

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

Cp-23. OF 1998
O.A. 168/95

Applicant(s) Shri Tikendrajit Bhahma & ORS

- VS -

Respondent(s) Sri Agit Kumar & ORS

Advocate for Applicant(s) Mr. M. Chanda

Advocate for Respondent(s)

Notes of the Registry	Date	Order of the Tribunal
<p>This op. is filed by Mr. M. Chanda, Advocate on behalf of the applicants, praying for non-compliance of the judgment & order dtd. 10.9.97 passed in O.A. 168/95.</p> <p>duid for favour of orders.</p> <p><u>10/8/98</u></p> <p>24 Registrar 3.8</p> <p>pl. comply order dtd 10/8/98.</p> <p>ns 12/8.</p>	<p>10.8.98</p> <p>pg ns 12/8.</p> <p>15.9.98</p>	<p>Issue notice on the alleged contempters to show cause as to why a contempt proceeding shall not be initiated against them for non compliance of the judgment passed by this Tribunal in O.A. 168/95 on 10.9.97. Returnable by four weeks.</p> <p>List on 15.9.98 for show cause and further order.</p> <p><u>60</u> Member</p> <p><u>JB</u> Vice-Chairman</p> <p>Mr. A.K. Choudhury, learned Add. C.G.S.C. prays for two weeks adjournment on behalf of respondent Nos. 2 & 3. Prayer allowed. Service reports awaits in respect of other respondents.</p> <p>List on 21.10.1998.</p> <p><u>60</u> Member</p> <p><u>JB</u> Vice-Chairman</p>

Notes of the Registry

Date

Order of the Tribunal

13.8.98

21.10.98

Two weeks time allowed on the prayer of Mr. M.Chanda.

List on 5.11.1998.

Member

Vice-Chairman?

trd

5.11.98

Mr M.Chanda, learned counsel appearing on behalf of the petitioner prays for two weeks time for receiving instruction. Prayer is allowed.

List on 25.11.98 for order.

Vice-Chairman

pg

Present:

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

Hon'ble Mr G.L. Sanglyine, Administrative Member

Two weeks time allowed to Mr M. Chanda, learned counsel for the petitioner for obtaining instructions. Fix it on 10.12.98.

Member

Vice-Chairman

nkm

10.12.98

Objection has been filed. The case is otherwise ready for hearing as submitted by the learned counsel for the parties.

List on 4.3.99 for hearing.

Member

Vice-Chairman

pg

Notes of the Registry

Date

Order of the Tribunal

Service 2 Notice
Receipt issued to
the respondents by
Regd/post vide D.No.
2193 dt. 13.8.98.

1) Service Reports are
still awaited.

2) No. show cause has
been filed.

14/9

Vakalatnama filed
by Mr. A.K. Choudhury
Adv. on behalf of
The Contemners.

15/9

Service report are
still awaited.

20/10

Show Cause Reply
filed on behalf of
The opposite party
Nb- 2 & 3

20/10

Show Cause Reply has been
filed.

24/11

9-12-98
1) Service Reports are still
awaited.

2) Show Cause Reply
has been filed.

21/12/98

28/12/98

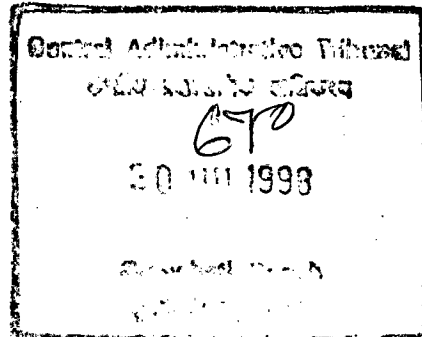
3
CP. 23/98 (Co-A. 168/98)

Notes of the Registry	Date	Order of the Tribunal
<u>1-3-99</u> 1) Service Reports are still awaited. 2) Show Cause Reply is being filed.	4-3-99 pg NS 5/3/99	Case is ready for hearing. List for hearing on 6-4-99. Member Vice-Chairman
<u>5-4-99</u> 1) Service Reports are still awaited. 2) Show Cause Reply is being filed.	6.4.99 nkm NS 12/4/99	Heard Mr M. Chanda, learned counsel for the petitioner and Mr A.K. Choudhury, learned counsel for the opposite party, in part. Let this case be listed for further hearing on 4.5.99. Member Vice-Chairman
<u>3-5-99</u> 1) Notice duly served on R.No. 2. 2) Show Cause Reply is being filed.	4-5-99 lm	On the prayer of Mr.M.Chanda learned counsel for the petitioner the case is adjourned to 7-5-99 for hearing. List on 2 7.5.99 for hearing. Member Vice-Chairman
<u>14-7-99</u> Show Cause Reply is being filed.	7.5.99 pg	On the prayer of the counsel for the parties the case is adjourned to 15.7.99. Member Vice-Chairman
	15-7-99	This Contempt Petition has been filed by the petitioner on the ground that the alleged contemner have violated our order. We have perused our order passed dated 10-9-97 and also the action taken by the respondents pursuant to our judgment and also the office Memorandum dated 16-3-98. There is no

contd/-

Notes of the Registry	Date	Order of the Tribunal
<p>21.7.99</p> <p>Copies of the order have been sent to the D/Sec. for issuing the due to the parties through Regd. with A.D.</p> <p>lm</p> <p>2407 to 2410 d. 21.7.99.</p> <p>lm</p>	<p>15-7-99</p>	<p>ground to proceed with the Contempt Petition. Accordingly, Contempt Petition is closed.</p> <p>If, on a later date it transpires that the order has not been implemented the petitioner will be at liberty to press the petition again.</p> <p>Member</p> <p>Vice-Chairman</p>

28
30/7



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI.

Filed by me applicant
through Mr. D. Goswami
Advocate,
27/9/98

C.P. NO. 23 /98.

in O.A. No. 168 of 1995.

Sri Tikendrajit Brahma & others

... Applicant.

-Versus-

Union of India & Others.

... Respondents.

