced rates. This O.M. was produced in Review Application 12/94 but in the body of the Review Application only a truncated portion was mentioned which gives a misleading impression.

19. Now although this O.M. (12-11/60-Acc-1) was issued on the same day on which O.M. 2(22)EII-8-60 was issued it is apparent on a plain reading of these two that these related to different subjects and did not cover the same field. Whereas the earlier one refers to cases where the concession of rent free accommodation is given to those for whom it is obligatory to stay at the office premises the latter conferred that benefit on all employees of P & T Department posted in Nagaland. The 1st O.M. however by itself does not conclusively show that such concession was not available to other employees also. That it could be so can be seen from the latter O.M. that was issued in respect of P & T staff in NHTA. Much ^{water} was however has flown since 1962.

20. The quest has therefore to be still continued to locate the right of the applicants to get this concession.

21. Notification No. 11015/4/86-E-II(8) dated 19.2.87 revised the earlier Memoranda on the basis of 4th Pay Commissions' recommendations accepted by the Govt. on the subject of grant of compensation in lieu of rent free accommodation to Central Govt. employees belonging to Groups 'B' 'C' and 'D' as were applicable from 1.10.86 and the President was pleased to decide that these employees working in various classified and unclassified cities will be entitled to compensation in lieu of rent free accommodation with effect from 1.1.86 as under :

24

- (i) Amount charged as licence fee for Government accommodation from employees similarly placed but not entitled to rent free quarters; and
- (ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of the orders, dated 23.9.1986.

22. The note below clause 2 provided that for the purpose of these orders the amount charged as licence fee for Government accommodation will be taken as 10% of the monthly emoluments (7½% in the case of employees drawing pay below Rs. 470) calculated with reference to 'Pay' in the pre-revised scales that they are drawing they would have drawn but for their option, if any for the revised scales of pay.

Under Clause 3 'Pay' for the purpose of House Rent Allowance component of compensation was to be 'Pay' as defined in FR 9(21)(a)(i).

23. The above mentioned orders however have to be read subject to Clause 6 which stated:

" These orders will apply only to the incumbents of posts which have been specifically made eligible for the concession of rent free accommodation under Government orders issued with reference to para 2 of Ministry of Works and Housing and Supply's O.M. No. 12/11/60/ACC-I dated the 2nd August, 1960".

24. The note thus restricts the concession only to those employees for whom

for the efficient discharge of duties it is necessary to live on or near the premises where they work, and should be provided with a Govt. residence rent free.

The respondents therefore deny the claim of the applicants.

25. The above O.M. was followed by Ministry of Finance O.M. No. 11015/4/86-E-11(R) dated 13.11.87 relating to 'compensation in lieu of rent free accommodation' effective from 1.7.1987. It stated that the President was pleased to decide that Central Govt. Employees belonging to Group A,B,C and D working in various classified cities/unclassified places will be entitled to compensation in lieu of rent free accommodation as under :

- (i) Amount charged as licence fee for Government accommodation as fixed in terms of Ministry of Urban Development (Directorate of Estates)'s O.M. dated 7.8.87, and
- (ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified city in terms of para 1 of O.M.s dated 23.9.86 and 19.3.87.

By the aforesaid O.M. dated 7.8.87 flat rate of licence fee was introduced on the recommendation of 4th Pay Commission for residential accommodation all over the country. By Fundamental (Amendment) Rules 1987 the Fundamental Rule 45A was correspondingly amended.

26. What is however crucial is that Clause 2 of the O.M. dated 13.11.87 provided as follows :

"Other terms and conditions for admissibility of compensation in lieu of rent-free accommodation indicated in the Ministry's O.M. dated 19.2.87 and 22.5.87 remain the same"

It therefore means that by virtue of Clause 6 of the O.M. dated 19.2.87 which applied to B,C & D Group employees the concession is confined to only those employees who are eligible to rent free Government accommodation under O.M. 12/11/60/ACC-I dated 2.8.60. The Government of India thus did not depart from the criteria as was laid down way

2e back in 1960 and in the absence of any relief sought to compel the Government to extend the benefit of the recommendation to all the employees in B, C & D Group posted in Nagaland the criteria so prescribed could be applicable for determining the eligibility for earning the compensation in lieu of the rent free accommodation. That would mean that all the ^{B,} C & D Group employees would not automatically be entitled to get it but only those falling in the limited class for whom the concession was meant would be eligible to claim it.

28. It must however be held that where independently of these O.M.s the concession of rent free accommodation is made available to all the employees then this restriction would not be valid being inconsistent with that provision. However no such provision has been brought to our notice. At the same time it is important to note that the respondents have admitted at some places that such concession is being given to all the employees. That has complicated the issue which by itself requires involved process to know exactly as to what is the true position. In this context we may refer to the written statement filed by the respondents (Subsidiary Intelligence Bureau - Ministry of Home Affairs) in O.A. 37/95. It is stated thus :

" at the time of Nagaland Hill Tuensang Area (NHTA) was carved out from Assam, the employees of NHTA administration were allowed the concession of rent free accommodation or HRA in lieu thereof as an incentive to attract suitable persons from outside for serving in this difficult tribal area. The benefit was subsequently, extended to other Central Govt. employees also".

X
V

Para 8 : ".....Out of 157 group C and D officers posted at Kohima as many as 54 officers have been allotted Govt. accommodation of type-I, II, and III which would speak about the allotment of accommodation".

Para 9 : " As a matter of fact, all group C and D employees who are not allotted any Govt. accommodation are being paid HRA plus Licence Fee as is admissible to I B employees at Kohima @ 'C' class only"

(Underlined by us)

✓ 29. These statements indicate that the compensation (composed of licence fee plus HRA) is being paid which means the criteria of the O.M. dated 2.8.60 is not treated as applicable (to SIB under Home Ministry). At the same time it is contended in the written statement filed in O.A. 48/91 (Geological Survey of India, Ministry of Steel and Mines) that there are no instructions from the Ministry of Finance that Central Govt. employees posted at Dimapur are entitled to rent free accommodation. In written statement in O.A. 11/95 (Directorate of Census Operations - Ministry of Home Affairs) it is stated that there is no provision for providing rent free accommodation to employees of Directorate of Census Operations, Nagaland, Kohima. (This stand and stand in O.A. 37/95 of the Home Ministry do not appear consistent and it leads to the inference that different departments are understanding the position differently and the situation is wholly confused). In O.A. 2/94 (the Department of Posts, Ministry of Communications) it is negatively stated that the allowances and concessions were sanctioned to the staff of P & T Department posted in NEFA and NHTA only implying thereby that other employees were not entitled to get the same.

30. Much emphasis has been laid by the applicants on the fact that all cities in Nagaland are 'B' class cities and HRA has to be paid at the rate payable for B class cities. Here also confusion

28 persists between entitlement for compensation in lieu of rent free accommodation (Composed of licence fee plus HRA)" and the rate of HRA payable otherwise than as the component of compensation and under general conditions of employment.

31. The position in this respect would be as follows :

- i. Where Govt. accommodation free of charge or rent is provided
- ii. Where such accommodation is provided on payment of licence fee by the employee to the Govt
- iii. Where compensation is paid in lieu of rent free accommodation by the Govt to the employee where such accommodation is not ~~make~~ available and
- iv. Where no Govt. accommodation is allottable incidental to service in which case HRA is paid by Govt. to the employee at rates prescribed from time to time and regulated by the relevant F.R.

32. The applicants have linked their claim to the cities in Nagaland being considered B class cities. Ministry of Finance O.M. No. 2(2)/93-E II (8) dated 14.5.93 refers to Ministry of Finance O.M. No. 11016/5/82-E II (8) dated 7.2. 83 as amended from time to time as containing the list of cities/towns classified as 'A', B-1', 'B-2' and 'C' class for the purpose of grant of HRA/CCA to Central Govt. employees. By the aforesaid O.M. (dated 14.5.93) a re-classification was introduced on the basis of 1991 Census. The new classification became effective from 1.3.91. It shows that only Kohima and Dimapur in Nagaland have been classified as class ^{'C'} ~~'B'~~ towns. Hence according to the respondents (in O.A. 37/95 - SIB) other places in Nagaland are unclassified. The position prior thereto was governed by earlier orders of the Govt. of India.

29

33. The applicants in (O.A. 11/95) rely upon O.M. No. 11015/4/86-E-II(B) dated 13.11.87. The applicants in O.A. 2/94 (Postal Department) rely upon Memo No. 41-17-61 dated 8.1.62. That provided that HRA in lieu of rent free accommodation will be payable at the rate payable to 'B' class cities contained in O.M. 2(22)-E-II (8)/60 dated 2.8.60. The applicants in O.A. 48/91 (Geological Survey of India) also rely upon the aforesaid O.M. 2(22)-E-II(8)/60 dated 2.8.60. Besides they also rely upon O.M. 11013/2/86 dated 23.9.86 (already referred to). They state that from 1.11.79 to 30.11.79 they were allowed HRA @ 25% but it was wholly withdrawn between 1.8.76 to 31.10.79. Later between 1.12.79 to 6.1.81 HRA was allowed at 7½% between 7.1.81 and 31.12.85 and from 1.1.86 they were paid at the rate applicable to 'C' class cities. According to them it should be admissible as for 'B' class cities.

34. The contentions based upon the various O.M.s noted above show that the applicants are confusing between HRA payable as component of compensation in lieu of rent free accommodation and HRA otherwise payable. As seen earlier the O.M.s dated 23.9.86 read with O.M. 12-11/60 dated 2.8.60 are relating to compensation and any grievance about the rate of HRA as part thereof can be made only by those who fulfill the criteria for eligibility to get the HRA. The applicants however have not produced any O.M. declaring all towns including Kohima and Dimapures 'B' class cities even after the 4th Pay Commissions' report as from 1.1.1986 or after 1991 Census.

35. The applicants seek to draw support from the below mentioned decisions :

- i. (S.K.Ghosh & Ors Vs. Union of India & Ors.)
O.A. 42(G)89 dated 31.10.90 CAT Guwahati Bench :
It related to Post & Telecommunication Department.
The Bench referred to the provision for payment
of HRA in lieu of rent free accommodation based on

order dated 8.1.62 and noticing that the reduction in payment from 15% to 7½% observed that :

"Since Nagaland was considered as a difficult area from the point of view of availability of rented house, all P & T employees posted there either got rent free quarters or, where such quarter could not be provided by the Government, were given house rent at the rate applicable to 'B' class cities".

36. It was therefore held that the applicants (therein) were entitled to HRA applicable to Central Govt. employees posted in 'B' class cities which includes classifications B-1 and B-2. This part of the decision has been confirmed by the Hon'ble Supreme Court as discussed below. It is not therefore open to us to express any opinion differently.

(?) Pre-review decision in O.A. 48/91 decided on 26.11.93.

The view taken at that stage was based on the decision in O.A. 42/89 (supra) and relating to compensation. The decision mainly dealt with varying rates at which HRA was paid over the years but does not notice the distinction between payment of HRA generally and as part of compensation in lieu of rent free accommodation. The decision however could be read in the context of the Supreme Court decision arising out of O.A. 42/G/89 (supra).

37. We may now turn to the judgement of the Hon'ble Supreme Court in Union of India V/S S.K.Ghosh & Ors.(Civil Appeal 2705 of 1991) decided on 18.2.93 (which was the appeal filed against the

order of the Tribunal in O.A. No. 42/89). The decision does not help the respondents but concludes the issue in favour of the applicants. It is submitted by the respondents in R.A. 25/94 (Postal Department) generally that the "Hon'ble Supreme Court did not mention in its' judgement about compensatory allowance and as such claim for that portion i.e. compensation @ 10% of monthly emoluments with effect from 1.7.1987 in lieu of rent free accommodation" is not tenable at all.

