

QA/TA/CP/RA/MP No. of 19

18 OCT 1995

Guwahati Bench
General Petition

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWALI BENCH

In the matter of :-

Review petition No: 19 of 1995
(On O.A No. 124/95)

Filed by:

C. K. Chakraborty
(MD. SHAUKAT ALI) 129/0295-
Central Govt. Standing Counsel
Guwahati Bench, Guwahati

In the matter of :-

Review petition u/S 22(f)(i) of the Central
Administrative Tribunal Act 1985

AND

In the matter of :-

Judgement and order dated 24 Aug 1995 passed
by the Hon'ble Tribunal in O.A 124/95

AND

In the matter of :-

1. Union of India, represented by the
Secretary, Ministry of Defence, Sena Bhawan
New Delhi
2. Garrison Engineer 868 Engineer
Works Section, C/O 99 APO

v/s

- Respondents/Petitioners

fae-

Shri Krishna Sinha, Elect and 116 others

opposite parties

..... Respondents/Petitioners

fae-

The humble Respondents/Petitioners named above most
respectfully sheweth :-

1. That the above noted case was finally heard on
24 Aug 1995 (at Kohima) and the applicants/Opposite parties
are allowed by the Hon'ble Tribunal to draw the amount of
following allowances :-

- (a) Special duty allowance wef 01.12.1988
- (b) Field Service Concessions wef 01.4.1993
- (c) Special compensatory allowance(RL) wef 01.10.86
- (d) House rent allowance wef 01.10.1986.

arrears amount of the above allowances to be paid as early as practicable but not later than a period of three months from the date of ~~10/11/95~~ receipt of copy of Judgment and order i.e from the date of 20 Sep 95 on which date the Respondents, have received the copy of the judgment and shall also continue to pay the current subject allowances regularly so long the concession is admissible.

2. That the Respondent No. 2, the Garrison Engineer 868 Engineer Works Section had taken up the case with higher authority i.e. Respondent No. 1 (Union of India) for issue instructions for implementation of the judgment and order in question. The opposite parties are not entitled for SCA (Remote Locality) vide Govt of India Min of Def New Delhi letter No.1(18)/86/D(Pay/Services) dated 10 Dec 1986 enclosed as Appendix 'A'. The contents of the ~~sd~~ said letter as under :-

"The personnel in receipt of Special Compensatory allowance under these orders will not be entitled to Composite Hill Compensatory Allowance in addition. However, where the Hill Compensatory Allowance or any other Compensatory Allowance admissible is more beneficial the same may be allowed in lieu of the Special Compensatory Allowance. It will not be admissible in stations where Full or Improved Modified Field Service concessions are admissible. In other words, personnel entitled to Full FSC or Improved Modified FSC will not be entitled to special compensatory (Remote Locality) allowance. However, this allowance will be admissible alongwith the Modified Field Service Concession".

3. That the opposite parties are allowed to draw the SDA from 01 Dec 1988 and arrears amount to be paid within the three months from date of receipt of copy of judgment and order. In regards to above allowance, it is submitted that opposite

parties are all belong to North Eastern Region and they are appointed in side of the North Eastern Region. As per the instruction of the Hon'ble Supreme Court SDA is admissible only to those employees who are appointed out side the North Eastern Region and are posted in the North Eastern Region. In view of this fact the opposite parties are not entitled to draw SDA as ordered and hence the judgment and order is liable to be reviewed.