In the matter of :

An application under section 17
of the Administrative Tribunal
Act, 1985 for initiating con-
tempt proceeding for non-
compliance of the Judgement
and order dated 10.9.1997
passed in O.A. 168 of 1995.

-And-

In the matter of :-

Sri Tikendrajit Brahma,
Son of late Bhabendra Nath Brahma,
Working under Garrison Engineer,
859, Engineer,
Works Section C/o 99 APO.

....2/-

1. Shri *Ajit Kumar I.A.S.* *Asst.*
Secretary, Govt. of India,
Ministry of Defence,
New Delhi.
2. Shri D. Mukherjee,
Garrison Engineer,
859, Engineer Works Section,
C/o 99 APO.
3. *Miss Bandana Sri Vastava C.D.A Asst.*
~~Shri J. Ihungdin,~~
Controller of Defence/Accounts,
Narengi,
Guwahati.

..... Contempners.

The applicant most humbly and respectfully
beg to state as under :

1. That your applicants approached this Hon'ble
Tribunal, through Original Application No. 168 of
1995 (Shri T. Brahma and 23 others) praying for
payment of Special Compensatory Allowance, as per
office Memorandum dated 14.12.83 and 1.12.88 issued
by the Govt. of India , Ministry of Finance,
New Delhi.

2. That the Original Application came ~~to~~ up
for consideration on 10.9.1997, after hearing

The arguments and after perusal of the Hon'ble Supreme Court order passed in the case of Union of India and others - Vs- B. S. Prasad, B.S.O. and others the Hon'ble Tribunal directed the respondents No. 1 to 3 of the original application to communicate to the Controller of Defence Accounts, Guwahati to sought clarification in the Impugned Order dated 26.7.95, as soon as it may be possible and on receipt of the communication from the respondents the CDA, Guwahati should take appropriate action immediately. The Original Judgement and Order was passed by this Hon'ble Tribunal long back on 10.9.1997.

A copy of the Judgement and Order dated 10.9.97 is enclosed as Annexure -1.

3. That your applicant beg to state that although the copy of the Judgement and Order was duly received by the contemner, but surprisingly no action was initiated for implementation of the Judgement and order dated 10.9.1997. Therefore willful non compliance of the Judgement and order dated 10.9.1997 is amount to contempt of the Hon'ble Tribunal, therefore, contemnners are liable for contempt of court and the Hon'ble Tribunal be pleased to initiate contempt proceeding against ~~contemners~~ ^{contemnners} in the contemnusing accordance with law and further be pleased to impose punishment for willful

non compliance of the Judgement and order dated 10.9.1997.

4. That this petition is made bonafide and for the ends of justice.

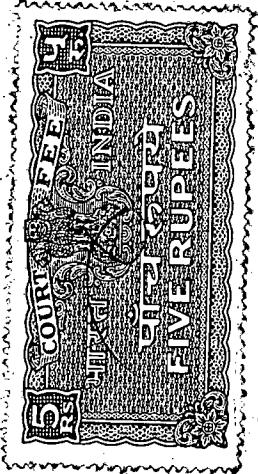
Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate contempt proceeding against the contemnners and further be pleased to impose punishment in accordance with ^{law} for willful non compliance, of the Judgement and Order passed in O.A. No. 168 of 1995 on 10.9.1997 and further be pleased to pass any other order or orders as deem, fit and proper by the Hon'ble Tribunal.

Draft Charge

Laid down before the Hon'ble Tribunal for initiation of contempt proceeding against the contemnners, for non compliance of the judgment and order dated 10.9.1997, passed in O.A. 168 of 1995 and be pleased to impose punishment upon the respondents in accordance with law.

-5-
A F F I D A V I T

I, Sri Tikendrajit Brahma son of late Bhabendra N. Brahma aged about employed under the Garfisan Engineer, 859 Engineering Works Section C/o 99 APO do hereby solemnly affirm on oath and state as follows :



1. That I am the petitioner of the above case and as such well acquainted with facts and circumstances of the case and also competent to ~~me~~ swear this affidavit.
2. That the statements made in paragraph 1 to 4 are true to my knowledge and belief and the rest are my humble submission before the Hon'ble Tribunal.
3. That this affidavit is made for the purpose of filing the contempt petition.

Place : Garhah

Date 27-7-98

Identified by:-

[Signature]
Advocate.

Tikendrajit Brahma

Deponent

The deponent above named, who has signed this affidavit to day on 27th day July 1998 before me who is identified by this *Sri O.K. Naer*

Advocate.

[Signature]

Signature.

To,

Registered/AD

1. Garrison Engineer
859 Engr Works section
C/O 99 APO
2. Controller of Defence Accounts,
Udayan Vihar, Warangi
Guwahati - 71

Subject : JUDGMENT/ORDER DATED 10 SEP'97 OF
CAT GUWAHATI

Sir,

Please find herewith copy of judgment/order dated 10-9-1997 passed by C.A.T Guwahati in case No. OA 168 of 1995 and also endorsing herewith the judgment of Supreme Court of India for your ready reference please.

Hope you will comply with order within the short time.

Thanking you.

Yours faithfully,

(1) T. J. Braham.

Endousers : Order dated 10-9-1997
with Supreme Cort order dt 17.2.1997.

26/12/97

- (2) G. K. Saikia
- (3) R. S. Prasad
- (4) M. P. Yadav
- (5) P. K. Keot
- (6) K. C. Das
- (7) V. R. Norma
- (8) Babinam Mity
- (9) H. P. Rabidas
- (10) Kashi Nath
- (11) Shree Kachidhar
- (12) B. B. Guroong
- (13) T. D. Joshi
- (14) R. B. Smita
- (15) C. K. Machhara

- (2) [Signature]
- (3) [Signature]
- (4) [Signature]
- (5) [Signature]
- (6) K. C. Das
- (7) [Signature]
- (8) Bobirunnik
- (9) [Signature]
- (10) [Signature]
- (11) [Signature]
- (12) [Signature]
- (13) [Signature]
- (14) [Signature]
- (15) [Signature]

Affected
Chibi
Adw.