38. We have endeavoured in the course of above discussion to highlight the difference between payment of compensation in lieu of rent free accommodation which contains HRA as ^{one} of its components and rate of HRA payable otherwise than as part of the compensation. The judgement of the Hon'ble Supreme Court does not refer to the O.M. No. 12-11/60-ACC-I dated 2.8.60 and apparently it was not brought to the notice of Their Lordships. That O.M. which is now pressed into service leads to creating two different situations. Whatever that might be the decision is binding as to the rate of HRA. The material observations are as follows :

"The cities in the State of Nagaland have not been classified and as such the general order prescribing House Rent Allowance for different classes of cities could not be made applicable to the State of Nagaland. It was under these circumstances that the President of India issued an order dated January 8, 1962 granting House Rent Allowance to the P & T staff posted in the State of Nagaland".

39. After quoting Clause 1(iii) of the order which refers to O.M. 2(22)-E-II/8/60 dated 2nd August 1960 their Lordships proceeded to observe thus :

"It is clear from the order quoted above that the P & T employees posted in the State of Nagaland are entitled to rent free accommodation or in the

alternative to the House Rent Allowance at the rates applicable in 'B' class cities. The Presidential Order equates the cities in the State of Nagaland for the purposes of payment of House Rent Allowance to the cities which have been classified as 'B' class".

And further;

" the question for our consideration is whether the respondents are entitled to the House Rent Allowance as provided for 'B' class cities by the IVth Central Pay Commission recommendations which were conferred with effect from October 1, 1986.

It is not disputed that the Presidential Order dated January 8, 1962 is still operative. We are of the view that the State of Nagaland having been equated to 'B' class cities by the Presidential Order the respondents are entitled to be paid the House Rent Allowance at the rates which have been prescribed for the Central Government employees posted in 'B' class cities. Consequently, the respondents are entitled to be paid the House Rent Allowance at the rate which has been prescribed by the IVth Central Pay Commission recommendations for 'B' class cities".

(Emphasis supplied)

40. With the above pronouncement of the Hon'ble Supreme Court it is not open to the respondents to contend that the cities in Nagaland are not declared 'B' class cities or that Kohima and Dimapur are only 'C' class cities or to contend that therefore the applicants are not eligible to claim HRA at the rate prescribed for 'B' class cities.

41. In our view, with respect, the ratio of the decision of the Supreme Court cannot be read as relating to P & T employees only. The observations underlined in the passages quoted above from the judgement clearly show that the view expressed that the cities in the State of Nagaland for the purposes of payment of House Rent Allowance have been equated to the cities which have been classified as 'B' class

cities would apply to all Central Government employees posted in the State of Nagaland irrespective of the department to which they belong. Indeed construing it differently would lead to employees in departments other than the P & T Department being differently treated from employees of P & T Department. Such a situation cannot be contemplated in view of Articles 14 & 16 of the Constitution. It is useful in this context to refer to Annexure-8 in O.A. 37/95 (SIB) which is a copy of Memorandum from the Assistant Director, SIB Kohima to Assistant Director/EP, IB Hqrs., New Delhi dated 23.3.94 in which in the context of the judgement of the Supreme Court and the Arbitration Award (amongst various orders) a opinion has been expressed as follows :

"In view of the Award of Board of Arbitration referred to in para-2 above, Hon'ble Supreme Court's judgement and its implementation by the P & T Department to all ~~employees~~ without any prejudice to petitioners and non-petitioners which has added new angle to the case, it is requested that the case may please be taken up with MHA/Ministry of Finance to extend the benefits to IB personnel also posted in Nagaland at par with P & T employees on priority basis"

42. Although the opinion is not binding on the Govt. of India it appears to us to be based on correct approach and sound. The respondents in the same O.A. have produced a copy of O.M. No. 2(2)93-E-II(B) dated 14.5.93 (also referred earlier) issued by the Ministry of Finance (Department of Expenditure), Government of India laying down the Re-classification of cities/towns on the basis of 1991 Census for the purposes of grant of House Rent Allowance (and CCA) to Central Government Employees. List II annexed thereto classifies only two cities in the State of Nagaland namely Kohima and Dimapur and these are classified as 'C' class cities. Rest of the

34

cities and towns would thus fall in unclassified category. However this classification prescribed for State of Nataland being contrary to the judgement of the Hon'ble Supreme Court (supra) it cannot prevail and the O.M. has to be looked upon as ineffective during the period prior to the date of its issue since in our opinion the decision of the Supreme Court would be applicable only to those Govt. orders ^{as} were operating when that O.A. (42/G/89) was filed and till these order were changed by the Govt. of India.

43. Thus we hold that the applicants though have not claimed that they fulfil the eligibility criteria under O.M. No. 12-11/60 dated 2.8.60 still they are entitled to get House Rent Allowance at the rate prescribed for 'B' class cities to the Central Government employees. It will be payable at the rate of 15% from 1.1.1986 to 30.9.86 and from 1.10.1986 at flat rate prescribed under O.M. dated 7.8.87 (read with O.M. dated 13.11.87 supra) read with Notification GSR No. 623 (E) amending the Fundamental Rule 45A with effect from 1.7.1987.

44. We now turn to the topic of compensation.

45. On the question of payment of compensation in lieu of rent free accommodation also in our view, with respect, the judgement of the Hon'ble Supreme Court (supra) must be held binding and therefore despite our view expressed in the foregoing discussion that the O.M. 12-11/60 dated 2.8.60 is not superseded and ordinarily the compensation would be payable only to those who fall within the eligibility criteria thereunder; that cannot be adopted or applied for the following reasons :

46. In order to understand the ratio of the Supreme Court decision, since it was rendered on appeal against the decision of this Tribunal which is confirmed except the modification as regards arrears to be paid, it will be necessary to note

35

the nature of claim made in that O.A. and the finding of this Tribunal.

47. The case of the applicants (in O.A. 42/89) on the point as stated in the application was as follows :

Para 4(a) "That while the plaintiffs are posted in the State of Nagaland, they are entitled to Rent-free accommodation under the orders of the Ministry of Finance, Union of India, New Delhi".

Para 4(b) That where the Government servants, entitled to rent free accommodation not provided house/quarter by the Government, the rate of House Rent Allowance to such employees was being regulated vide Director General, Post & Telegraph letter No. 41-17/61 P & A dated 8.1.62. Such category of staff while posted in Nagaland were entitled to get House Rent Allowance at the rate applicable to employees posted in 'B' class cities".

Para 4(c) That when such employees were thus allowed and drawing the House Rent Allowance at par with employees posted to 'B' class cities some orders contradictory to each other were issued by various respondents on various dates

Para 4(d) The Govt. of Nagaland vide their Office Memorandum No. FIN/ROP/45/75 dated 16.8.75 has allowed their employees belonging to the category in which the applicants fall, House Rent Allowance at the rate ..
..... which rate is higher admissible to the employees of even the 'B' class cities
the other Central offices located in Nagaland are also allowing the increased rate of House Rent Allowance when employees of such departments are posted in Nagaland.

36 Para 5 (a) The Government of India and the other Respondents have themselves agreed in the past that the employees placed in this category (i.e. entitled to free-accommodation and not provided with accommodation in Nagaland) shall be given the House Rent Allowance at par with 'B' class cities.

With these main averments they sought the following relief :

"All the employees when posted in Nagaland, who are entitled to rent-free accommodation and the same is not provided for by the Government be allowed to draw the House Rent Allowance as is admissible to the employees posted in 'B' class cities as categorised in the Government of India letter No. 11013/2/86-E.II(B) dated 23.9.86".

(Emphasis supplied)

The same was claimed with effect from May 1980 onwards.

48. It would appear from the above nature of their pleadings that the claim for House Rent Allowance at the rate of 'B' class cities was made on the assumption that all the employees posted in Nagaland were entitled to rent free accommodation or compensation in lieu thereof and their grievance was as regards the rate of House Rent Allowance as one of the components of compensation in lieu of rent free accommodation. If the G.I.M.H & W O.M. No. 12-11/60-ACC-I dated 2.8.60 is kept in view then clearly the whole basis of the claim was wrong. The O.A. was filed by 107 P & T employees but it was not stated in the application that all or any of them fulfilled the eligibility criteria prescribed thereunder. Even so the respondents (in that case) did not deny categorically that all the employees posted in Nagaland were not eligible for rent free accommodation or

37

compensation in lieu thereof when the tenor of the application was to aver that all Central Government employees posted in Nagaland were eligible for the same. Worse still the respondents neither produced nor relied upon the above mentioned O.A. (12-11/60) dated 2.8.60.

49. It would be interesting to note the material statements made in the written statement (in that case) by the respondents which are set out below :

Para 2 "respondents beg to state that as per the D.G. P & T letter No. 41-17/61 P & A dated 8.1.62 the P & T staff posted in NHTA (now renamed as Nagaland) are entitled to rent free accommodation."

Para 3 ".....the payment of HRA to P & T staff in lieu of rent free accommodation was regulated upto April, 1980 as per above letter dated 8.1.62".

Para 4 " The Govt. of India vide orders have revised the rate of HRA admissible in lieu of rent free accommodation with effect from May, 1980.

Para 12 "the respondents beg to state that the P & T staff posted in Nagaland are being paid the HRA in lieu of rent free accommodation correctly at the rate fixed by the Govt. of India".

(Underlines supplied)

The anxiety of the respondents was thus to justify the rate of HRA that was being paid and which was disputed by the applicants and in that process they did not dispute rather - accepted the position that all the applicants (P & T staff) posted in Nagaland were entitled to get rent free accommodation and their

38 defence related only to the rate of HRA as one of the components of compensation in lieu of rent free accommodation.

✓ 50. With ^{the} above nature of the case the then learned Members of this Bench observed in the order dated 31.10.90 as follows :

Para 1 " Briefly stated the facts of the case are that Telecom and Postal employees posted anywhere in Nagaland were provided with rent free accommodation. If they were not given Government accommodation, they were entitled to House Rent Allowance as in 'B' class cities".

Para 3 " On behalf of the Central Government a written statement was filed, followed, on our orders, by a clarificatory statement. In this none of the facts mentioned by the petitioners and summarised in the above paragraph were disputed.....".

Para 4 ".....
Since Nagaland, irrespective (of) the stations of the entire territory, was considered as a difficult area from the point of view of availability of rented house, all P & T employees posted there either got rent free quarters or, where such quarter could not be provided by the Government, were given house rent at the rate applicable to 'B' class cities".

"It appears to us that the HRA is paid by the Central Government for compensating an employee on account of his residential accommodation in the place of posting".

(Emphasis supplied)

With the above conclusions it was held that the applicants were entitled to House Rent Allowance applicable to Central Government employees posted in 'B' class cities which included the classifications B1 & B2 (from 18.5.1980).

51. It is true that the decision related only to P & T employees and the core of controversy decided was as regards the rate of HRA that was payable. However the impact of the decision is to hold

that all the employees of P & T Department posted in Nagaland were entitled to get rent free accommodation or compensation in lieu thereof. The ^{O.M.} ~~O.M.~~ 12-11/60 dated 2.8.60 obviously was not invoked to deny that benefit to them. Apparently there was no coordination between the concerned Ministries of the Govt. of India in formulating the defence in that case and that resulted in the aforesaid O.M. not having been relied upon which could ^{restrict} ~~resist~~ the eligibility criteria.