4. That the judgment and order dated 24 Aug 1995 delivered at Kohima has been based on the earlier judgment and order dated 30 Aug 1994 on O.A. 174 of 1993 Shri SC Omar, Assistant Executive Engineer Versus Garrison Engineer 868 Engineer Works Section. Respondents i.e. Engineer-in-Chief's branch Army Headquarters, New Delhi filed S.L.P before Hon'ble Supreme Court against the judgment and order dated 30 Aug 94 on the O.A 174 of 1993 bearing Civil C.C. No. 3371/94. The Hon'ble Supreme Court allowed the Respondents to file a review application before the Hon'ble Tribunal at Guwahati, against the ~~s/~~/ said impugned judgment and order. As per the instruction of the Hon'ble Supreme Court, Respondents No. 1 & 2 i.e. Union of India and Garrison Engineer 868 Engineer Works Section have filed a review application against the said impugned judgment and order on 04 Sep 95 and the review application has been registered as RA No. 18 of 1995. The above RA has not yet come up before the Hon'ble Tribunal for admission.

5. The Respondents have now filed this petition praying for review of the judgment and order dated 24 Aug 95 passed by the Hon'ble Tribunal in O.A 124/95.

6. That the petitioners submit that there has been error apparent on the face of the records for granting SDA to the original applicants who are locally appointed in NE region i.e in Nagaland and as such the judgment is liable be reviewed.

7. That this petition is filed bona fide and in the interest of Justice.

P R A Y E R

It is therefore, prayed that this Hon'ble Tribunal would be kind enough to admit this Review Application and consider the circumstances explained above and review the judgment and order dated 24 Aug 1995 passed in O.A 124/95 in the light of above facts.

And for this act of kindness, the petitioners as in duty bound shall ever pray.

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

I, Major Navin Mohan, Garrison Engineer 868 Engineer Works Section, C/O 99 APO do hereby solemnly affirm and declare that the contents made in Paragraph 1 of the Review Application are true to my knowledge and these made from paragraphs 2 to 5 are derived from records which I believe to be true and rest are humble submission before the Hon'ble Tribunal.

I sign this verification on this Fifteenth day of Oct 1995 at Dimapur.


(Navin Mohan)
Major
Garrison Engineer

/COPY/

No. 71(18)/86/D(Pay/Services)
 Government of India
 Ministry of Defence
 New Delhi, December 10, 1986.

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

Subject :- Grant of Special Compensatory (Remote Locality) Allowance to Armed Forces Personnel below Officer rank, including NCs (E) posted in Assam and Meghalaya

Sir,

I am directed to refer to this Ministry's letter No. 99934/Misc/AG/PS3 (b)/5051/D(Pay/Services), dated 31.10.1985, and to say that consequent upon the decision taken by the Government on the recommendations of the Fourth Central Pay Commission, the President is pleased to sanction Special Compensatory (Remote Locality) Allowance to the Armed Forces personnel below Officer rank, including NCs (E), posted in Assam and Meghalaya at the following revised rates :-

Pay Range	Rate of Special Compensatory Allowance (Rupees per mensem)
Basic Pay below Rs 950/-	20
Basic pay of Rs 950/- and above but below Rs 1500/-	40
Basic pay of Rs 1500/- and above but below Rs 2000/-	60
Basic pay of Rs 2000/- and above but below Rs 3000/-	80
Basic pay of Rs 3000/- and above	100

2. These orders take effect from 01.10.1986.

3. For the period from 1.1.1986 to 30.9.1986, the above Allowance will be drawn at the existing rates on the notional pay in the pre-revised scale.

4. The term "Basic Pay" means the pay in the revised scale and will not include any other pay such as Classification pay, Rank/Appointment pay, Good Service pay etc. In the case of those who retain the existing scale of pay, it will include, besides basic pay in the pre-revised scale of pay, appropriate Dearness Allowance, Additional Dearness Allowance, Dearness pay, adhoc Dearness Allowance and Interim Relief thereon at the rates in force on 31.12.1985. Where the application of revised rates

results in a loss to an employee, who has been continuously drawing the allowance from date prior to 1.10.1986, the amount drawn by him immediately prior to that date will be protected by treating the difference between the allowance so drawn and that admissible at the revised rates as personal to him. The protection will continue till the employee remains posted in the said region and becomes eligible to the higher amount either on promotion or otherwise.