- | | |
|----------------------|----------------------|
| (15) Garakh Ram | (16) STAD |
| (17) Ganes Mahato | (17) STAD |
| (18) Ram Nath Thakur | (18) STAD |
| (19) G.C. Mahato | (19) STAD |
| (20) Parshu Ram | (20) STAD |
| (21) B.D. Majhi | (21) STAD |
| (22) H.C. Bonia | (22) Hemchandra |
| (23) N. Bora | (23) STAD |

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order : This the 10th Day of September, 1997.

Sri G.L. Sanglyine, Administrative Member.

O.A.No. 168 of 1995.

Sri Tikendrajit Brahma & 23 others . . . Applicants
- Versus -
Union of India & Ors. . . . Respondents

O.A.No. 183 of 1995.

Sri Gangadhar Kalita & 18 others . . . Applicants
- Versus -
Union of India & Ors. . . . Respondents

O.A.No. 184 of 1995

Sri Baikuntha Das & 14 others . . . Applicants
- Versus -
Union of India & Ors. . . . Respondents

O.A.No. 185 of 1995.

Sri P.K. Kajak & 11 others . . . Applicants
- Versus -
Union of India & Ors. . . . Respondents.

O.A.No. 186 of 1995.

Sri K.R. Choudhury & 26 others . . . Applicants.
- Versus -
Union of India & Ors. . . . Respondents.

O.A.No. 187 of 1995.

Sri Tapender Singh & 16 others . . . Applicants
- Versus -
Union of India & Ors. . . . Respondents.

O.A.No. 188 of 1995.

Sri Prof. Kumar Baishya & 23 others . . . Applicants
- Versus -
Union of India & Ors. . . . Respondents

O.A.No. 189 of 1995

Sri Indrajit Kumar Das & 14 others . . . Applicants.
- Versus -
Union of India & Ors. . . . Respondents

Attested
by

Signature of Administrative Member

Attested
by
Chalu
Adm

O.A. No. 190 of 1995.

Sri Narendra Pandey & 27 others. . . . Applicants

- Vs -

1. Union of India
represented by the Secretary to
the Govt. of India, Ministry of
Defence (Engineer-in-chief Branch)
Army Head Quarters, New Delhi.
2. The Chief Engineer
Eastern Command, Headquarter, Calcutta.

3. Garrison Engineer,
859 Engineer Works Section
C/O 99 A.P.O.

4. Controller of Defence Accounts,
Gauhati.

. . . Respondents

O.A.No. 191 of 1995.

Sri Rajat Kanti Dey & 24 others . . . Applicants.

- Versus -

1. Union of India
2. The Chief Engineer,
Eastern Command,
H.Q. Calcutta.
3. Garrison Engineer,
859 Engineer Works Section,
C/O 99 A.P.O.
4. Controller of Defence Accounts,
Gauhati

. . . Respondents.

O.A.No. 192 of 1995.

Sri Jugal Das & 24 others . . . Applicants

- Versus -

1. Union of India
2. The Chief Engineer,
Eastern Command H.Q.
Calcutta.
3. Garrison Engineer,
859 Engineer Works Section
C/o 99 A.P.O.
4. Controller of Defence Accounts,
Gauhati.

. . . Respondents

O.A.No. 193 of 1995.

Sri Ananda Ch. Sarma & 22 others . . . Applicants

- Versus -

1. Union of India
2. The Chief Engineer,
Eastern Command, H.Q.
Calcutta.
3. Garrison Engineer,
859 Engineer Works Section
C/O 99 A.P.O.

. . . Respondents

O.A.No. 194 of 1995

Sri Anil Ch. Sarkar & 23 others.

- Versus -

... Applicants.

1. Union of India
2. The Chief Engineer,
Eastern Command H.Q.
Calcutta.
3. Garrison Engineer,
859 Engineer Works Section,
C/O 99 A.P.O.
4. Controller of Defence Accounts
Gauhati.

O.A.No. 195 of 1995.

William Smith & 21 others

- Versus -

... Respondents.

... Applicants.

1. Union of India
2. The Chief Engineer,
Eastern Command H.Q.
Calcutta.
3. Garrison Engineer,
859 Engineer Works Section
C/O 99 A.P.O.
4. Controller of Defence Accounts,
Gauhati

O.A. No. 196 of 1995.

Sri Someswar Bhuyan & 24 others

- Versus -

... Respondents

... Applicants

1. Union of India
2. The Chief Engineer,
Eastern Command H.Q.
Calcutta.
3. Garrison Engineer,
859 Engineer Works Section C/O 99 A.P.O.
4. Controller of Defence Accounts,
Gauhati

O.A.No. 197 of 1995.

Sri C.K.Janardhar & 24 others

- Versus -

... Applicant

... Respondents

1. Union of India & Others
2. The Chief Engineer,
Eastern Command H.Q., Calcutta.
3. Garrison Engineer,
859 Engineer Works Section C/O 99 A.P.O.
4. Controller of Defence Accounts
Gauhati.

... Respondents

For all the applicants : Sri B.K.Sharma &
K.Bhattacharjee

For all the respondents : Sri A.K.Choudhury,
Addl.C.G.S.C.

Attested
by

Sd/- *[Signature]*
Gauhati High Court

[Handwritten signature]
for

- 4 -

16

G.L.SANGLYINE, ADMINISTRATIVE MEMBER,

The applicants in the above mentioned 16 (sixteen) Original Applications are employees under the Military Engineering Service and posted in various places in the State of Arunachal Pradesh. Permission to submit combined applications had been granted. Facts and law involved in these applications are same and therefore, for the sake of convenience the Original Applications are disposed of by this common order.