✓ SIA. We have seriously considered the aspect whether since that decision related only to P & T employees and although it became applicable to all employees of that Department notwithstanding the O.M. (12-11/60) dated 2.8.60 whether a different view should be taken in the light of the said O.M. (12-11/60 2.8.60) in the instant applications which relate to different departments of the Govt. of India other than P & T Department except O.A. 2/94 which is filed by Postal Employees who ~~are~~ ^{are} covered by the decision in O.A. 42/89 (supra). Consistently with the view we have indicated on the applicability of O.M. 12-11/60 dated 2.8.60 it would have been open to us to take a different view than taken in O.A. 42/89 in respect of departments other than P & T. We are not however persuaded to do so for two reasons. Firstly, it having been held that the concession of rent free accommodation or compensation in lieu thereof was available all the employees posted in Nagaland which position was not controverted by the Government of India even in respect of P & T employees, we think that that principle should be applied to employees of other Departments concerned in the instant applications also in order to avoid resultant discriminatory treatment to employees of other Departments being ^{meted} ~~meted~~ out. ✓

Secondly, we are of the opinion that the judgement of the Hon'ble

90 Supreme Court touching the above aspect does not leave it open to us to take a different view.

52. We therefore now turn to the judgement of the Supreme Court(dated 18.2.93) once again. The opening passage reads :

"Group 'C' and 'D' employees of Telecommunications and Postal Department posted in the State of Nagaland approached the Central Administrative Tribunal Guwahati seeking a direction to the Union of India to pay them the House Rent Allowance at the rates as admissible to the employees posted in 'B' class cities"

Proceeding further Their Lordships' referred to the order of the President of India dated January 8, 1962 and set out the portion 1.(iii) (already quoted above by us) reading as follows :

"1. (iii) Rent free accommodation on a scale approved by the local administration. The P & T staff in NHTA who are not provided with rent free accommodation will, however draw HRA in lieu thereof at the rates applicable in 'B' class cities contained in Col. 4 Paragraph 1 of the Ministry of Finance O.M. No. 1(22)-EII(B)/60 dated the 2nd August, 1960".

and proceeded to observe that :

" It is clear from the order quoted above that the P & T employees posted in the State of Nagaland are entitled to rent free accommodation or in the alternative to the House Rent Allowance at the rates applicable in 'B' class cities"

Lastly, Their Lordships observed :

" We see no infirmity in the judgement of the Tribunal under appeal. We agree with the reasoning and the conclusions reached therein"

53. The respondents (Govt. of India) did not urge before the Supreme Court that the words 'who are not provided with rent free accommodation' occurring in the order of the President dated 2.8.60,

meant only those employees who were within the eligibility criteria prescribed in G.I. M.H and W, G.M. No. 12-11/60 ACC-I dated 2nd August, 1960 as is sought to be contended in the instant O.A.s. As stated earlier it follows from the judgement that all the employees of the P & T Department posted in Nagaland irrespective of being covered by O.M. 12-11/60 dated 2.8.60 or not were held to be entitled to rent free accommodation or the compensation in lieu thereof. On a parity of reasoning and with no rational criteria to differentiate employees of departments other than of P & T employees being discernible we are of the view that the benefit of the judgement should be available to the applicants in the instant applications who are posted in Nagaland without applying the criteria in the O.M. dated 12-11/60 dated 2.8.60. We hold that the respondents are estopped from taking up a stand in the instant cases relying upon the said O.M. inconsistently with what was held by the Supreme Court in the aforesaid judgement. The respondents must take the consequences of the failure to draw the attention of the Tribunal or the Hon'ble Supreme Court to the O.M. 12-11/60 dated 2.8.60 in the proceedings in O.A. 42(G)/89. We further hold that the said O.M. though not revoked or withdrawn so far by the Govt. of India has ceased to have any efficacy or applicability in the instant cases being inconsistent with the judgements of the Supreme Court and Central Administrative Tribunal in O.A. 42 (G)/89 and it is not open to the respondents in the instant cases to invoke ^{and} apply the same in order to deny the concession of rent free accommodation or compensation in lieu thereof to the respective applicants posted in State of Nagaland. We further hold that the latest O.M. issued by Ministry of Finance (Expenditure) O.M. No. 2(25)/92/E-II-8 dated 16.5.1994 (discussed below) also does not alter the above position as it does not contain fresh orders but is based on the very O.M. 12-11/60 dated 2.8.60 which can no longer

be applicable to the applicants as held in the preceding discussion. We read the judgement of the Hon'ble Supreme Court, with respect, as conclusive on both the points namely entitlement of rent free accommodation or compensation in lieu thereof as well as rate of House Rent Allowance to be payable as for 'B' class cities.

54. The position that would emerge in the light of above discussion would be as follows :

- (i) The O.M. 12-11/60-ACC-I dated 2.8.60 is still operative.
- (ii) By reason of the aforesaid OM which governs the OMs dated 23.9.86 and 13.11.87 the concession of compensation in lieu of rent free accommodation would be available only to those employees who fulfil the criteria of eligibility prescribed under the OM aforesaid dated 2.8.60.
- (iii) There has been no decision of the Govt. of India entitling the Central Government Employees posted in Nagaland (except who are eligible for the concession of rent free accommodation or compensation in lieu thereof under O.M. 12-11/60 ACC-I dated 2.8.60) to get the concession of rent free accommodation or compensation in lieu thereof.

However, even with the above conclusions at (i) to (iii) the relief of compensation cannot be refused to the respective applicants in view of the decision of the Hon'ble Supreme Court.

- (iv) The compensation mentioned above consists of licence fee plus House Rent Allowance.
- (v) The House Rent Allowance even for the purposes of compensation has to be paid as prescribed for 'B' class cities with effect from 1.10.1986 when the recommendations of the IVth Central Pay Commission were enforced.
- (vi) House Rent Allowance where payable to the applicants apart from as a component of compensation in lieu of rent free accommodation will also be payable at the rate payable for 'B' class cities to Central Government employees. 'B' cities include cities classified as B1 and B2 (as held in O.A. 42 (G)/89).

55. In O.A. 48/91 claim is made for payment of House Rent Allowance @ 15% of pay per month from 1974 to 30.6.87 and House Rent Allowance compensation @ 25% from 1.7.87 onwards. In view of conclusions recorded above relief will be granted only to the extent indicated below in the final order, *consistently with the original order.*

56. In O. A. 2/94 the principal claim is made for a declaration that employees of Postal Department posted in Nagaland are entitled to House Rent Allowance applicable to the Central Government Employees in 'B' class cities with effect from 1.10.1986. It is also prayed that relief may be granted in respect of compensation in terms of O.M. dated 13.11.87.

Both these reliefs will be granted to the extent indicated below in the final order consistently with the payments as may have already been made under original order dated 17.3.94.

57. In O.A. 11/95 two fold relief is prayed for. Firstly a declaration is sought to the effect that ~~all~~ Group 'C' & 'D' employees of the Directorate of Census Operations posted in Nagaland are entitled to House Rent Allowance as well as compensation in lieu of rent free accommodation applicable to Central Govt. Employees posted in 'B' class cities with effect from 1.10.1986. These prayers will be granted to the extent indicated below in the final order.

Secondly a direction is sought to the respondents to release the arrears with effect from 1.10.1986 towards the two reliefs claimed in the declaration. This also will be only granted as indicated below.

58. In O. 37/95 also a declaration is sought coupled with direction to pay the arrears from 1.10.1986 towards House Rent Allowance @ 15% and compensation in lieu of rent free accommodation at the rates applicable to Central Government Employees posted in

44
'B' class cities. Here also relief will be granted as indicated below. from 1.10.1986 and 1.7.1987 respectively.

In O.A. 105/95 applicants pray for House Rent Allowance at the rate payable to B-2 class cities and compensation on the lines in O.A. 48/91.

59. A note of a recent Ministry of Finance (Expenditure) O.M. No. F 17(2)-E-II (A)/93 containing copy of O.M. No. 2(25)/92/E-II (B) dated 16.5.1994 issued by the same Ministry is necessary to be taken. That is issued on the subject of grant of compensation in lieu of rent free accommodation.

(It is published at item 44 in journal section of 1995 (1) SLJ P.55). It provides as follows :

" 2. The matter has been considered and the President is pleased to decide that the Central Government employees who are entitled to the facility of rent free accommodation in accordance with the Ministry of Urban Development O.M. No. 12-II/60-ACC-1 dt. 2.8.60 and who have not been provided with such accommodation, will be entitled to compensation in lieu of rent free accommodation as under :

- (i) The lowest amount charged as licence fee for the entitled type of accommodation as fixed in terms of Ministry of Urban Development (Directorate of Estates) above mentioned O.M. dt. 26.7.93 and
- (ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of para 1 of this Ministry's O.M. No. 111013/2/86-E.II(B) dt. 23.9.83 for Central Govt. employees belonging to Group 'B' 'C' & 'D' and para 1 of O.M. No. 11013/2/86-E.II(B) dt. 19.3.87 for Central Government employees belonging to Group 'A'.

3. These orders take effect from 1.7.93, the date from which the flat rate of licence fee was revised.

39

4. All other conditions, laid down in this Ministry's O.M. No. 11015/4/86-E.II (B) dt. 19.2.87, 22.5.87 and 4.5.88 shall continue to be applicable, while regulating grant of compensation in lieu of rent free accommodation under these orders".

60. This notification continues the provisions contained in O.M. No. 12-11/60-ACCI dt. 2.8.60 (considered above). It means that these employees who are eligible to get the compensation in lieu of rent free accommodation under that O.M. will be governed by the formula now laid down with effect from 1.7.93. As already indicated above it is of no help to the respondents to deny the claim of the applicants so long as it is based on the O.M. dated 2.8.60. However it would be open to the Govt. of India to issue fresh orders without correlating it to the aforesaid O.M. and laying down a formula independently thereof as may be considered necessary.

61. We have referred in the course of above discussion to the material produced by the parties in all the applications together as well as to the record of O.A. 42(G)/89 which we called for, and we have done so bearing in mind the requirement of service jurisprudence and in order to avoid the possibility of conflicting decisions on the same points being rendered if each case were to be separately decided strictly on the basis of material produced by the parties in ^{that} each case. That could be the correct way in a technical sense but would have frustrated the cause of justice as the questions arising in all the applications are almost identical touching service matter. We have not specifically referred to other material or the award referred to in the respective applications as that was not necessary to decide the questions in issue and would have unnecessarily burdened the judgement. However we have perused the said material.

62. The above discussion also leads to the conclusion that the applicants who belong to different departments of Govt. are being discriminated vis-a-vis employees of Posts & Telecommunications Department in whose case the judgement of the Tribunal in O.A. 42/89 has been implemented.

63. Lastly effective dates for payment have to be indicated.

46 Although some of the applicants have laid a claim for the period prior to 1.1.1986 that cannot be granted. We would follow the date indicated in the judgement of the Supreme Court (Supra) namely 1.10.1986. In that case although Tribunal granted the claim from 18 May 1980 Their Lordships have modified that direction in following terms :

"We are, however, of the view that the Tribunal was not justified in granting arrears of House Rent Allowance to the respondents from May 18, 1980. The respondents are entitled to the arrears only with effect from October 1, 1986 when the recommendations of the Central Pay Commission were enforced".

We therefore adopt the date 1.10.1986 as the basic date for granting relief to the applicants eventhough the claim may have been made for a period since prior thereto.

This will be subject to concerned employees being in service on that day. For employees posted subsequently the date of posting will be taken into account.

64. However we are not in a position to specify as to for how long the said benefit would continue. It would depend upon the policy decisions taken by the Government of India from time to time in the exigencies of the situation. To the extent that from 1.10.1986 till the dates of the filing of the respective applications the applicants would be entitled to get the relief there does not arise any difficulty. ^{But as} As noted earlier, from 1.3.1991 the cities and towns have been re-classified under O.M. dated 14.5.1993 on the basis of 1991 Census. Although the classification prevailing under O.M. dated 7.2.1983 as amended from time to time lastly by OM dated 5.7.90 would be subject to the decision of the Supreme Court which was rendered on 18.2.1993 the same cannot be said about the reclassification introduced by OM No. 2(2)/93-E-II(B) dated 14.5.1993. It will be for the respondent

47

to examine the impact thereof, in the light of the discussion in this order and regulate the payment accordingly for the period as from and subsequent to 1.3.1991 until further change has been introduced.