5. The personnel in receipt of Special Compensatory Allowance under these orders will not be entitled to Composite Hill Compensatory Allowance or any other Compensatory Allowance admissible is more beneficial, the same may be allowed in lieu of the special Compensatory Allowance. It will not be admissible in stations where Full or Improved Modified Field Service Concessions are admissible. In other words, personnel entitled to Full FSC or Improved Modified FSC will not be entitled to Special Compensatory (Remote Locality) Allowance. However, this Allowance will be admissible along with Modified Field Service Concessions.

6. The Special Compensatory Allowance will be regulated during leave, joining time and suspension in the same manner as City Compensatory Allowance.

7. These orders supersede all earlier orders issued on the subject, insofar as they relate to Armed Forces personnel below Officer rank, including NCs(E).

8. Pay and Allowances Regulations for JCO/ORs and Non-Combatants (Enrolled) of the Army and corresponding, Regulations the Navy and Air Force will be amended in due course.

9. This letter issues with the concurrence of Finance Division of this Ministry vide their U.O No.2609-P4 of 1986.

(Based on O.M Nos 20/14/6/86-EIV, dated 23.9.1986 and 20/14/7/86-EIV, dated 23.9.1986 issued by Ministry of Finance (Department of Expenditure).

Yours faithfully,

Sd/-x-x-x-x-x-

(R.N. Rodesar)

Under Secretary to the Government of I

(Tel : 3012739)

Copy to:-

1. CGDA
2. DADS
3. All Joint DsADS
4. All CsDA
5. Addl. FA (J)
6. DFA (AG) - 3 Copies
7. DFA (Navy)
8. Director (Org/AF)
9. Army Headquarters - DPA-100 Copies. PC Cell-200 Copies
10. Naval Headquarters - DPA-100 Copies. PC Cell- 100 Copies AG/Budget- 3 Copies
11. Air Headquarters - DPP&P-100 COPIES. PC Cell-100 Copies
12. Min. of. Fin (PCI-Cell) 13. Fourth Central Pay Commission.

Copy signed in ink :- All Controllers of Defence Accounts.

C.T.C

(Signature)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.124 of 1995

With

Original Application No.125 of 1995

Date of decision: This the 24th day of August 1995
(AT ROHIMA)

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

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

O.A.No.124/95

Shri Krishan Sinha and 116 others

All are serving in the Office of the Garrison Engineer,
868 EWS C/o 99 APO.

.....Applicants

- versus -

1. Union of India represented by
The Secretary, Defence,
Government of India, New Delhi.
2. The Garrison Engineer,
868 EWS C/o 99 APO.
3. The Garrison Engineer,
869 EWS, C/o 99 APO.

.....Respondents

O.A.No.125/95

Shri N. Limbu and 14 others

All are serving in the Office of the Garrison Engineer,
868 EWS C/o 99 APO.

.....Applicants

- versus -

1. Union of India represented by
The Secretary, Defence,
Government of India, New Delhi.
2. The Garrison Engineer,
868 EWS, C/o 99 APO.

.....Respondents

For the applicants in both the cases : By Advocate Shri A. Ahmed

For the respondents in both the cases : By Advocate Shri S. Ali, Sr. C.G.S.C.



Subh

ORDER

CHAUDHARI.J. V.C.

Mr A. Ahmed for the applicants.

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

Both these cases involve same question and therefore are being disposed of by this common order.

Facts of O.A.No.124 of 1995:

The applicants belong to Group "C" serving in the Defence Department as civilian employees. The application is restricted to applicants at serial No. 1 to 117. These applicants are from inside North Eastern Region and are serving in different capacities as Central Government employees in Nagaland under GE 868 EWS 99 APO. Their grievance is that they are being denied the payment of:

- I) Special (Duty) Allowance (SDA) payable under Memo No.20014/3/83-E-IV of the Government of India, Ministry of Defence dated 14.12.1983 read with O.M.No.4(19)/83/D, Civil-I dated 11.1.1984
- II) House Rent Allowance (HRA) as per the circular No.11013/2/86-E-II(B) dated 23.9.1986 issued by the Government of India, Ministry of Finance
- III) Special Compensatory (Remote Locality) Allowance SCA(RL) under the Ministry of Defence letters No.16037/E/A2 HQ 3 Corps (A) C/o 99 APO and No.B/37269/AG/PS3(a)/165/D/(Pay)/Service dated 31.1.1995
- IV) Field Service Concession (FSC) vide letter No.16729/GG4 (civ)(d) dated 25.4.1994 of Army Headquarter, New Delhi, although they are entitled to get these concessions.

2. Although no written statement has been filed, Mr S. Ali, learned Sr. C.G.S.C., fairly states that we may decide the matter.



W.M.

in the light of earlier decisions on the point although he has instructions to say on behalf of the respondents that they oppose the claim.

Facts of O.A.No.125 of 1995:

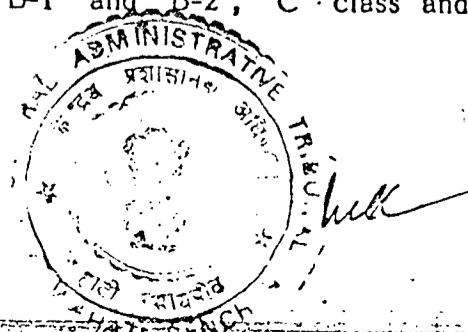
3. The applicant Nos.1 to 15 (other applicants already deleted) who belong to Group "A", "B", "C" and "D" employed in the Defence Department as civilian employees and posted in Nagaland make a grievance that the respondents are denying them the benefit of SDA, HRA, SCA(RL) and FSC although they are entitled to get these concessions.

4. The respondents have not filed any written statement. However, Mr S. Ali, learned Sr. C.G.S.C., fairly states that we may decide the matter in the light of earlier decisions on the point although he has instructions to say on behalf of the respondents that they oppose the claim.

REASONS (common to both the cases) :

5. The applicants place reliance upon the O.M. dated 14.12.1983 which provides that Central Government civilian employees who have All India Transfer liability will be granted SDA at the rate prescribed thereunder per month on posting to any station in the North Eastern Region. Likewise, the letter of Ministry of Defence dated 31.1.1995 provides that the Defence Civilian Employees serving in the newly defined Field Areas and Modified Field Areas will be entitled to payment of SCA(RL) together with other allowances as may be admissible. The O.M. dated 23.9.1986 issued by the Ministry of Finance, (Department of Expenditure) provides that on the recommendation of the 4th Pay Commission it has been decided that the Central Government employees shall be entitled to HRA, on a slab basis related to their pay and separately prescribed for "A", "B-1" and "B-2", "C" class and "Unclassified" cities with effect

from.....



from 1.10.1986. It is further provided that HRA at the rates prescribed shall be paid to all employees (other than those provided with Government home/hired accommodation) without requiring them to produce rent receipts, but on compliance with the prescribed procedure thereunder. It also provides that where HRA at 15% has been allowed under special orders the same shall be given as admissible in "A", "B-1" and "B-2" class cities and it shall be admissible at the rates in "C" class cities in other areas. The memorandum issued by the Army Headquarter - Org 4(civil)(d) dated 25.4.1994 bearing No.16729/ GG4(Civ)(d) on the subject of FSC to civilians paid from Defence Service Estimates including civilians employed in lieu of combatants and NCsE (both posted and locally recruited) provides that it is proposed to extend the same concessions to Defence civilians employed in the field areas as they serve side by side with services personnel under similar conditions in the given areas and the same shall be paid at the rates prescribed under the said memorandum. It has, however, been provided that SCA such as Bad climate allowance etc. shall not be in addition to these allowances.