2. The Special Compensatory (Remote Locality) Allowance was paid to the Defence Civilian employees posted in the NEWLY DEFINED FIELD AREAS and MODIFIED FIELD AREAS with effect from 1.4.1993 vide Ministry of Defence No.8/37269/AG/PS-3(a)/165/D (Pay/Services) dated 31.1.1995 as follows :

"i) Defence civilian employees serving in the newly defined field areas will continue to be extended the concession enumerated in Annexure 'C' to Govt letter No.A/02586/AG/PS 3(a)/97-5/D (Pay/Services) dt 25 Jan '64. Defence civilians employees serving in Newly Defined Field Areas will continue to be extended the concessions enumerated in Appendix 'B' to Govt letter No. AP 25762/AG/PS 3(a)/146-S/2/D(Pay/Services) dt 2nd March 1968.

ii) In addition to above, the Defence civilians employees serving in the newly defined Field Areas and Modified field areas will be entitled to payment of Special Compensatory (Remote Locality) Allowance and other allowances as admissible to defence civilians as per the existing instructions issued by this Ministry from time to time."

The date of effect of the above order was substituted by corrigendum No.B/37269/AG/PS-3(a)/1862/D(Pay)/Services) dated 12.9.1995 as below :

"These orders will come into force w.e.f the date of issue of this letter

contd...45

-12-

namely w.e.f. 31.1.95. In other words, no recovery will be made on account of concessions like free rations/free single accommodation etc. already availed of by Defence Civilians as part of Field Service Concessions from 1.4.93 to 31.1.95. Similarly, no payment on account of SDN/SCA/SCA(RL) will also be made from 1.4.93 to 30.1.95."

Further amendment had been made to the letter dated 31.1.1995 above vide Ministry of Defence letter No.B/37269/AG/PS-3(a)/7000D(Pay/Services) dated 17.4.1995 insofar as it relates to employees posted in the Newly Defined Field Areas and newly defined Modified Field Areas as below :

"The Defence Civilian employees, serving in the newly defined modified Field areas, will continue to be entitled to the Special Compensatory (Remote Locality) Allowance and other allowance as admissible to defence Civilians, as hitherto, under - existing instructions issued by this Ministry from time to time. However, in respect of Defence Civilians employees in the newly defined Field Areas, Special Compensatory (Remote Locality) Allowance and other allowances are not concurrently admissible alongwith Field Service Concessions."

3. Heard Mr K.Bhattacharjee, learned counsel for the applicants in each Original Application and Mr A.K. Choudhury, learned Addl.C.G.S.C for the respondents. The applicants are Defence civilian employees posted in various places in Arunachal Pradesh and according to the respondents, the applicants were enjoying Field Service Concessions facilities (FSC for short), namely, Free Ration, Free Single accommodation etc. provided by the respondents. Therefore, in terms of the aforesaid letter dated 17.4.1995 they are not entitled to the payment of Special Compensatory (Remote Locality) Allowance, ^(RL) SCA for short, in addition to FSC. Accordingly the amount of SCA(RL) paid for the period from 1.4.1993 to 31.1.1995 was not

contd... 5

- 13 -

admissible to them and was ordered to be recovered. Learned counsel Mr K. Bhattacharjee submitted that the contention of the respondents is not sustainable. In S.C. Omar vs. G. S. Engineer (1995) 30 ATC 763, the Tribunal had held that SCA^(RL) is admissible in addition to FSC. In many other cases such as O.A.No.124 and 125 of 1995 etc. Defence civilian employees posted in Nagaland the Tribunal had allowed payment of SCA^(RL). Further, in Union of India & Others vs. B. Prasad. B.S.O and others, 1997 SCC (L&S) 1055, the Hon'ble Supreme Court had held that upto 17.4.1995 Special Duty Allowance and Field Area Special Compensatory (Remote Locality) Allowance are admissible together. Thus the applicants are entitled to payment of SCA^(RL).

4. The cause of action arose out of the order No.Pay/01 dated 26.7.1995 issued by CDA, Gauhati, that is Controller of Defence Accounts, Gauhati and the order dated 31.7.95 issued by the Accounts Officer of the Area Accounts Office, Shillong. A tussle was going on between the administrative authorities of the respondents 1 to 3 in one hand and the Audit and Accounts authorities on the other over the question of payment of SCA^(RL) alongwith FSC. The CDA, Gauhati wrote in his No.Pay/01 dated 26.7.95 :

"In view of pending clarification regarding application of provisions of Min of Defence letter dt.31-1-95 and 17-4-95 payment on account of SCA^(RL) for the period 1-4-93 onwards already made is irregular and unauthorised and requiring recovery in lumpsum from the ensuing pay bills without any consideration and intimated to this. AO Shillong has already been instructed to effect recovery in lump-sum.

contd... 13

As per Min of Def letter dated 13-1-95, certain Area of Arunachal Pradesh have been classified both Field and Modified Field Area as well. Please intimate specific authority classifying your office location in Modified field Area. If located in modified field area, facility of FSC may be stopped forthwith and recovery if any from 1-2-95 on account of cost of Free Ration/Single accommodation may be effected before allowing SCA(RL).

In future advice of your AAO CE on financial matter may invariably be accepted to avoid any complication which has arisen now."

The Accounts Officer, Shillong followed it up as below:

"The recoveries may please be effected from the concerned indirected involved in the following bills to comply will be directive of the CDA Guwahati.

- 1) 01/Cash/30 dt. 29-5-95.
- 2) 01/Cash/31 dt. 29-5-95.
- 3) 02/Cash/73 dt. 27-5-95.
- 4) 03/Cash/51 dt. 17-5-95
- 5) 05/Cash/19 dt. 26-5-95
- 6) 01/Cash/71 dt. 30-6-95

The sy pay bill bearing voucher No.01/Cash/69 dt. 29-6-95 on account of payment of SCA(RL) is returned unpassed for the reason stated above."

Operation of the above two orders have been stayed by the Tribunal at admission of the present original applications.

5. The decision of the Tribunal in S.C.Omar(Supra) was based on the its decision in D.B.Sonar and others. SLP No.17254 of 1995 filed by the respondents was dismissed by the Hon'ble Supreme Court on 24-7-1995 with liberty to file Review Application. Review Application No.18 of 1995 filed by the respondents was dismissed by the Tribunal on 20-11-1995. D.B.Sonar and others, RA 3/95(O.A.48/89) and RA 4/95(CA 49/89), and some of the other cases referred to by Mr.K.Bhattacharjee were subject matter in Union of India and others vs. B.F.Sad, B.D.O and others (Supra). The aforesaid letter dated 17.4.1995 was under consideration by the Hon'ble Supreme Court in that case. The Hon'ble Supreme Court had held in the order dated

contd/-8.