We make it clear that as the said O.M. dated 14.5.1993 is not the subject matter of these applications we do not express any opinion about its applicability or otherwise or extent thereof as to the payment of compensation of HRA ^{and} if any of the applicants would feel aggrieved with any action taken by the respondents, on its basis they will be at liberty to pursue their remedies in accordance with the law.

65. We are not impressed by the objection of limitation raised by the respondents in O.A. 48/91 and reject the same.

66. In conclusion we answer the points formulated as follows :

- | | | |
|------------|---|---|
| Point i | : | Yes |
| Point ii | : | Licence fee plus House Rent Allowance - Quantum as below |
| Point iii | : | Yes (10%) |
| Point iv | : | Yes - at the rate applicable to Central Government Employees in 'B' Class Cities. (including 81 or 82) upto 1.3.1991 and thereafter as indicated in the order below : |
| Point v | : | Yes - as above |
| Point vi | : | As indicated in final order below |
| Point vii | : | Yes ^{vis-a-vis} vis-a-vis P & T Department |
| Point viii | : | As per final order below. |

67. In the result following order is passed in respect of each O.A. separately.

will

O R D E RO.A. 48/91

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (81-82) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.
- (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage, or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date but it shall not be less than 15% of monthly pay for the period between 1.10.1986 and 14.2.1995.
- (c) Arrears from 1.10.1986 upto 14.2.1995 ^{be} paid accordingly = subject to the adjustment of the amount as may have already been paid to the respective applicants for the aforesaid period in compliance with the original order dated 26.11.1993 (set aside on review on 14.2.95)
- (d) No recovery shall be made of any amounts paid in compliance with the order dated 26.11.93 upto 14.2.95.
- (e) Future payment from 15.2.1995 to be regulated in accordance with clause (a) above.

(f) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto 14.2.1995 payable under the original order dated 26.11.93 (set aside on review on 14.2.95) subject to adjustment of amount as may have already been paid for this period in compliance with the original order dated 26.11.93 upto 14.2.95.

(c) No recovery shall be made of any amounts paid in compliance with the order dated 26.11.93.

(d) Future payment to continue from 15.2.95 subject to clause (a) above.

(e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

G.A. allowed in terms of above order. No order as to

O.A. 2/94

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (81-82) class cities/towns for the period from 1.10.86 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 onwards, and continue to pay the same.
- (b) For the purpose of above direction it is clarified that the rate shall be adopted as 15% of monthly pay under the original order dated 17.3.1994 with effect from 1.10.1986 till 21.8.1995 (when the said order was set aside) and as from 22.8.1995 the rate as may be applicable whether on percentage basis or slab basis under the existing Government Memoranda.
- (c) Arrears from 1.10.1986 upto 21.8.1995 to be paid as indicated in clause (b) above subject to the adjustment of the amount as may have already been paid for this period in compliance with the original order dated 17.3.94 upto 21.8.95.
- (d) No recovery shall be made of any amounts paid in compliance with the order dated 17.3.1994.
- (e) Future payment from 22.8.1991 to be regulated in accordance with clause (a) above.

(f) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of this order by the respondents.

2 (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid @ 10% of monthly pay for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto 21.8.1995 payable under the original order dated 17.3.1994 (set aside on 21.8.1995) (subject to adjustment of amount as may have already been paid for this period in compliance with the original order dated 17.3.94 upto 21.8.95.

(c) No recovery shall be made of any amounts paid in compliance with the order dated 17.3.1994.

(d) Future payment from 22.8.1995 to be made under this order.

(e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of this order.

O. A. allowed in terms of above order. No order as to

costs.

G.A. 11/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.
 - (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.
 - (c) Arrears from 1.10.1986 upto date to be paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applicants during the aforesaid period.
 - (d) Future payment to be regulated in accordance with clause (a) above.
 - (e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.
- 2 (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the

case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

- (b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.
- (c) Future payment to be regulated in accordance with clause (a) above.
- (d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to

costs.

O.A. 37/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

1. (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (B1-B2) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.

- 54
- (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.
 - (c) Arrears from 1.10.1986 upto date to be paid accordingly subject to the adjustment of the amount as may have already been paid to the respective applicants during the aforesaid period.
 - (d) Future payment to be regulated in accordance with clause(a) above.
 - (e) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.
2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.
- (b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.
 - (c) Future payment to continue from 23.8.95 to be regulated in accordance with clause (a) above.

- (d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to costs.

O.A. 105/95

It is declared that the applicants are entitled to draw compensation in lieu of rent free accommodation. The respondents do pay the same to the applicants as directed below :

- 1 (a) House rent allowance at the rate applicable to the Central Government employees in 'B' (81-82) class cities/towns for the period from 1.10.1986 or actual date of posting in Nagaland if it is subsequent thereto, as the case may be, upto 28.2.91 and at the rate as may be applicable from time to time as from 1.3.1991 onwards and continue to pay the same.
- (b) For the purpose of above direction it is clarified that the rate may be calculated on the basis of percentage or flat rate or slab rate as may be applicable from time to time during the period from 1.10.1986 upto date.
- (c) Arrears from 1.10.1986 upto date to be paid accordingly subject to the adjustment of the amount as may have been paid to the respective applicants during the aforesaid period.
- (d) Future payment to be regulated in accordance with clause(a) above.

56
(a) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

2. (a) Licence fee @ 10% of monthly pay (subject to where it was prescribed at a lesser rate depending upon the extent of basic pay) with effect from 1.7.1987 or actual date of posting in Nagaland if it is subsequent thereto as the case may be, upto date and continue to pay the same until the concession is not withdrawn or modified by the Government of India or till rent free accommodation is not provided.

(b) Arrears to be paid for the period from 1.7.1987 (or actual date of posting in Nagaland if it is subsequent thereto as the case may be) upto date.

(c) Future payment to be regulated in accordance with clause (a) above.

(d) Arrears to be paid as early as practicable but not later than a period of 3 months from the date of receipt of the copy of this order by the respondents.

O.A. allowed in terms of above order. No order as to costs.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Application fee of Rs. 50/-

Paid vide Bank Draft

Postal Order No. 882746

Dated 1-1-95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::: GUWAHATI BENCH

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

Title of the case : O.A. No. // of 1995

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण

17 JAN 1995

50
17
Guwahati Bench
गुवाहाटी प्रशासनिक

Assam and Census Employees' Association ... Applicant
- Versus -
Union of India & Others ... Respondents

I N D E X

Sl.No.	Particulars of the documents	Page Nos.
1.	Application ...	1 to 13
2.	Verification ...	14
3.	Annexure-1 : O.M. dtd. 23.9.1986	15 to 17
4.	Annexure-2 : O.M. dtd. 9.6.1987	18 to 19
5.	Annexure-3 : Judgment & Order in Civil Appeal 2705/91	20 to 23
6.	Annexure-4 : Judgment dt. 26.11.93	24 to 27
7.	Annexure-5 : Judgment dt. 17.3.1994	28 to 31
8.	Annexure-6 : Letter dtd. 10.6.94	32
9.	Annexure-7 : Representation dt. 17.9.94	33

For use in Tribunal's Office

Date of filing : 17-1-95

Registration No. : OA 11/95

REGISTRAR

Recd Copy
Jama
17.1.95

5B

Filed by - M.K. Choudhury
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

O.A. No. 11 of 1995

BETWEEN

Nagaland Census Employees' Association
represented by its President Mr. L. Angami,
Directorate of Census Operations,
Nagaland, Kohima.

... Applicant

AND

1. The Union of India,
represented by the Secretary,
Ministry of Home Affairs,
New Delhi-1.
2. The Registrar General of India,
2/A, Mansingh Road, New Delhi-110001.
3. The Director of Census Operations,
Nagaland, Kohima.

... Respondents

DETAILS OF APPLICATION

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

The application is directed against communication dated 10.6.94 under No. 12/5/93- AdyIV (Nag) issued by the Registrar No.2 whereby House Rent Allowance at 'B' Class city rates has been denied to the members of the applicant association and also for a direction to release house rent allowances to the Group 'C' and 'D' employees of Census Operation posted in Nagaland, as is admissible to the Central Govt. employees posted in 'B' class cities together with compensation in lieu of free accommodation in terms of O.M. No. 11015/4/86-E.II(B) dated 13.11.87.

Contd..P/2.

2. JURISDICTION OF THE TRIBUNAL:

The applicants declare that the subject matter of the orders against ~~the~~ which they want redressal is within the jurisdiction of the Tribunal.

3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the applicant is the Nagaland Census Employees Association representing the interest of Group 'C' and 'D' employees of the Directorate of Census Operations posted in Nagaland. The applicant association is recognised by the Govt. and it is represented by the President. The members of the association are all citizens of India and as such, they are entitled to all the rights, protections and privileges guaranteed under the Constitution of India.

4.2 That the employees of the Census Operation posted in Nagaland are required to be provided with rent free accommodation. However, if they are not given rent free Government accommodation, they are entitled to house rent allowance (HRA for short) as in 'B' class cities declared by the Govt. of India. Such employees are also entitled to compensation in lieu of rent free accommodation (RFA).

4.3 That the cities/towns in the State of Nagaland

have not been classified by the Government and as such, the general order prescribing HRA for different classes of cities could not be made applicable to the State of Nagaland. It was under these circumstances that the President of India issued an order dated 8.1.62 granting HRA to the P & T Staff posted in Nagaland. The operative portion of the said order which is relevant for the purpose of the instant application is quoted below :

"1(iii) Rent free accommodation on a scale approved by the Local Administration. The P&T staff of NHTA who are not provided with rent free accommodation will, however, draw HRA in lieu thereof at the rate applicable in 'B' class cities contained in Col. 4 paragraph 1 of the Ministry of Finance O.M. No. 2(22)-E.II(B)/60 dated 2nd August 1960."

The Presidential order equates the cities in the State of Nagaland for the purpose of payment of HRA to the cities which have been classified as 'B' class. The said presidential order dated 8.1.62 is still operative. The applicant is not in possession of a copy of the aforesaid order and therefore, craves the leave of the Hon'ble Tribunal to direct the respondents to produce a copy of the same.

4.4 That the applicants state that the former NHTA (Naga Hills and Tuensang Area) and the present State of Nagaland is considered as a specially difficult area for the purpose of rented accommodation. In Nagaland irrespective of the station of the entire territory, the

Contd...P/4.

whole State has been considered as a difficult area from the point of view of availability of rented house and therefore, the Central Government employees posted there are either given rent free accommodation or where such accommodation could not be provided by the Government, the employees are entitled to HRA at the rate applicable to 'B' class cities. This situation has continued since 1962 and the difficulties still exist. The housing situation in Kohima in particular and the State of Nagaland in general has not improved and therefore, rented house at reasonable rates are not available till date.

4.5 That the applicants state that most of the Group 'A' and X 'B' employees of Directorate of Census Operation Nagaland are staying in Government accommodation. However, the Group 'C' and 'D' employees are not provided with the Government accommodation and therefore, they are required to stay in rented house which are very scarce and hence as a result, of the Group 'C' and 'D' employees are facing great hardship all through.

4.6 That in spite of the aforesaid factual position the members of the applicant association were given their due HRA and as such, this grievance was raised by the staff side of the departmental council in a meeting of the Departmental council of the erstwhile Department of Personnel and Administrative Reforms which meeting was held in October/November 1980. It was urged in the meeting that the disparity in payment of HRA between the employees of Ministry of Home Affairs as well as other Central Govt.

employee posted at Kohima be removed since the Central Government employees of certain other departments were given the HRA at the rate of B-class cities. However, nothing fruitful came out of the aforesaid deliberation.