6. The applicants have based their respective claims on these memorandums.

7. It appears that the applicants in both the cases had filed a Civil Suit in the court of DC(Judicial), Dimapur, Nagaland, being Civil Suit No.255/89 making the same claims. The civil court by judgment and decree dated 19.12.1994 has allowed the claims and directed the respondents to make the payment accordingly. The civil court relied upon the decision of this Tribunal in O.A.Nos.48, 49 and 50 of 1989 of the Central Administrative Tribunal, Guwahati Bench. The decree has not been complied with, but the applicants have now stated in the applications that they would not proceed with the execution of the decree as they have now realised that they had obtained the decree from the court which lacked inherent

Jurisdiction.....

full



jurisdiction to entertain and try the suit in view of the bar of jurisdiction arising under the provisions of the Administrative Tribunals Act and, therefore, they have approached this Tribunal for relief by these applications. Since the applicants were agitating the claim in respect of SDA and HRA in a wrong forum it is just and proper to give them the benefit of exclusion of the period of pendency of the civil suit for the purpose of holding the said claims within limitation in these applications. The relief sought in respect of the other two claims is within jurisdiction.

8. The question of entitlement for all these claims in respect of Defence civilian employees have been exhaustively examined by us in the decision in the case of S.C. Omar, Assistant Executive Engineer, -vs- Garrison Engineer and another (O.A.No.174 of 1993) reported in SLJ 1995(1) CAT (Guwahati Bench) ^{p.74}. We have held in that case that SDA and SCA(RL) are payable to civilians with All India transfer liability posted in Nagaland even if they get Field Service Concessions. We have not accepted the plea that admissibility of Field Service Concession deprives them of these benefits. In view of this conclusion since facts are identical and as we had also referred to the earlier decisions in O.A.No.48/89 and O.A.No.49/89 dated 29.3.1994 in support, we are satisfied that the relief claimed by the applicants in the instant applications relating to SDA and SCA(RL) must be allowed. We, therefore, declare that the applicants in the respective applications are entitled to be paid SDA with effect from 1.12.1988 or from the actual date of posting

as.....



as the case may be. We further declare that the applicants in the respective applications are entitled to be paid SCA(RL) also, with effect from 1.10.1986. For specifying these dates in respect of these two reliefs we rely upon O.M.No.20014/16/86/E-IV/E-II(B) dated 1.12.1988. This is consistent with the decision in S.C. Omar's case (Supra). It is, however, made clear that this applies only to such of the applicants who are appointed outside N.E. Region, but are posted in N.E. Region on tenure basis.

9. Consistently with the view we have taken in Omar's case on the nature of FSC and with the view taken that SDA and SCA(RL) are payable independently of FSC we hold that on the subject the applicants in the respective applications are entitled to draw the same as provided in the letter of the Government of India No.37269/AG/PS 3(a)/D(Pay & Services) dated 13.1.1994 with effect from 1.4.1993 subject to fulfilment of other conditions prescribed therein.

10. Lastly, in so far as the claim for HRA is concerned we follow our decision in O.A.No.48/91 dated 22.8.1995 and hold that under the O.M. dated 23.9.1986 the applicants are entitled to draw the HRA prescribed for B class cities with effect from 1.10.1986 at the rates prescribed from time to time since 1.10.1986 whether on percentage basis or flat rate or slab basis till 28.2.1993 and thereafter to be regulated in accordance with the O.M.No.2(2)93-E-2(B) dated 14.5.1993 with effect from 1.3.1991 and continued to be paid.

11. For the purpose of the aforesaid order it is made clear that as now held by the Hon'ble Supreme Court the benefit of SDA is admissible only to those employees who are appointed outside the North Eastern Region and are posted in the North Eastern Region. It will be open



full

to the respondents to ascertain the case of each applicant for that purpose if necessary. Further it is made clear that this order has been passed on the footing that all the applicants in the two cases are posted in Nagaland.