Attended
C.A.
A.W.

15-
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17.2.1997 in that case that upto 17.4.1995 the employ-
are entitled to both the Special Duty Allowance and
the Field Area Special Compensatory (Remote Locality)
Allowance and thereafter to only one Special allowance
in terms of the aforesaid order dated 17.4.1995. Further,
as regards payment of Special Duty Allowance to Defence
civilian employees posted in Field Areas and in Modified
Field Areas the Government was directed by the Hon'ble
Supreme Court to modify the order dated 17.4.1995 and
issue the necessary corrigendum. It was also directed
that Union of India is not entitled to recover any
payments made of the period prior to 17.4.1995. In the
impugned order No. Pay/01 dated 26.7.1995 the CDA had
referred to the letter dated 13.1.1995 issued by the
Ministry of Defence classifying certain areas of Aruna-
chal Pradesh as Field Areas and Modified Field Areas
and sought clarification as mentioned therein. Mr A.K.
Choudhury, learned Addl.C.G.S.C submitted that classi-
fications of areas were made under letter dated 13.1.1994
and not dated 13.1.1995. Mr K.Bhattacharjee submitted
that the applicants were posted in Modified Field Areas.
Apart from this clarification, the CDA also sought
clarification regarding the aforesaid order dated
17.4.1995. The impugned actions of the CDA and the
Accounts Officer were taken by them pending clarification
of the order dated 31.1.95 and dated 17.4.1995 by the
authorities under the respondents No.1 to 3. From the
impugned order No. PM/1/306-CI dated 31.7.95 issued by
Area Accounts Office, Shillong the recovery ordered
to be made relates to the payment of Special Compen-
satory (RL) Allowance made from 4/93 to 1/95 through

contd...9

the vouchers mentioned therein. In some of the original applications under consideration however, the CDA, Gauhati was not made a respondent while in all the Original Applications the Accounts Officer, Area Accounts Office, Shillong was not made a respondent. In the facts and circumstances stated above the respondents 1 to 3 are directed to communicate to the CDA, Gauhati the clarifications required by him in the impugned order dated 26.7.95 as mentioned above as soon as it may be possible. On receipt of the communication from the respondents the CDA, Gauhati shall take appropriate action immediately. Till such action is taken by him, the operation of the impugned orders in each Original Application shall remain suspended.

With the above directions, the original applications under consideration are disposed of. No order as to costs.

sd/- MEMBER (A)

pg

Chh. S. S.
Chh. S. S.

Attest of
Chh. S. S.
A. W.

-17-

22
Filed by:-
Simp Mr. J. G. G. G.
Akhara-
20/10/98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI



In the matter of :

Contempt Petition No 23/98

Tikendrajit Brahma

..... Applicant.

- Versus -

Sri Ajit Kumar & Others.

..... Opposite Party.

- And -

In the matter of :

Show cause reply on behalf of

the Opposite Party No 2.

I, Maj D Mukherjee, Garrison Engineer, 859 Engineer Works Section, C/O 99 APO do hereby solemnly affirm and say as follows:-

1. That I am the Garrison Engineer, 859 Engineer Works Section C/O 99 APO and opposite Party No 2 in the above contempt petition. I have gone through the application and have understood the contents there of, save and except whatever is admitted in this show cause, the other contentions and statements may be deemed to have been denied.

2. That with regard to the statements made in paragraph 1 of the contempt petition I beg to state that, the Government of India letter quoted in this para are policies issued by the Government from time to time. The question of applicability of the letters to the applicants of OA 168/95 was never debated by the Hon'ble Tribunal, Guwahati, Since the applicant was in receipt of field service concessions in terms of Government of India letter dated 25th Jan 64 and was not entitled to Special Compensatory Allowance (Remote/Locality). The judgement dated 10.9.97 delivered by the Hon'ble Tribunal has not made any reference to these Government letters.

3. That with regard to the statements made in paragraph 2 of the contempt petition I beg to state that the judgement of the Hon'ble Supreme Court in Union of India-Vs-B. Prasad and others Civil Appeal No 1572 of 1997, the dispute arose when the Government of India issued a letter of dated 17 April 95 where it was held. "The Defence Civilian Employees, serving in newly defined modified field areas, will continue to be entitled to the special compensatory (Remote/Locality) allowance and other allowance as admissible to defence civilians, as hithertofore, under - existing instructions issued by this Ministry from time to time. However, in respect of Defence Civilians employees in the newly defined Field Areas, Special Compensatory (Remote/ Locality) Allowances and other allowances are not concurrently admissible alongwith Field Service Concessions." This made the dual payments irregular, however Hon'ble Supreme Court by judgement dated 17.2.97 ordered the Union of India not to recover any amount already paid erroneously or other wise prior to 17.4.95.

In OA No 168/95 filed by the applicant, the dispute arose on issue of Government letter dated 17.4.95. The period of dispute was 1.4.93 to 17.4.95, date 1.4.93 being the date from which the area was declared as 'Modified Field Area' and the concessions reduced to as per Government of India letter dated 02nd March '1968. Special Compensatory Allowance (Remote/Locality) was made admissible to modified field area w.e.f. 1.4.93. The applicants in fact continued to draw the Field Service Concessions (Single Accn, Free rations, clothing etc) beyond 1.4.93 as per Government of India letter dated 25.1.64 and then demanded Special Compensatory Allowance (Remote/Locality) because of applicability of Special Compensatory Allowance(Remote/Locality) to their areas w.e.f. 1.4.93.