4.7 That the 4th Pay Commission made certain recommendation regarding grant of HRA and compensatory allowances to the Central Government employees and pursuant to such recommendation the Government of India, Ministry of Finance by memorandum dated 23.9.86 communicated the decision of the Government of India of the Pay Commission and the rates for HRA and compensatory allowances were prescribed. It was communicated by the aforesaid decision that HRA at the rate shown shall be paid to all employees without requiring them to produce rent receipts.

A copy of the aforesaid memorandum dated 23.9.86 is annexed herewith as ANNEXURE-1.

4.8 That in view of the aforesaid memorandum, it was ~~ex~~ abundantly clear that the recommendation of the 4th Pay Commission was accepted by the Government and accordingly the members of the applicant association are entitled to HRA and compensation in lieu of RFA. The members of the applicant association thereafter urged the matter once again before the respondents. It was thereafter the Ministry of Home Affairs issued an office memorandum dated 9.6.87 whereby it was communicated that the grievance raised in the departmental council for removal of disparity in payment of HRA etc. between the employees of the Ministry

Contd...P/6.

of Home Affairs and other Central Government employees posted at Kohima was not possible to agree and therefore, a formal disagreement was recorded on this demand and consequently, the matter was referred to the Board of Arbitration for a decision. The Board of Arbitration had in ~~the~~ the mean time given an Award to the effect that from 1.5.76 the employees of the Directorate of Census Operations posted in Nagaland shall get HRA and personal allowance at the same rate as that of the employees of Post and Telegraphs Department. Pursuant to such an Award, the Ministry of Finance in consultation with the Department of Personnel & Training decided to implement the Award.

A copy of the aforesaid memorandum dated 9.6.87 is annexed herewith as ANNEXURE-2.

4.9 That from the aforesaid memorandum dated 9.6.87 it is apparent and clear that the Government has agreed to give HRA to the members of the applicant's association at the same rate as that of the Posts & Telegraphs Deptt. Nevertheless the members of the applicant association are given HRA at the rate of 'C' class cities whereas the employees of P&T Department are granted HRA at the rate of 'B' class cities. Further the employees of P&T Department are also granted compensation @ 10% in lieu of rent free accommodation.

4.10 That the applicants state that some employees of Postal Department filed O.A. No. 42(G)/89 (S.K. Ghosh & Ors Vs. Union of India & Ors) claiming HRA @ 'B' class cities and the said application was allowed by this Hon'ble Tribunal by Judgment and Order dated 30.10.90. Against the

aforesaid Judgment dated 31.10.90, the Union of India preferred an appeal before the Hon'ble Supreme Court being Civil Appeal No. 2705/91 (Union of India Vs. S.K. Ghosh & Others). The aforesaid appeal was disposed of by the Hon'ble Supreme Court by order dated 18.2.93 whereby the Hon'ble Supreme Court was pleased to modify the Judgment of this Hon'ble Tribunal to the extent that arrears of HRA will be given only with effect from 1st October 1986 and not from 18.5.80.

A copy of the order of the Hon'ble Supreme Court dated 18.2.93 is annexed herewith as ANNEXURE-3.

4.11 That the applicants state that some employees of the Geological Survey of India belonging to Group 'C' and 'D' and posted in Nagaland filed an application before this Hon'ble Tribunal being O.A. No. 48/91 claiming HRA at the rate applicable to 'E' class cities i.e. @ 15% of their pay and also for payment of compensation @ 10% in lieu of RFA. The aforesaid application was allowed by this Hon'ble Tribunal by Judgment and Order dated 26.11.93.

A copy of the aforesaid Judgment and Order dated 26.11.93 passed in O.A. 48/91 is annexed herewith as ANNEXURE-4.

4.12 That subsequent to it, the All India Postal Employees Union filed another O.A. No. ~~22~~ 2/94 claiming the same benefits and the said application was also allowed by this Hon'ble Tribunal.

Contd...P/8.

A copy of the Judgment dated 17.3.94 passed in
O.A. No. 2/94 is annexed herewith as ANNEXURE-5.

4.13 That it will be pertinent to mention here that the modification of the Hon'ble Tribunal's order was done by the Hon'ble Supreme Court in view of the recommendation of the 4th Pay Commission which came into effect from 1.10.86. From 1.4.86, the basic grant of HRA was changed according to recommendation of the 4th Pay Commission. The Pay Commission in its report, inter alia, stated that where HRA at the rate of 15% has been allowed, under special order, the same shall be given as admissible in a B-1 and B-2 class cities. In other cases covered by special order, the HRA shall be admissible at the rate in other class cities. The applicants crave the leave of the Hon'ble Tribunal to refer to the recommendations of the 4th Pay Commission at the time of hearing, if necessary.

4.14 That the applicants state that that after the Judgment of this Hon'ble Tribunal referred to above and the decisions of the Supreme Court dated 18.2.93, all Central Government employees posted in Nagaland are entitled to HRA at the rate admissible to B-class cities and they also entitled to compensation in lieu of rent free accommodation. However, for reasons best known to the respondents the members of the applicant association are deprived of the said benefits.

4.15 That subsequent to the passing of the aforesaid judgment, the applicants ~~xx~~ again urged the matter before the respondents claiming that in view of the Judgments

passed by this Hon'ble Tribunal as well as by the Hon'ble Supreme Court and in view of the decisions of the Government to grant HRA and other benefits to employees of Directorate of Census Operations at the same rate as applicable to that of P&T Department, the members of the applicant association may be granted the said benefits. The grievances of the members of the applicant association was forwarded by the respondent No. 3 to the respondent No. 2. However, the respondent No. 2 by a communication dated 10.6.94 has conveyed the decision that the judgments in case of P&T Department posted in Nagaland have been implemented exclusively for the employees of P&T Department posted in Nagaland and that no analogy can be drawn to the effect that the Judgments are applicable to other Central Government employees posted in Nagaland.

A copy of the aforesaid communication dated 10.6.94 is annexed herewith as ANNEXURE-6.

4.16 That the applicants state that since the members of applicant association are similarly circumstanced with those of any other Central Government employees posted in Nagaland, the respondents ought to have extended the said benefits to the employees of the Directorate of Census Operations. It is a well settled proposition of law that when a decision made by a Court in case of certain employees it is not necessary for other similarly circumstanced employees to approach the Court and similar effects should also be extended to them. However, the respondents by the aforesaid communication dated 10.6.94 has forced the applicant association to approach this Hon'ble Tribunal.

Contd...P/10.

4.17 That thereafter the applicants filed a representation dated 17.9.94 before the respondent No.34 claiming entitlement of HRA at the rate of 'B' class cities in view of the Judgment passed by this Hon'ble Tribunal and in view of the earlier decision of the Government in this regard. However, till date, the applicants have not received any reply to the aforesaid representation.

A copy of the aforesaid representation dated 17.9.94 is annexed herewith as ANNEXURE-7.

Further the applicants are also entitled to compensation in terms of office memorandum ~~no~~ No. 11015/4/86-E.II (B)/87 dated 13.11.87 as referred in in Judgment in O.A. No. 48/91.

4.18 That the applicants state that justice was demanded and the same has been denied to the members of the applicant association.

4.19 That the applicants state that this application has been filed in a representative capacity representing the interest of all Group 'C' and 'D' employees of Directorate of Census Operation posted in Nagaland.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the Presidential order of 1962 being still operative, the respondents cannot take away the right of HRA of the employees of the Directorate of Census Operations in Nagaland at the rate applicable to the employees of Central Government posted in B-class cities.

5.2 For that it is a well settled proposition of law that if some employees are found entitled to certain benefits, all similarly circumstanced employees also should be extended with the similar benefits.

5.3 For that the action of the respondents is discriminatory and violative of the rights guaranteed under Part-3 of the Constitution of India.

5.4 For that the employees serving in other Central Government Department, Corporation etc. and posted in Nagaland are given HRA as is admissible to 'B' class cities and as such, the applicants (their members) cannot be discriminated against.

5.5 For that in any view of the matter, the impugned order as contained in Annexure-6 liable to be quashed and the respondents are required to be directed to pay HRA to all the employees of Postal Department posted in Nagaland at the rate admissible to B-class cities.

5.6 For that the members of the ~~applicat~~ association are entitled to compensation in lieu of rent free accommodation in terms of the memorandum dated 13.11.87 referred to in the body of the application.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicants have submitted numerous representations ; but the same have not been replied to. As such, there is no other alternative and efficacious remedy accept by way of filing this application.

Contd...P/12.

3. MATTERS NOR PREVIOUSLY FILED OR PENDING
BEFORE ANY OTHER COURT :

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

8. RELIEFS SOUGHT :

Under the facts and circumstances of the case, the applicants pray that Your Lordships would be pleased to issue notice on the respondents to show cause as to why the reliefs sought for in this application shall not be allowed, call for the records and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :

- (i) A declaration that ~~the~~ all the Group 'C' and 'D' employees of the Directorate of Census Operation posted in Nagaland are entitled to House Rent Allowances as well as compensation in lieu of Rent Free Accommodation applicable to the Central Govt. employees posted in B-class cities with effect from 1.10.86.
- (ii) A direction to the respondents to release house rent allowances at the rate of 15% and compensation in lieu of rent free accommodation to all the employees of Directorate of Census Operations posted in Nagaland

as admissible to the Central Government employees posted in ~~Nagaland~~ B-class cities forthwith, alongwith arrears with effect from 1.10.86.

iii) Cost of this application.

iv) Any other relief or relief to which the applicants are entitled ~~to~~ under law and equity.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, the respondents may be directed to release their current HRA at the rate admissible to the Central Government employees posted in B-class cities.

10.

The application is filed through Advocate.

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

(i) I.P.O. No. : 8-03-88 271 8
(ii) Date : 4.1.95
(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

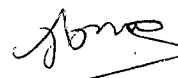
As stated in the Index.

Contd....Verification...

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

I, Shri L. Angami, aged about 41 years, son of Mr. L. Angami, President, Nagaland Census Employees Association, Group 'C' and 'D' at present working as Accountant in the office of the Directorate of Census Operation, Kohima, do hereby verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice. I am also duly authorised to sign this verification on behalf of the association, and I have not suppressed any material facts.

And I sign this verification on this the 14th day of January 1995.■


(L. ANGAMI)

No.11013/2/86-E-II(b)
GOVERNMENT OF INDIA MINISTRY OF
FINANCE (Department of Expenditure)

New Delhi the 23rd September 1986.

OFFICE MEMORANDUM

Sub : Recommendations of the Fourth Pay Commission, Decisions of the Government relating to grant of Compensatory (City) - & House Rent Allowances to Central Government Employees.

The undersigned is directed to say that, consequent upon the decisions taken by the Government on the recommendation of the Fourth Pay Commission relating to the above mentioned allowances vide this Ministry's resolution No. 14(1)/IC/86 dtd, 13th September 1986, the President is pleased to decide that in modification of this Ministry O.M.No.F.2(37)-E-II(B)/64 dated 27.11.1985 as amended from time to time for compensatory (City) and House Rent Allowances to Central Government employees shall, be admissible at the following rates :

COMPENSATORY (CITY) ALLOWANCES

Pay Range (Basic Pay)	Amount of C.C.A. in class of cities Rs. p.m.)		
	A	B-1	B-2
Below Rs. 950	30	25	20
Rs.950 and above but below Rs.1500	45	35	20
Rs.1500 and above but below Rs.2000	75	50	20
Rs.2000 and above	100	75	20

Note : For 14 special localities, where C.C.A. at the rates applicable to B-2 class city are being paid, fresh orders will be issued separately.