12. For the aforesaid reasons following order is passed:

(A) O.A.No.124/95:

i) It is declared that SDA is payable from 1.12.1988.

ii) (a) The respondents are directed to pay to the applicants Special (Duty) Allowance (SDA) with effect from the date of actual posting in Nagaland on or after 1.12.1983 as the case may be in respect of each applicant and continue to pay the same so long as the concession is admissible.

(b) Arrears from the date of actual posting in Nagaland on or after 1.12.1988 upto date to be paid within three months from the date of receipt of copy of this order.

iii) (a) It is declared that SCA(RL) is payable from 1.10.1986,

(b) The respondents are directed to pay to the applicants SCA(RL) with effect from the date of actual posting in Nagaland on or after 1.10.1986 as the case may be in respect of each applicant and to continue to pay the same so long as the concession is admissible.

(c) Arrears from the date of actual posting in Nagaland on or after 1.10.1986 upto date to be paid within a period of three months from the date of communication of this order.



[Handwritten signature/initials over the stamp]

iv) (a) It is declared that FSC is admissible from 1.4.1993.

(b) The respondents are directed to extend the FSC to the applicants in the prescribed manner with effect from 1.4.1993 or from the date of actual appointment as the case may be in respect of each applicant upto date and to continue to give the same so long as admissible.

v) (a) It is declared that HRA is admissible as indicated below.

(b) The respondents are directed to pay HRA to the applicants at the rate as was applicable to the Central Government employees in B, B-1, B-2 class cities/towns for the period from 1.10.1986 or from the actual date of appointment as the case may be in respect of each applicant upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 upto date and to continue to pay the same at the rate prescribed hereafter.

(c) Arrears 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 towards HRA.

(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 three months from the date of communication of this order to the respondents.

The original application is allowed in terms of the aforesaid order. No order as to costs.



(B) O.A.No.125/95:

i) It is declared that SDA is payable from 1.12.1988.

ii) (a) The respondents are directed to pay to the applicants Special (Duty) Allowance (SDA) with effect from the date of actual posting in Nagaland on or after 1.12.1988 as the case may be in respect of each applicant and continue to pay the same so long as the concession is admissible.

(b) Arrears from the date of actual posting in Nagaland on or after 1.12.1988 upto date to be paid within three months from the date of receipt of copy of this order.

iii) (a) It is declared that SCA(RL) is payable from 1.10.1986.

(b) The respondents are directed to pay to the applicants SCA(RL) with effect from the date of actual posting in Nagaland on or after 1.10.1986 as the case may be in respect of each applicant and to continue to pay the same so long as the concession is admissible.

(c) Arrears from the date of actual posting in Nagaland on or after 1.10.1986 upto date to be paid within a period of three months from the date of communication of this order.

iv) (a) It is declared that FSC is admissible from 1.4.1993.

(b) The respondents are directed to extend the FSC to the applicants in the prescribed manner with effect from 1.4.1993 or from the date of actual appointment as the case may be in respect of each applicant upto date and.....



and to continue to give the same so long as admissibility is not disputed.

v) (a) It is declared that HRA is admissible as indicated below:

(b) The respondents are directed to pay HRA to the applicants at the rate as was applicable to the Government employees in B, B-1, B-2 class cities/towns for the period from 1.10.1986 or from the actual date of appointment as the case may be in respect of each applicant upto 28.2.1991 and at the rate as may be applicable from time to time as from 1.3.1991 upto date and to continue to pay the same at the rate prescribed hereafter.

(c) Arrears 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 towards HRA.

(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 three months from the date of communication of this order to the respondents.

The original application is allowed in terms of the aforesaid order. No order as to costs.



Sd/- CHAIRMAN

Sd/- MEMBER

C.I.C

Certified to be true Copy,

मन्माणित प्रतिलिपि

[Signature] 28/9/95
COURT OFFICER

प्रधानमंत्री अधिकारी
Central Administrative Tribunal
प्रधानमंत्री अधिकारी
Guwahati Bench, Guwahati
प्रधानमंत्री अधिकारी

AC-B/1
28/9/95