Accordingly Controller of Defence Accounts Guwahati recommended the recovery of over payments, vide their letter dated 26.7.95 operation of which was stayed by Hon'ble Tribunal. Respondent complied with the judgement of the Hon'ble Tribunal in its spirit and manner, in fact even though the payment of Special Compensatory Allowance (Remote/Locality) was not made to the applicants for the period 1.4.93 to 17.4.95 since they were not entitled. The arrears on its account were calculated and paid in light of Hon'ble Supreme Court judgement barring the Union of India from making any recovery from employees for the period prior to 17.4.95.

4. That with regard to the statements made in paragraph 3 of the contempt petition I beg to state that the opposite party have never denied receipt of Hon'ble Tribunal judgement dated 10.9.97 and beg to submit that the judgement has been implemented to the best of their interpretation.

There is absolutely no cause whatsoever on part of applicants to come to the Hon'ble Tribunal and file a contempt petition. The clarification to Controller of Defence Accounts Guwahati has been communicated and Government of India letter dated 16 Mar '98 where the Government has passed instruction in view of Hon'ble Supreme Court Judgement and Hon'ble Tribunal judgement not to make any recovery for the period prior to 17.4.95, however the Government has directed that any over payments made beyond 17.4.95 will be recovered accordingly.

A copy of the letter dated 16.3.98 is annexed hereto and marked as Annexure - A.

The applicants of OA 168/95 were in receipt of Field Service Concessions (Vide Government of India letter 25 Jan 64) and were paid Special Compensatory Allowance (Remote/Locality) also for the period beyond 17.4.95 till 31.7.95. This amount has since been recommended for recovery this may be the cause of the grievances of the employees, however this action in no way has dishonoured the Hon'ble judgement dated 10.9.97.

5. That with regard to the statements made in paragraph 4 of the contempt petition I beg to state that the judgement dated 10.9.97 delivered in OA 168/95 by the Hon'ble Tribunal Guwahati has been complied with in its to the best interpretation of the respondents. There is absolutely no cause for any contempt, the applicants have by way of filing the Contempt petition tried to mislead the Hon'ble Tribunal thus consuming its valuable time.

26

6. That the Opposite Party begs to submit that they had no intention to disobey the Hon'ble Tribunal's judgement dated 10.9.97. The respondent beg to offer unconditional apology to the Hon'ble Tribunal in case the Hon'ble Tribunal find that any contempt of Court was committed by the Opposite Party.

It is, therefore, prayed
that the Hon'ble Tribunal will be please
to drop the contempt proceeding in view
of the facts stated above.

Most humbly it is prayed that the contempt petition
may please be dismissed.

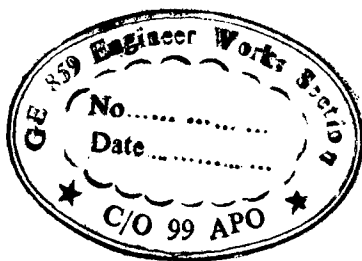
Affidavit

- 22 -

AFFIDAVIT

I, Major D Mukherjee, Son of Late Mr DB Mukhopadhyay aged 38 years, presently working as Garrison Engineer, 859 Engineer Works Section, C/O 99 APO do hereby solemnly affirm and state that the statement made in paragraph 1 of this show cause are true to my knowledge and those made from paragraph 2 to 5 are derived from records which I believe to be true and rests are humble submissions before this Hon'ble Tribunal.

AND I sign this Affidavit on this 20th day of Oct. 1998 at Guwahati.




Deponent.

The deponent above named has signed the affidavit on this the 20th day of October, 1998, before me who is identified by Shri A. K. Chaulkha, Advocate.

Solemnly affirmed before
me on 20th day
of Oct 20th 1998...

Signature.


Registrar
Central Administrative Tribunal,
Guwahati Bench.

- P/2 - 23-28

No. 4(3)/98/D(Civ. I)
Government of India
Ministry of Defence
New Delhi, the 16th March 1998

OFFICE MEMORANDUM

Subject:- Field Service Concessions admissible to Defence Civilians in area classified as Field Area and Modified Field Area - Clarifications.

The undersigned is directed to refer to Corrigendum No. B/37269/AG/PS-3(a)/730/D(Pay/Serv-ices) dated 17.4.95 and to say that the Hon'ble Supreme Court in Civil Appeal No. 1572/1997 had observed as under and had directed the Government to modify the order dated 17.4.95 accordingly:-

(i) "We are of the view that the Government having been extending the benefit of payment of Special Duty Allowance to all the defence employees working in the North-Eastern region as per the orders issued by the Government from time to time as on April 17, 1995, they are entitled to both the Special Duty Allowance as well as Field Area Special Compensatory (Remote Locality) Allowance. The same came to be modified w.e.f. that date. Therefore, irrespective of the fact whether or not they have been deployed earlier to that date, all are entitled to both the allowances only upto that date. Thereafter, all the personnel whether transferred earlier to that or transferred from on or after that date, shall be entitled to payment of only one set of Special Duty Allowance in terms of the above modified order."

(ii) "As regards the payment of Special Duty Allowance to the defence civilian personnel deployed at the border area for support of operational requirement, they face the imminent hostilities supporting the army personnel deployed there. Necessarily they alone require the double payment as ordered by the Government but they cannot be deprived of the same since they are facing imminent hostilities in hilly areas risking their lives as envisaged in the proceedings of the Army dated January, 13, 1994."

2.....1-



23 (A)

IMPORTANT CIRCULAR

No. Pay/01/XIII
Office of the C.D.A.,
Udayan Vihar, Narangi,
Gusahati - 781 171.
Dated: 18-05-98.

To

The AAO Gt
859 E.W.S.
C/o 99 APO

Sub:- Field Service Concessions admissible to Defence Civilians in area classified as Field Area and Modified Field Area-Clarifications./

Government of India, Ministry of Defence, New Delhi letter No. 4(3)/98/D(Civ-I) dated 16-3-98 on the above subject is reproduced for information and guidance of all concerned.