II) HOUSE RENT ALLOWANCES

Type of accommodation to which entitled	Pay range in revised scales or pay for entitlement.	Amount of H.R.A. payable Rs. p.m.		
		A, B-1, B-2 class cities.	C class cities	Unclassified places.
	750-949	150	70	30
	950-1499	250	120	50
	1500-2799	450	220	100
	2800-3599	600	300	150.

2. H.R.A. at above rates shall be paid to all employees (other than those provided with Government owned/hired accommodation) without requiring them to produce rent receipts

Attested.

M. K. Choury
Advocate.

Contd...P/

These employees shall however, be required to furnish a certificate to the effect that they are incurring some expenditure on rent/contributing towards rent, H.R.A. at above rates shall also be paid to Government employees living in their own houses subject to their furnishing certificate that they are paying/contributing towards house of property tax or maintenance of the house.

3. Where H.R.A. at 15 percent of pay has been allowed under special orders, the same shall be given as admissible in A, B-1, and B-2 class cities. In other cases covered by special ~~pay~~ order, HRA shall be admissible at the rate ~~of~~ in C class cities. In both these cases there shall be no upper age limit for payment of HRA.

4. The other condition at present applicable for grant of HRA in cases of hearing of accommodation and other categories shall continue to be applicable.

5. Pay for the purpose of these orders, will be 'pay' as defined in F.R.9(21) (a) (i). In the case of persons who continue to draw pay in the scales of pay which prevailed prior to 1.1.1986 it will include in addition to pay in the pre-revised scales, dearness pay, dearness allowance, Additional Dearness Allowances, Ad-hoc DA and Interim Relief appropriate to that pay, admissible under orders in existence on 31.12.1985.

6. These orders shall be effective from 1.10.1986. For the period from 1.1.1986 to 30.9.1986, the above allowances will be drawn at the existing rates on the national pay in the pre-revised scale.

7. These orders will apply to civilian employees of the Central Government belonging to Group 'B' 'C' & 'D' only. The orders will also apply to the Group 'B' 'C' & 'D' civil employees paid from the Defence Service's Estimates. In regard to Armed Forces Personnel and Railway Employees, separate orders will be issued by the Ministry of Defence and Department of Railways respectively.

8. In so far as the persons serving in the India Audit and Accounts Department are concerned this order issues after

Contd...P/17.

Attested.

M. K. Chetty
Advocate.

consultation with the Comptroller and Auditor General of India.

9. Hindi version of the order is attached.

Sd/-

(B.P. Varma)

Joint Secretary to the Government of India.

To

All Ministries and Department of the Government of India,
etc. as per distribution list.

Copy forwarded to C&AG and UPSC etc. (with usual number
of spare copies) as per standard endorsement list.

Attested.

M. K. Chetty
Advocate.

No. 10/10/87-NEI
Government of India
Ministry of Home Affairs,

New Delhi the 9th June 1987.

Subject : Implementation of Award of the Board of Arbitration regarding grant of HRA to the employees of Directorate of Census Operation (Ministry of Home Affairs) Nagaland at the rates applicable to the employees of P & T Department posted at the same station.

The undersigned is directed to say that the Staff side of the Departmental Council had raised a demand in the 30th Ordinary Meeting of the Departmental Council of the erstwhile Department of Personnel & Administrative Reforms held in October/November 1980, for removal of disparity in payment of House Rent Allowance, between the employees of the Ministry of Home Affairs, and other Central Government employees posted at Kohima, Nagaland. Since it was not feasible to agree to their demand, formal disagreement was recorded, on this demand and consequently, the matter was referred to the Board of Arbitration for a decision, as per J.C.M. scheme. The Board of Arbitration has now given the following Award :

"With effect from 1st May, 1976, the employees of the Director of Census Operations, Ministry of Home Affairs, Department of Registrar General of India, posted in Nagaland shall get House Rent Allowances and personal Allowance at the same rates under the same conditions and in the same manner as the employees of the Post & Telegraph Department have been granted."

2. The Award of the Honourable Arbitration has been considered by the Ministry of Finance in consultation with the Department of Personnel & Training and it has been decided to implement the Award.

3. The erroneous payment of H.R.A. at 15% of pay in the case of employees of Post & Telegraph Department was reduced to 7½% of pay and the remaining 7½% protected in the shape of personal allowance. However, in the case of

RECEIVED.

Contd...

M. K. Ching
A. S. S. S.

ne entrants i.e. persons posted to Nagaland from 1st April 1980 onwards the House Rent Allowances is being paid at a uniform rate of 7½% of pay only. Accordingly, the ~~xx~~ employees of the Directorate of Census Operations, Kohima, Nagaland may be allowed House Rent Allowance at the rate of 7½% of pay and personal allowance at same rate (7½% of pay) with effect from 1st May 1976 and the employees of the Directorate posted at Nagaland from 1st April, 1980 onwards be paid only House Rent Allowance at a uniform rate of 7½% of pay as is being done in the case of the employees of the P&T Department.

4. This issues on the basis of the Office Memorandum No. 11021/1/86-E-II(B) dated the 12th March, 1986, issued by the Ministry of Finance Department of Expenditure.

Sd/-

(Brijeshwar Singh)

DS (NEC)

Copy to :

1. All Ministries/Departments of Government of India.
2. All attached and subordinate offices of the Ministry of Home Affairs.
3. Chief Secretaries of all States.
4. Ministry of Finance, Department of Expenditure (E-II-B), New Delhi.
5. Office of the Registrar General of India, 2-A, Prithvi Raj Road, New Delhi with reference to their u.o. No. D-11026/7/86-Ad.iii. dt. 22.1.87 (with 10 spare copies).

Sd-

(Brijeshwar Singh)

DS (NEC).

...

Attested.

M. K. Chy
Advocate.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2705 OF 1991

Union of India & Ors.	...	Appellants
- Versus -		
Sri S.K. Ghosh & Ors.	...	Respondents

O R D E R

Group 'C' and 'D' employees of Telecommunications and Postal Department posted in the State of Nagaland approached the Central Administrative Tribunal, Guwahati seeking a direction to the Union of India to pay them the House Rent Allowance at the rates as admissible to the employees posted in 'B' class cities. The Tribunal allowed the prayer in the following terms :

"The application is allowed. The petitioners shall be entitled to House Rent Allowance applicable to Central Government employees posted in 'B' class cities which includes the classification B-1 & B-2. The order contained in Dy. Director General's letter dated 30.10.81 (Annexure A-1) is quashed. Arrears of the allowance counting from the 18th of May 1980 shall be paid to the petitioners within a period of 120 days from the date of receipt of this order."

This appeal by way of special leave is by the Union of India against the judgment of the Tribunal. The cities in the State of Nagaland have not been classified and as such, the general order prescribing House Rent Allowance for different classes of cities could not be made applicable to the State of Nagaland. It was under these circumstances that the President of

Contd...P/21.

Attested.

M. K. Chary
Advocate.

India issued an order dated January 8, 1962 ~~xx~~ granting House Rent Allowance to the P & T Staff posted in the State of Nagaland. The relevant part of the said order is as under :

"1.(iii) Rent free accommodation on a scale approved by the Local administration. The P & T Staff in NHTA who are not provided with rent free accommodation, will, however, draw H.R.A. in lieu thereof at the rates applicable in 'B' class cities contained in col. 4 paragraph 1 of the Ministry of Finance O.M. No. 2(22)-E.11(B)/60 dated the 2nd August 1960."

It is clear from the order quoted above that the P & T employees posted in the State of Nagaland are entitled to rent free accommodation or in the alternative to the House Rent Allowance at the rates applicable in 'B' class cities. The Presidential Order equates the cities in the State of Nagaland for the purposes of payment of House Rent Allowance to the cities which have been classified as 'B' class.

Initially the House Rent Allowance was being paid at the rate of 7½% per cent in the State of Nagaland. It was increased to 15 per cent in the year 1973. From 1979 the House Rent Allowance was again reduced to 7½ per cent. It is not necessary for us to go into the rates of the House Rent Allowance at various stages because the question for our consideration is whether the respondents are entitled to the House Rent Allowance as provided for 'B' class cities by the IVth Central Pay Commission recommendations which were enforced with effect from October, 1, 1986.

Contd...

Attested.

M. K. Ching
Advocate.

It is not disputed that the Presidential order dated January 8, 1962 is still operative. We are of the view that the State of Nagaland having been equated to 'B' class cities by the Presidential Order the respondents are entitled to be paid the House Rent Allowance at the rates which have been prescribed for the Central Government employees posted in 'B' class cities. Consequently, the respondents are entitled to be paid House Rent Allowance at the rate which has been prescribed by the IVth Central Pay Commission recommendations for 'B' class cities.

The Tribunal allowed the application for the respondents on the following reasons :

"There is no dispute that the former N.H.T.A. (Naga Hills and Tuensang Area) and the present Nagaland was considered as a specially difficult area for rented accommodation. For the purpose of H.R.A. Government classified the cities and towns on the basis of their population and paid higher allowance in more populous cities because the rent structure is higher in such cities. Since Nagaland, irrespective the stations of the entire territory, was considered as a difficult area from the point of view of availability of rented house, all P & T employees posted there either got rent free quarters or where such quarter could not be provided by the Government, were given house rent at the rate applicable to 'B' class cities. This situation continued from 1962. The rate of HRA may be reduced with efflux of time. The only reason for doing so can be that the special difficulties which existed from 1962 onwards have since been ameliorated. This can conceivably happen, with the development of the area in question. The housing stock may improve to such an extent that rented house at reasonable rate may be available. If that was the situation, a downward revision of HRA or even its complete discontinuance would have been justified. In this case, however, the respondents case solely rests

Contd...

...ed.

M. K. Ching
Advocate.

on what is stated as Annexure-A-1 which is reproduced in full in the preceeding paragraph. Since no such reason is given for the downward revision we have no other alternative but to hold that the revision effected in compliance to the document at Annexure A1 is arbitrary and cannot be sustained. We further find that according to the formula adopted after the IV CPC HRA is payable to the Central Government employees posted even in classified places. From Annexure A-7 it is clear that this allowance is at a flat rate is payable without production of rent receipt. It appears to us that the HRA is paid by the Central Government for ~~xx~~ compensating an employee on account of his residential accommodation in the place of posting is not shown to have undergone any improvement in the matter of availability and rent of hired accommodation, any alteration of the rate of HRA will remain arbitrary and unjustified. In this view of the matter, we feel inclined to allow the application."

We see no infirmity in the judgment of the Tribunal under appeal. We agree with the reasoning and the conclusions reached therein. We, are, however, of the view that the Tribunal has not justified in granting arrears of House Rent Allowance to the respondents from May 18, 1980. The respondents are entitled to the arrears only with effect from October 1, 1986 when the recommendations of the IVth Central Pay Commission were enforced. We direct accordingly and modify the order of the Tribunal to that extent. The appeal is therefore, disposed of. No costs.

Sd/-

(Kuldip Singh) J

Sd/-

(N.M. Kasliwal) J.

New Delhi

February 18, 1993.

...

Attested.

M. K. Chugh
Secretary.

CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH

Original Application No. 48 of 1991

Date of order : This the 26th day of November 1993

Shri S. Haque, Vice Chairman,

Shri G.L. Sanglyine, Member (Administrative).

Shri M. Lepdon Ao and forty six (46) others,
Group 'C' & 'D' employees posted in the
Office of the Director,
Geological Survey of India,
Operation Manipur-Nagaland, Dimapur,
District Kohima, Nagaland. ... Applicants.
By Advocate Shri .M.N. Trikha.