It would be seen from Government letter ibid that Defence Civilians posted in Field Area are not entitled for payment of Special Compensatory (Remote Locality) Allowance beyond 17-04-95. Payment may, therefore, be stopped forthwith and overpayment made for period beyond 17-04-95 may please be worked out and amount of overpayment unitwise be intimated to this office for onward transmission to higher authorities and recovery commenced immediately. In case no overpayment is involved a NIL report may be furnished to this office.

GO has seen.

Please acknowledge receipt.

(S. PRASAD)
SR. ACCOUNTS OFFICER.

Contd.....P/2.

2. The Hon'ble Supreme Court in Civil Appeal No. 3251/93. Union of India V/S S. Vajaykumar and others had held that the Special Compensatory Allowance including Special Duty Allowance to Central Government employees in the North-Eastern Region will be admissible to only those who are originally recruited in regions other than North-East and subsequently transferred from such outside region to the North-Eastern Region. Accordingly, I am directed to convey the sanction that Defence Civilians who are working in Field Areas will be entitled, in addition to the Field Service Concessions as applicable, to receive Special Duty Allowance at the applicable rates provided they had been originally recruited outside the North-Eastern Region and have been transferred to the North-Eastern Region from such outside region.

3. Any payment made not in accordance with the aforesaid corrigendum dated 17.4.95 read with clarification in the preceding paragraph, will be recovered in so far as they relate to the period beyond 17.4.95. In other words:-

(i) No recovery would be made on account of payment made to Defence Civilians in respect of Special Compensatory (Remote Locality) Allowance as well as Special Duty Allowance in respect of personnel posted in North-Eastern Region prior to 17.4.95.

(ii) The Defence Civilians recruited from outside the North-Eastern Region and posted from outside into the North-Eastern Region would be entitled to the Special Duty Allowance in addition to the Field Service Concessions.

(iii) Special Compensatory (Remote Locality) Allowance will not, however be admissible along with Field Service Concession in Field Areas beyond 17.4.95, and overpayment made on this account would be recovered.

24(A)
P/11-

-3-

This is issued with the concurrence of Finance Division/AG of this Ministry vide their ID No. 232-PA/98 dated 11.3.98.

(Signature)
(C.A. Subramanian)

Under Secretary to the Govt. of India

To

The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

R&D/Orgn./DOP DGNCC/Pers(C) DSDE/Admin
DGAFMS/DG-2(E) DGAQA DSQA/Admin-7B
The OFB Calcutta DPR D(JCM)

Copy to:-

The CGDA; All CDAs; All Sr. Dy. DADS; The DGADS; The Asst. Audit Officers (Defence Services), Kharkee, Kanpur, Bangalore and Allahabad; The Director of Accounts (Postal); APS Section, Nagpur - 44000.

DFA(AG); DFA(Navy); DFA(AF); DFA(Budget-II); AFA(DP-I); C.C.A (Factory) Calcutta.

D(AG); D(Alr.III); D(B&C); D(Fy.I); D(Fy.II); D(GS.I); D(GS.II); D(GS.III); D(GS.IV); D(GS.V); D(GS.VI); D(HAL); D(Insp.); D(Med); D(Mov); D(N.I); D(N.II); D(N.III); D(N.IV); D(O.II); D(QS); D(Q&C); D(R&D); D(Res.); D(SSC); D(W.II); D(Apppts.); D(Lab); D(Clv.II); APO; D(PS/Coord); D(Pay/Serv-ices).

OF Cell; Chief Canteen Officer/QMG's Branch; OC Defence Security Troops, Room No. 4, H-Block; Air HQrs./JDPC; AG/PS-3A; AG/PS-3B; AG/Budget; E-in-C's Branch/CSCC; E-in-C's Branch/EIS; HVF Cell; Addl. DGOF; Kanpur; DGQA/Admin(14); RD-24; Coast Guard HQrs; National Stadium, New Delhi; AD/DGQA(Coord).

General Secretary, All India Defence Employees Federations, 70 Market Road, Kharkee, Pune-411003.

General Secretary, Indian National Defence Workers Federations, 25/19, Karachi Khana, Kanpur-208001.

Chairman, Central Administrative Tribunal, Faridkot House, Copernicus Marg, New Delhi.

RECEIVED
24.3.98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI



In the matter of :-

Contempt petition No.23 of 1998

T. Brahma ... petitioner

-vs-

Ajit Kumar & others .. Opp. party

-AND-

In the matter of :-

Show cause reply on behalf of
Opposite party No.3.

I, Miss Vandana Srivastava, Controller of
Defence Accounts, Narang, Guwahati, do hereby
solemnly affirm and say as follows :-

1. That I am the Controller of Defence Accounts, Narang, Guwahati and Opposite party No.3 in the above contempt petition. I have gone through a copy of the application and have understood the contents thereof.

2. That with reference to paragraph 1 of the contempt petition I beg to state that the applicability of Govt. orders dated 14-12-83 and 1-12-88 quoted in this para was not a matter of dispute in O.A. No.168/95. The particulars of order against which the application was filed was a letter of Area Accounts Office, Shillong, one of our sub-offices, being No.PM/1/306-01, dated 31-7-95. In the above letter payment of SC(RL)A for the period from Apr 4/93 to 1/95 made to applicants of OA 168/95 was asked to be recovered from them.

A copy of letter dated 31-7-95 is annexed at markedx hereto and marked as Annexure-A.

3. That the statements made in paragraph 2 of the contempt petition are correct and hence I have no comment.

4. That with reference to the paragraph 3 of the contempt petition, I beg to state that the contention of the applicant that the Department did not initiate any action for

implementation of the Hon'ble Tribunal judgement dated 10-9-97 and willfully have not complied with judgement is not correct for the reasons stated below :-

- i) The C.D.A. Guwahati were not respondent in O.A. No. 168/95.
- ii) In the judgement dated 10-9-97 Respondents No. 1 to 3 had been directed by Hon'ble Tribunal to communicate to the C.D.A. the clarification sought for.
- iii) The C.D.A. requested respondent No. 3, GE 859 EWS, where the applicants are serving to communicate to them about the clarification sought for.

5. That with reference to the paragraph 4 of the contempt petition, I beg to state that from the statement made above it is evident that to the best of our knowledge, understanding of the direction of the judgement of the Hon'ble Tribunal, the C.D.A. have not defied order of the Hon'ble Tribunal in O.A. No. 168/95 and, therefore, it is prayed that the contempt proceeding against the C.D.A. be kindly ordered for dismissal.

6. That I beg to submit that the issue regarding payment of SC(RL)A to applicants already stands resolved by making payment of the said allowance to them for the period from 1-4-93 to 30-1-95 even though during this period the applicants were not entitled to the said allowance in terms of Government of India, Ministry of Defence No. B/37269/AG/PS-3(a)/1862/D(Pay/Services), dated 12-9-95 as they had drawn concessions like free ration/ free accommodation which was not admissible to them consequent on re-classification of location of unit where applicants are serving from Field to modified Field with effect from 1-4-93.

A copy of Govt. order dated 12-9-95 is annexed to hereto and marked as Annexure- B.

7. That I beg to submit that I have not committed any contempt of the Hon'ble Tribunal and if in any way the Hon'ble Tribunal holds that I have violated the Hon'ble Tribunal's judgement I beg to offer un-conditional apology.

Contd. p/3-

(3)

8. That I beg to submit that in view of the statements made above the contempt petitioner is liable to be dismissed with costs.

AFFIDAVIT

I, Miss Vandana Srivastava, Daughter of Shri AK Srivastava
 _____ aged about 43 years _____ working as
 the Controller of Defence Accounts, Narangi, Guwahati, do hereby
 solemnly affirm and state as follows :-

1. That I am the Opposite Party No.3 in the above case and as such acquainted with the facts and circumstances of the case.
2. That the statements made in paragraph 1,2,3 of the show cause reply are true to my knowledge, those made in paragraphs 4,5,6 are true to my information derived from the records of the case which I believe to be true and those made in the rest are my humble submission before the Hon'ble Tribunal.

[Signature]

DEPONENT
VANDANA SRIVASTAVA
 Controller
 Office of the C. D. A.
 Udayan Vihar, Narangi,
 Guwahati - 781171.

The deponent above named, has
 signed this affidavit on 20th
 day Oct, 1998 before me
 who is identified by A.K. Choudhary
 Advocate.

Identified by me
A.K. Choudhary
Advocate

[Signature]
 (A.K. Nair)
 Signature

ANNEXURE-A

RESTRICTED

No.B/37269/AG/PS3(a)/165 /D(Pay/Services)
 Government of India
 Ministry of Defence
 New Delhi, the 31st January, 95.

CDA, Narang, Guwahati

To

The Chief of the Army Staff

Subject:- Field Service Concessions to Defence Civilians
 serving in the newly defined Field Areas.

Sir,

I am directed to refer to para 13 of Govt. letter
 No.37269/AG/PS3(a)/D(Pay/Services) dated 13.1.1994 and
 to convey the sanction of the President to the following
Field Service Concessions to Defence Civilians in the
newly defined Field Areas and Modified Field Areas as
defined in the above mentioned letter:-

(i) Defence Civilian employees serving in the newly
 defined Field Areas will continue to be extended the
 concessions enumerated in Annexure 'C' to Govt. letter
 No.A/02584/AG/PS3(a)/97-S/D(Pay/Services) dated 25.1.1964.
 Defence Civilian employees serving in newly defined
 Modified Field Areas will continue to be extended the
 the concessions enumerated in Appendix 'B' to Govt.
 letter No.A/25761/AG/PS3(b)/146-S/2/D(Pay/Services)
 dated 2nd March, 1968.

(ii) In addition to above, the Defence Civilian
 employees serving in the newly defined Field Areas
 and Modified Field Areas will be entitled to payment
 of Special Compensatory (Remote Locality) Allowance
 and other allowances as admissible to Defence Civilians
 as per the existing instructions issued by this Ministry
 from time to time.

These orders will come into force w.e.f. 1st April, 93.

3. This issues with the concurrence of Finance Division
 of this Ministry vide their UO No.5(1)/85-AG(14-PA) dated
 9.1.1995.

Yours faithfully,

L.T. Trianga

Under Secretary to the Government of India

RESTRICTED

Attached
 Addl. Control Copy
 Standing Council

ANNEXURE 'B' (5)

- 29 -

No. B/37269/AG/PS-3(a)/1862/D(Pay/Services)
Government of India
Ministry of Defence

New Delhi, the 12th September, 95.

C O R R I G E N D U M

The following amendment is made to this Ministry's letter No. B/37269/AG/PS-3(a)/165/D(Pay/Services) dated 31.1.95, regarding Field Service Concessions to Defence Civilians serving in the newly defined Field Areas:-

Para 2 may be deleted and substituted as under:-

"These orders will come into force w.e.f. the date of issue of this letter namely w.e.f. 31.1.95. In other words, no recovery will be made on account of concessions like free rations/free single accommodation etc. already availed of by Defence Civilians as part of Field Service Concessions from 1.4.93 to 30.1.95. Similarly, no payment on account of SDA/SCA/SCA(RL) will also be made from 1.4.93 to 30.1.95."

2. This Corrigendum issues with the concurrence of the Finance Division/AG of this Ministry vide their T.D. No. 1033-PA dated 11.9.95.

(L.T. TLUANGA)

Under Secretary to the Govt. of India

To
The Chief of the Army Staff
New Delhi

Copy to :-

1. CGDA, New Delhi - 5 copies
2. DADS, New Delhi - 5 copies
3. DADS, CC, Meerut Cantt.
4. DADS, SC, Pune
5. DADS, EC, Patna
6. DADS, AF, Dehradun
7. DADS, WC, Chandimandir
8. DADS (Navy), Bombay
9. Director of Audit (O), East Wing, Calcutta
10. Deputy DADS, NC, Jammu
11. Deputy DADS (Pens), Allahabad
12. CDA (O), Pune: Please connect your letter No. Tech/046 dated 7 Mar 94.

..... 2/-

Attended
1st Ch...
Addl. Control Com
Standing Comm.