- Versus -

1. Union of India, through the Secretary,
to the Government of India,
Ministry of Steel and Mines,
Department of Mines, New Delhi.
2. The Director General, Geological Survey
of India, 27, Jawaharlal Nehru Road,
Calcutta-700 013.
3. The Deputy Director General, Geological
Survey of India, North East Region,
Asha Kutir, Laitumkhrah, Shillong-79 3003.
4. The Director, Geological Survey of India,
Operation Manipur-Nagaland, Dimapur
... Respondents.

By Advocate Shri S. Ali, Sr. C.G.S.C. and
Shri A.K. Choudhury, Addl. C.G.S.C.

...

ORDER

HAQUE J.

The applicants numbering 47 (forty seven) are
Group 'C' and 'D' employees under the Director, Geological
Survey of India, Operation Manipur-Nagaland at Dimapur,
Nagaland. This application by them under Section 19 of the
Administrative Tribunals Act, 1985 claiming House Rent
Allowance (HRA) at the rate applicable to 'B' class cities
i.e. at the rate of 15% of their pay and also claim compensa-
tion at the rate of 18% in lieu of Rent Free Accommodation (RFA).

Attested.

Contd...

M. K. Chy
Advocate.

They claim that Nagaland falls within 'B' class cities for the purpose of HRA and compensation in lieu of RFA.

2. It is an admitted fact that the employees of the respondent Directorate are entitled to rent free accommodation in Nagaland, buty they were not given free government accommodation.

3. Learned counsel Mr. N.N. Trikha for the applicants submits that it was established vide judgment dated 31.10.1990 in O.A.No. 42(G)/89 of this Bench and duly confirmed by the Supreme Court vide order dated 18.2.1993 in Civil Appeal No. 2705/91 that Nagaland in general is 'B' class city and the Central Government employees there are entitled for benefits of 'B' class cities granted by various circulars and office memoranda. ~~These submissions~~ Mr. Trikha read out the relevant Office Memoranda. These submissions are not disputed by learned Sr. C.G.S.C. Mr. S. Ali. We have perused the judgments and orders referred to by Mr. Trikha, Nagaland had been recognised as 'B' class cities in general vide our judgment and order dated 31.10.1990 in O.A. No. 42(G)/89 read with the Supreme Court order dated 18.2.1993. in Civil Appeal No. 2705 of 1991. This being the established position, we hold that the applicants were entitled to HRA at the rate of 15% on their pay from 1974 to September 1986 ; and thereafter, on flat rate basis group wisely with effect from 10.10.1986 pursuant to Office Memorandum No. 11013/2/86-E-11(B) dated New Delhi the 23rd September 1986 issued by the Ministry of Finance, Government of India (Annexure-A/7).

4. After the fixation of the HRA on flat rate basis groupwisely, the Government of India further granted compensation to Group A, B, C and D employees in lieu of rent free

Attested.

M. K. Chy
Advocate.

Contd...

accommodation with effect from 1.7.1.87 vide Government of India Ministry of Finance, Department of Expenditure O.M. No. 11015/4/86-E.II(B)/87 dated 13.11.1987 which reads as follows :-

" The undersigned is directed to refer to para 1 of this Ministry's office Memorandum of even number, dated 19.2.1987 regarding Central Government employees belonging to Groups 'B', 'C' and 'D' and also para 1 of O.M. of even number dated 22.5.1987, regarding Central Government employees belonging to Group 'A', on the subject noted above and to say that consequent upon fixation of flat rate of licence fee for residential accommodation under Central Government all over the country vide Ministry of Urban Development (Directorate of Estates)'s O.M. No. 12035/(1)/85-Pol.II (Vol.III) (i) dated 7.8.1987, the President is pleased to decide that Central Government employees belonging to Group 'A' 'B' 'C' and 'D' working in various classified cities and unclassified places will be entitled to compensation in lieu of Rent free accommodation as under :

- (i) Amount charged as licence fee for Government Accommodation as fixed in terms of Ministry of Urban Development (Directorate of Estates)'s above mentioned O.M. dated 7.8.1987 and
 - (ii) House Rent Allowance admissible to corresponding employees in that classified city/unclassified place in terms of para 1 of this Ministry's O.M. No. 11013/2/86-E.II(B) dated 23.9.1986, for Central Government employees belonging to Groups 'B' 'C' and 'D' and para 1 of O.M. No. 11013/2/86-E.II(B) dated 19.3.1987, for Central Government Employees belonging to Group 'A'.
2. Other terms and conditions for admissibility of compensation in lieu of rent free accommodation indicated in this Ministry's office Memorandum, dated 19.2.1987 and 22.5.1987, remain the same.
3. These orders shall take effect from 1.7.1987."

The compensation is fixed at 10% of the monthly emoluments calculated with reference to pay vide NOTE under para 2 of the Government of India, Ministry of Finance Office Memorandum No. 11015/4/86-E.II(B)/87 dated 25.5.1987. These Office Memoranda had been circulated by Geological Survey of India, Calcutta vide order No. 14017(1)/88-3(HRA) dated 26.9.1988 for

Accessed.

Contd...

M.K. Chugh
Advocate.

necessary action by all branches. Therefore, we hold that the applicants are entitled to compensation at the rate of 10% of pay in lieu of rent free accommodation with effect from 1.7.1987 in terms of O.M. No. 11015/4/86-E.II(B) dated 13.11.1987 in addition of the HRA.

5. The applicants were not entitled to 10% compensation in lieu of rent free accommodation for the month of November 1979 and they are liable to refund that amount.

6. In the result, this application is allowed. The respondents are directed to pay HRA to the applicants at the rate of 15% of their pay from 1974 and at flat rate groupwise with effect from 1.10.1986 in terms of O.M. No. 11013/2/86-E.II(B) dated 23.9.1986. The respondents are further directed to pay compensation at 10% of the monthly emoluments calculated with reference to the pay of respective applicants with effect from 1.7.1987 besides HRA. The respondents shall realise 10% of pay of the applicants paid in excess with salary for the month of November 1979.

7. The respondents shall implement the above directions and pay all arrears within three months (90 days) from the date of receipt of copy of the order.

8. Intimate all concerned immediately.

...

Attested.

M. K. Chetty
Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION No. 2 OF 1994

Date of Order : This the 17th day of March, 1994.

Justice S. Hague, Vice Chairman,

Shri G.L. Sanglyine, Member (Administration)

1. All India Postal Employees Union,
P(III) & A.D.A. Divisional Branch,
Kohima - 797001, represented by its
Divisional Secretary - Mr. V. Angami
2. All India Postal Employees Union,
Postmal Class IV & E.D.
Kohima Branch, Nagaland, represented
by its Divisional Secretary - Mr. K. Tali Ao.
... Applicants.

By Advocate Shri B.K. Sharma and Shri M.K. Choudhury

- Versus -

1. The Union of India, represented by the
Secretary, Ministry of Communication,
Department of Posts, New Delhi.
2. The Director General, Posts,
New Delhi-110001.
3. Chief Postmaster General,
N.E. Circle, Shillong.
4. The Director of Postal Services,
Nagaland Division, Kohima.
5. ... Respondents

By Advocate Shri G. Sarma, Addl. C.G.S.C.

O R D E R

HAQUE J.

The applicant No.1, the All India Postal Employees Union Postman (III) and Extra Departmental Agents, Divisional Branch, Kohima represented by its Divisional Secretary, Mr. V. Angami ; and the applicant No.2, the All India Postal Employees Union, Postman Class IV and E.D. Kohima Branch represented by its Divisional Secretary, Mr. K. Tali Ao have filed this application under section 19 of the Administrative Tribunals Act, 1985 claiming House Rent Allowance(HRA)

Attested.

M. K. Choudhury
Advocate.

at the rate of 15% of their pay as applicable to 'B' class cities and also compensation at the rate of 10% in lieu of Rent Free Accommodation (RFA). They claim that Nagaland ~~is~~ falls within 'B' class cities for the purpose of HRA and compensation in lieu of RFA. The respondents have filed written statements virtually admitting the claim of the applicants by referring to the judgment of the Supreme Court in Civil Appeal No. 2705 of 1991 affirming the judgment of C.A.T. Guwahati Bench in O.A. No. 42(G) of 1989 with modification to give effect of arrears HRA from 1.10.1986 i.e. the date from which the recommendation of the 4th Central Pay Commission was implemented. The judgment of the Supreme Court dated 18.2.1993 arising out of the judgment dated 31.10.90 in O.A. 42(G)/89 C.A.T. Guwahati Bench in respect of postal employees.

2. It is an admitted fact that the applicants are entitled to Rent Free Accommodation in Nagaland, but they were deprived of the said facilities.

3. Learned counsel Mr. B.K. Sharma on behalf of the applicants submits that the grievances and reliefs sought for by the applicants are covered by judgment in O.A. No. 42(G) 89 read with Supreme Court Judgment dated 18.2.93 in Civil Appeal No. 2705/of 1991 and judgment dated 26.11.93 in O.A. No. 48/91 C.A.T. Guwahati Bench. Mr. Sharma further submits that the Government of India has decided to allow the benefit of the Supreme Court judgment in Civil Appeal No. 2705/91 to all similarly placed postal employees posted in Nagaland vide letter No. Vig-5/2/89-90 dated Shillong, the 10-3-1994 addressed to the Director of Postal Services, Nagaland Division.

Att. ...

Contd...P/30.

M. K. Chetty
Advocate.

Kohima. Perused contents of the letter. It was decided in clear terms in the letter that the President of India is pleased to allow the benefits of the Supreme Court in Civil Appeal No. 2705/91 to all similarly placed postal employees posted in Nagaland. Learned Addl. C.G.S.C. Mr. G. Sarma submits with reference to the written statements which virtually admits the claim of the applicants in respect of HRA and compensation in lieu of RFA.

4. Perused our previous judgment on O.A. No. 42(G)/89 read with Supreme Court judgment in Civil Appeal No. 2705/91 and judgment dated 26.11.93 in O.A. No. 48/91. All observations and findings in these judgments are aptly applicable in the instant case. The grievances and reliefs sought for by the applicants/members of ~~the~~ both the Unions are covered by these judgments. Furthermore, the order of the President of India referred in letter No. Vig-5/2/89-90 dated Shillong the 10.3.1994 clearly established that the applicants are entitled for the reliefs sought for. We hold that the applicants are entitled to HRA at the rate of 15% of their pay with effect from 1.10.1986 in terms of O.M. No. 11013/2/86-E.II(B) dated 23.12.1986 and also entitle to the compensation at the rate of 10% of pay in lieu of RFA with effect from 1.7.1987 in terms of O.M. No. 11015/4/86-E.II(B) dated 13.11.1987.

5. Accordingly, this application is allowed. The respondents are directed to release HRA to the applicants at the rate of 15% of their pay with effect from 1.10.1986 and also to pay compensation at the rate of 10% of monthly emoluments calculated with reference to the pay of respective applicants with effect from 1.7.1987. The

Attested.

M. K. Chy
Advocate.

Contd...P/31.

respondents are further directed to release arrears of HRA as well as compensation in lieu of RFA within three months from the date of receipt copy of this judgment/order and shall pay current HRA and compensation from next month (April 1994).

Communicate all concerned.

Sd/- S. HAQUE

VICE CHAIRMAN

Sd/- G.L. SANGLYINE

MEMBER (ADMN.)

Attested.

M. K. Ching
Advocate.

No.12/5/93-Ad.IV(Nag.)

Government of India,
Ministry of Home Affairs,
OFFICE OF THE REGISTRAR GENERAL INDIA

2/A Mansingh Road,
New Delhi dt. 10.6.94.

To .

The Director of Census Operations
Nagaland, Kohima.

Subject Grant of House Rent Allowance at 'B' class
cities Rates.

Sir,

With reference to your letter No.G.11026/16/86-E&N dated 13.9.93 on the above cited subject, I am to say that the Ministry of Finance, Deptt. of Expenditure, E.II(B) Bench have clarified that the judgment ~~have~~ been implemented exclusively for the employees of Telecom who are posted at Nagaland and as such no analogy can be drawn to this judgment to the other Central Govt. employees posted at Nagaland. The concerned officials may be apprised of the position accordingly.

Yours faithfully,

(B.K. BHATIA)
DEPUTY DIRECTOR.

...

Attested.

M.K. Chetty
Advocate.

20

ANNEXURE-7

- 33 -

To

The Deputy Director of Census Operations
Nagaland, Kohima.

SUB :

GRANT OF HOUSE RENT ALLOWANCE OF 'B' CLASS
CITIES AT PAR WITH POSTAL & TELEGRAPH EMPLOYEES.

Sir,

With due respect, I on behalf of the Nagaland Census Employees Association, Kohima have the honour to submit herewith a representation for grant of higher H.R.A. @ 'B' class cities at par with the employees of Postal and Telegraph Department at Kohima.

The employees of P & T Department have been enjoying HRA @ 'B' class city effect from 1.10.1986 as per order of Central Administrative Tribunal, Guwahati Bench original application No. 2 of 1994 and their Department office letter No. 4-4C/87-PAP dated 7.3.94. Their office letter has also spelt out the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 2705/91 and Finance concurrence Dairy No. 827/TA dated 2.3.94 for implementation. (Copies enclosed for easy reference).

Over and above, the Ministry of Home Affairs vide its O.M. No. 10/1087-NE) dated 9.6.1989 has implemented Board of Arbitration Award regarding payment of HRA to the employees of Director of Census Operations Kohima as the Board of ~~Director~~ Arbitration has granted HRA & Personal Allowances to the employees of D.C.O. Kohima at same rates, under same condition and in the same manner, as the employees of the Post and Telegraph Department have been granted. (copy enclosed).

In view of the above stated reasons, we the employees of the Directorate of Census Operations, Kohima request your good office to sanction higher HRA @ 'B' class cities with effect from 1.10.1986 on the analogy of P & T Department as you are well aware of the problem of your staff who are staying in rented houses where accommodation problem is needless to mention. Early action on the matter shall be highly appreciated.

Yours faithfully,

Sd/- 17.9.94

(K.G.K.PILLAI)
General Secretary.

Encl. As above.

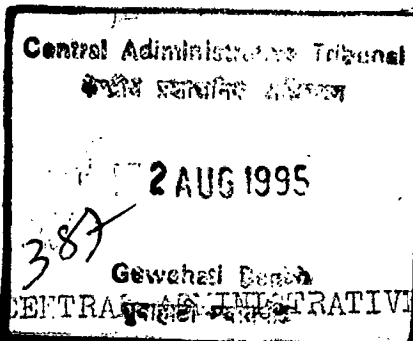
Copy to :

1. Registrar General, India, New Delhi-110001.
2. Secretary General, AICEF.
3. President, C.G.E.&W.C.O.C. Nagaland, Kohima.

Attested.

M. K. Ching
Advocate.

Sd/- 17.9.94
(K.G.K.PILLAI)
General Secretary
N.C.E.A.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

by
10/8/95
Additional Central Govt.
Standing Counsel,
Central Administrative Tribunal

In the matter of :

O.A.No.11/95
Nagaland Census Employees
Association ...Applicant.

-Versus-

Union of India & Others...Respondents.

-AND-

In the matter of :

Written Statement on behalf
of the Respondents.

I, Shri N.M.Alvi, Deputy Director of
Census Operations, Assam & Nagaland, office of the
Director of Census Operations, Nagaland do hereby
solemnly affirm and declare as follows :-

1. That a copy of application in connection
with the above noted case along with an order
passed by this Hon'ble Tribunal has been served upon
the

al

-2-

the Respondents. I am competent enough to file this Written Statement on behalf of all the Respondents and being authorised I do hereby file the Written Statement as follows and say categorically that save and except what is specifically admitted in this written statement rest may be treated as total denial by all the respondents.

2. That though the case relates to Nagaland Census Employees Association only, I am filing this Written Statement as Deputy Director of Census Operations, Nagaland though at present I am also Deputy Director of Census Operations of Assam state.

3. That with regards to the contents made in paragraphs 1,2,3 and 4.1 of the application, I beg to state that I have nothing to comment on them.

4. That with regards to the contents made in paragraph-4.2 of the application, I beg to state that there is no provision for providing rent free accommodation to employees of Directorate of Census Operations, Nagaland, Kohima. House rent allowance is being paid according to pay slab of the individual employee of Census Directorate as per rules.

Contd.....p3/-

5. That with regards to the contents made in paragraph-4.3 of the application, I beg to state that since nature of work and duties in P&T Department are vastly different than in other departments the pleasure of the President in according sanction to HRA to P&T employees may be viewed with that angle.

6. That with regards to the contents made in paragraph-4.4 of the application, I beg to state that for the Govt. accommodation the employees/occupants are supposed to pay license fee. It is, therefore can't be termed as rent free accommodation.

7. That with regards to the contents made in paragraph-4.5 of the application, I beg to state that contract for 12 more quarters mostly for Group 'C' employees of the Directorate of Census Operations, Nagaland has already been awarded and some constructions actively has been in operation through C.P.W.D. at Census Campus, Kohima.

8. That with regards to the contents made in paragraph-4.6 of the application, I beg to state that I have nothing to comment.

9. That with regards to the contents made in paragraph-4.7, I beg to state that I have nothing to comment.

comment. In this connection a copy of letter No.41-17/61-P&A dated 8.1.62 to the DPT, Shillong is annexed herewith and the same is marked as Annexure R-1.

10. That with regards to the contents made in paragraph-4.8 of the application, I beg to state that this is being honoured.

11. That with regards to the contents made in paragraphs 4.9, 4.10, 4.11 and 4.12, I beg to state that I have nothing to comment.

12. That with regards to the contents made in paragraph-4.13 of the application, I beg to state that there is no 'special order' through which HRA at a higher rate can be paid to Census employees.

13. That with regards to the contents made in paragraph-4.14 of the application, I beg to state that the Hon'ble Tribunal and the Hon'ble Supreme Court have awarded the HRA benefits to the employees of those departments having different working conditions and duties which had filed the petitions and as such their Lordships judgement cannot be deemed to be applicable to all Central Govt. offices located in Nagaland.

Contd....P5/-

14. That with regards to the contents made in paragraph-4.15, I beg to state that I have nothing to comment.

15. That with regards to the contents made in paragraph-4.16 of the application, I beg to state that because of their nature of work and duties and falling under essential services the P&T employees like the Railways are having their own colonies, staff quarters etc. in almost all the states. But wherever constructed housing structures are not available they are duly compensated by a higher HRA. On the other hand the work of Census taking does not fall in that category and therefore census employees are not treated at par with those in P&T and other departments.

16. That with regards to the contents made in paragraph-4.17 of the application, I beg to state that the employees of the Directorate of Census Operations, Nagaland Kohima had approached the Deputy Director of Census Operations and had been apprised of the latest communication dated 10.6.94 issued by the office of the Registrar General, India, New Delhi.

Contd.....P6/-

17. That with regards to the contents made in paragraph-5.1. of the application, I beg to state that I have nothing to comment.

18. That with regards to the contents made in paragraph-5.2 of the application, I beg to state that the circumstances and living conditions may be the same but the benefits accruable to employees depend upon the nature of work and functional importance of the employees/departments. Essential services cannot be equated with non-essential services and therefore the employees of various departments.

19. That with regards to the contents made in paragraph-5.3, I beg to state that statements are same as made in paragraph-18 above.

20. That with regards to the contents made in paragraphs 5.4, 5.5 & 5.6 I beg to state that I have nothing to comment.

20. That with regards to the contents made in paragraph-6 of the application, I beg to state the employees of the Directorate of Census Operations, Nagaland, Kohima had approached the Deputy Director of Census Operations and had been apprised of the latest communication dated 10.6.94 issued by the

office of.....

office of the Registrar General, India, New Delhi.
A copy of the said communication is annexed herewith
and marked as Annexure-R.2.

21. That this present application is
ill-conceived of law and mis-conceived of fact.

22. That this present application is without
any merit and as such liable to be rejected.

23. That the association applicant is getting
locus standi to file this present case.

24. That the respondents crave leave of
filing additional written statement if this Hon'ble
Tribunal so demands.

25. That this Written Statement is filed
bonafide and in the interest of justice.

Verification.....

28

VERIFICATION

I, Shri N.M.Alvi, Deputy Director of Census Operations, Assam & Nagaland, Ministry of Home Affairs, in the office of the Director of Census Operations, Nagaland do hereby solemnly affirm and declare that the statements made in paragraphs 1 & 2 of this Written Statement are true to my knowledge and those made from paragraph-3 to 20 are derived from records which I believe to be true and rest are humble submissions before this Hon'ble Tribunal.

I sign this Verification on this 6th day of July, 1995 at Guwahati.

N.M. Alvi
6.7.95

उप निदेशक जनगणना परिचालन असम
Dy. Director of Census Operations, Assam. &
गुवाहाटी / Guwahati, Nagaland

Ref D.O's letter No.41-17/61-P&A dated 8.1.'62 to the DPT, Shillong.

Subject: Revision of allowance and concessions to the P&T staff posted in NEFA and NHTA.

In supersession of the marginally noted orders on the subject the President is pleased to sanction the grant of the following Allowances and concessions to the P&T staff working in NEFA and NHTA on the terms and to the extent specified in this memorandum.

(i) Compensatory allowance at the rate of 20% of pay. This will be subject to a minimum of Rs.250/-P.m. for staff other than Class IV staff.

(ii) Winter allowance at the following rates for five months from the first No. to the 31st March, each year at stations within the tribal areas(interior) NEFA and NHTA at an altitude of 4000ft. or above:-

<u>Pay in Rs.</u>	<u>Rate of allowance in Rs.</u>
Below 500/-	10% of pay subject to minimum of Rs.10/- and maximum of Rs.25/- PM.
500 and above	Amount by which pay falls short of Rs. 524/-

The drawal of winter allowance during leave, absence on tour or temporary transfer be regulated under the Ministry's of Finance O.M.No. (4)-E.II(B)/57 dtd, the 18th April, 1959.

(iii) Rent free accomodation on a scale approved by the local administration. The P&T staff in NHTA who are not provided with rent free accomodation, will however, draw H.R.A in lieu thereof at the rates applicable in "B" class cities contained in col.4 of paragraph 1 of the Ministry of Finance O.M.No.2(22)E.II(B)/6 dated the 22nd August' 1960.

1. These order will take effect from the 1st November, 1960. However, the employees who, on the said date were in receipt of allowance at those station under the then existing orders shall have the option to draw the allowances specified in para (1) above or to draw instead a fixed amount equivalent to the allowances admissible to them on the 1st Nov' 1960. Under the existing, the fixed amount for the month of Feb. and to Oct. will be however, be excessive of the amount of winter allowance admissible under the existing orders. If any employee elects the later, he shall draw the fixed amount on the existing terms and conditions till he becomes ineligible. If such a person becomes eligible, he shall be eligible for the revised allowances specified in para(1) above, of otherwise admissible from the date on which he ceases to be eligible for the existing allowances.

2. The option referred to in this paragraph, once exercised, will be treated as final and should be exercised within two months from the date of issue of those orders.

3. The expenditure involved is debitable to the head "Allowances Hon.etc." under the relevant abstract and should be met from the sanctioned grant.

4. These orders are issued with the concurrence of the Ministry of Finance (CD) vide their U.O.No.7479 dated the 28th November 1961.

H COPY

[Handwritten signature and stamp]